



**BAY AREA
AIR QUALITY
MANAGEMENT
DISTRICT**

**BOARD OF DIRECTORS
MEETING**

September 20, 2023

**MEETING LOCATION(S) FOR IN-PERSON ATTENDANCE BY
BOARD MEMBERS AND MEMBERS OF THE PUBLIC**

**Bay Area Metro Center
1st Floor Board Room
375 Beale Street
San Francisco, CA 94105**

**Office of Contra Costa County
Supervisor John Gioia
11780 San Pablo Ave., Suite D
El Cerrito, CA 94530**

**City of Palo Alto City Hall
250 Hamilton Ave.
Palo Alto, CA 94301**

**Office of Alameda County Supervisor
David Haubert
4501 Pleasanton Ave.
Pleasanton, CA 94566**

**Hyatt House Sacramento/Midtown
2719 K Street
Sacramento, CA 95816**

**Office of Santa Clara County
Supervisor Otto Lee
70 W Hedding St
East Wing, 10th Floor
San Jose, CA 95110**

**San Ramon City Hall
Community Conference Room, 2nd Floor
7000 Bollinger Canyon Road
San Ramon, CA 94583**

**Santa Rosa Junior College Campus
Doyle Library, Room 148
1501 Mendocino Ave.
Santa Rosa, CA, 95401**

THE FOLLOWING STREAMING OPTIONS WILL ALSO BE PROVIDED

These streaming options are provided for convenience only. In the event that streaming connections malfunction for any reason, the Board of Directors reserves the right to conduct the meeting without remote webcast and/or Zoom access.

The public may observe this meeting through the webcast by clicking the link available on the air district's agenda webpage at www.baaqmd.gov/bodagendas.

Members of the public may participate remotely via Zoom at <https://bayareametro.zoom.us/j/83837369792>, or may join Zoom by phone by dialing (669) 900-6833 or (408) 638-0968. The Webinar ID for this meeting is: 838 3736 9792

Public Comment on Agenda Items: The public may comment on each item on the agenda as the item is taken up. Members of the public who wish to speak on a matter on the agenda will have two minutes each to address the Board on that agenda item, unless a different time limit is established by the Chair. No speaker who has already spoken on an item will be entitled to speak to that item again.

The Board welcomes comments, including criticism, about the policies, procedures, programs, or services of the District, or of the acts or omissions of the Board. Speakers shall not use threatening, profane, or abusive language which disrupts, disturbs, or otherwise impedes the orderly conduct of a Board meeting. The District is committed to maintaining a workplace free of unlawful harassment and is mindful that District staff regularly attend Board meetings. Discriminatory statements or conduct that would potentially violate the Fair Employment and Housing Act – i.e., statements or conduct that is hostile, intimidating, oppressive, or abusive – is *per se* disruptive to a meeting and will not be tolerated.

BOARD OF DIRECTORS MEETING AGENDA

WEDNESDAY, SEPTEMBER 20, 2023

9:00 AM

Chairperson, John J. Bauters

1. Call to Order - Roll Call

The Board Chair shall call the meeting to order and the Clerk of the Boards shall take roll of the Board members.

2. Pledge of Allegiance

3. Special Orders of the Day

CONSENT CALENDAR (Items 4 - 16)

4. Approval of the Draft Minutes of the Board of Directors Meeting of September 6, 2023

The Board of Directors will consider approving the draft minutes of the Board of Directors meeting of September 6, 2023.

5. Board Communications Received from September 6, 2023 through September 19, 2023

A copy of communications directed to the Board of Directors received by the Air District from September 6, 2023 through September 19, 2023, if any, will be distributed to the Board Members by way of email.

6. Personnel Out-of-State Business Travel Report for August 2023

In accordance with Division II, Section 5.4(b), of the Air District Administrative Code, the Board of Directors will receive a report of Air District personnel who have traveled on out-of-state business in the preceding months.

7. Projects and Contracts with Proposed Grant Awards Over \$500,000

The Board of Directors will consider approving the award of incentive funding to projects with proposed grant awards in excess of \$500,000 and authorizing the Executive Officer/APCO to execute grant agreements for each recommended project.

8. Authorization to Execute Lease Extensions for Air Monitoring Stations in Redwood City and Sebastopol

The Board of Directors will consider authorizing the Executive Officer/APCO to execute five-year extensions to the lease agreements for Air Monitoring Stations in Redwood City and Sebastopol for a total amount not to exceed \$251,289 over five years.

9. Authorization to Execute Purchases for Meteorology and Measurement Division Operations

The Board of Directors will consider authorizing the Executive Officer/APCO to procure goods and services that are required for Meteorology and Measurement Division operations in a total amount not to exceed \$676,840.

10. Authorization to Accept Grant Program Revenues from the U.S. Environmental Protection Agency for Clean Air Act Section 105 Activities

The Board of Directors will consider adopting a Resolution authorizing the Executive Officer/APCO to accept, obligate, and expend funding from the United States Environmental Protection Agency (EPA) for Clean Air Act Section 105 activities in the amount of \$2,496,021; and authorizing the Executive Officer/APCO to enter into a Memorandum of Understanding with the California Air Pollution Control Officers Association for passthrough funding in the amount of \$622,542.

11. Authorization to Execute the Renewal of the Three-Year Microsoft Enterprise Agreement with Dell Marketing LP for the Continued Licensing of all Microsoft Software and Cloud Products.

The Board of Directors will consider authorizing the Executive Officer/APCO to execute a three-year Microsoft Enterprise Agreement with Dell Marketing LP for the continued licensing of all Microsoft software and cloud products not to exceed \$2,300,000 for the three-year term.

12. Authorization to Execute a Four-Year Lease Extension for a Compliance & Enforcement Field Office in Novato

The Board of Directors will consider authorizing the Executive Officer/APCO to execute a four-year Lease Agreement with Chabad of Novato for a Compliance and Enforcement field office in Novato for a total amount not to exceed \$62,940.

13. Authorization for Board Members to Attend the Air District's Washington D.C. Advocacy Trip

The Board of Directors will consider approving the \$100 per meeting compensation, up to a maximum of \$200 per day, for attendance by Board Chair John J. Bauters, Board Vice Chair Davina Hurt, and Board Members Katie Rice and Vicki Veenker, in Washington D.C. from October 19, 2023 to October 25, 2023.

14. Report of the Finance and Administration Committee Meeting of September 6, 2023

The Board of Directors will receive a report of the Finance and Administration Committee Meeting of September 6, 2023.

15. Report of the Advisory Council Meeting of September 11, 2023

The Board of Directors will receive a report of the Advisory Council Meeting of September 11, 2023.

16. Report of the Stationary Source and Climate Impacts Committee Meeting of September 13, 2023

The Board of Directors will receive a report of the Stationary Source and Climate Impacts Committee Meeting of September 13, 2023, and will consider the following action item:

- A. United States Environmental Protection Agency (US EPA) Climate Pollution Reduction Grant

Action Item: The Board of Directors will consider authorizing the Executive Officer/APCO to accept, obligate, and expend up to \$1,000,000 from the United States Environmental Protection Agency (US EPA) for a Climate Pollution Reduction Grant, and authorize the Executive Officer/Air Pollution Control Officer (APCO) to enter into all necessary agreements to accept, obligate, and expend program funds.

*For the full Committee agenda packet and materials, click on the link below:
www.baaqmd.gov/bodagendas*

INFORMATIONAL ITEM(S)

17. Advisory Council Presentation on the Work of the Council and Fine Particulate Local Risk Methodology

Advisory Council leadership will share a presentation on the work of the Council and a letter endorsing the Air District's white paper, Modeling Health Risks from Local Sources of Fine Particulate Matter (PM_{2.5}), version 2.0, August 2023. This is an information item only and will be presented by Dr. Gina Solomon, Chair, Air District Advisory Council.

OTHER BUSINESS

18. Public Comment on Non-Agenda Matters

Pursuant to Government Code Section 54954.3, members of the public who wish to speak on matters not on the agenda will be given an opportunity to address the Board of Directors. Members of the public will have two minutes each to address the Board, unless a different time limit is established by the Chair. The Board welcomes comments, including criticism, about the policies, procedures, programs, or services of the District, or of the acts or omissions of the Board. Speakers shall not use threatening, profane, or abusive language which disrupts, disturbs, or otherwise impedes the orderly conduct of a Board meeting. The District is committed to maintaining a workplace free of unlawful harassment and is mindful that District staff regularly attend Board meetings. Discriminatory statements or conduct that would potentially violate the Fair Employment and Housing Act – i.e., statements or conduct that is hostile, intimidating, oppressive, or abusive – is per se disruptive to a meeting and will not be tolerated.

19. Board Member Comments

Any member of the Board, or its staff, on his or her own initiative or in response to questions posed by the public, may: ask a question for clarification, make a brief announcement or report on his or her own activities, provide a reference to staff regarding factual information, request staff to report back at a subsequent meeting concerning any matter or take action to direct staff to place a matter of business on a future agenda. (Gov't Code § 54954.2)

20. Report of the Executive Officer/APCO

21. Chairperson's Report

22. Time and Place of Next Meeting

Wednesday, October 4, 2023, at 9:00 a.m. at 375 Beale Street, San Francisco, CA 94105. The meeting will be in-person for the Board of Directors members and members of the public will be able to either join in-person or via webcast.

CLOSED SESSION

23. Conference With Legal Counsel re Existing Litigation (Government Code Section 54956.9(a))

Pursuant to Government Code Section 54956.9(a), the Board will meet in closed session with legal counsel to discuss the following cases:

Chevron U.S.A Inc. v. Bay Area Air Quality Management District, Contra Costa Superior Court Case No. MSN21-1739; and

Martinez Refining Co. LLC v. Bay Area Air Quality Management District, Contra Costa Superior Court Case No. MSN21-1568.

24. Conference with Labor Negotiators Pursuant to Government Code Section 54957.6

Conference with Labor Negotiators

Pursuant to Government Code Section 54957.6

Agency Designated Representatives:

Laura A. Izon, Atkinson, Andelson, Loya, Ruud & Romo

John Chiladakis, Acting Deputy Executive Officer of Finance and Administration

Employee organization: BAAQMD Employees' Association

OPEN SESSION

25. Adjournment

The Board meeting shall be adjourned by the Board Chair.

CONTACT:

MANAGER, EXECUTIVE OPERATIONS
375 BEALE STREET, SAN FRANCISCO, CA 94105
vjohnson@baaqmd.gov

(415) 749-4941
FAX: (415) 928-8560
BAAQMD homepage:
www.baaqmd.gov

- Any writing relating to an open session item on this Agenda that is distributed to all, or a majority of all, members of the body to which this Agenda relates shall be made available at the Air District's offices at 375 Beale Street, Suite 600, San Francisco, CA 94105, at the time such writing is made available to all, or a majority of all, members of that body.

Accessibility and Non-Discrimination Policy

The Bay Area Air Quality Management District (Air District) does not discriminate on the basis of race, national origin, ethnic group identification, ancestry, religion, age, sex, sexual orientation, gender identity, gender expression, color, genetic information, medical condition, or mental or physical disability, or any other attribute or belief protected by law.

It is the Air District's policy to provide fair and equal access to the benefits of a program or activity administered by Air District. The Air District will not tolerate discrimination against any person(s) seeking to participate in, or receive the benefits of, any program or activity offered or conducted by the Air District. Members of the public who believe they or others were unlawfully denied full and equal access to an Air District program or activity may file a discrimination complaint under this policy. This non-discrimination policy also applies to other people or entities affiliated with Air District, including contractors or grantees that the Air District utilizes to provide benefits and services to members of the public.

Auxiliary aids and services including, for example, qualified interpreters and/or listening devices, to individuals who are deaf or hard of hearing, and to other individuals as necessary to ensure effective communication or an equal opportunity to participate fully in the benefits, activities, programs, and services will be provided by the Air District in a timely manner and in such a way as to protect the privacy and independence of the individual. Please contact the Non-Discrimination Coordinator identified below at least three days in advance of a meeting so that arrangements can be made accordingly.

If you believe discrimination has occurred with respect to an Air District program or activity, you may contact the Non-Discrimination Coordinator identified below or visit our website at www.baaqmd.gov/accessibility to learn how and where to file a complaint of discrimination.

Questions regarding this Policy should be directed to the Air District's Non-Discrimination Coordinator, Suma Peesapati, at (415) 749-4967 or by email at spesapati@baaqmd.gov.

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

375 BEALE STREET, SAN FRANCISCO, CA 94105

FOR QUESTIONS PLEASE CALL (415) 749-4941

EXECUTIVE OFFICE:

MONTHLY CALENDAR OF AIR DISTRICT MEETINGS

SEPTEMBER 2023

<u>TYPE OF MEETING</u>	<u>DAY</u>	<u>DATE</u>	<u>TIME</u>	<u>ROOM</u>
Community Advisory Council Retreat (2-day event)	Thurs/Fri	14/15	11:00 a.m. / 8:00 a.m.	Sheraton Sonoma Wine Country Petaluma Hotel Ballroom 745 Baywood Drive Petaluma, CA 94954
Board of Directors Meeting	Wednesday	20	9:00 a.m.	1 st Floor Board Room
Board of Directors Community Equity, Health and Justice Committee	Wednesday	20	1:00 p.m.	1 st Floor Board Room

OCTOBER 2023

<u>TYPE OF MEETING</u>	<u>DAY</u>	<u>DATE</u>	<u>TIME</u>	<u>ROOM</u>
Board of Directors Meeting	Wednesday	4	9:00 a.m.	1 st Floor Board Room
Board of Directors Legislative Committee	Wednesday	4	10:30 a.m.	1 st Floor Board Room
Board of Directors Finance and Administration Committee	Wednesday	4	1:00 p.m.	1 st Floor Board Room
Board of Directors Stationary Source and Climate Impacts Committee	Wednesday	11	10:00 a.m.	1 st Floor, Yerba Buena Room
Board of Directors Mobile Source and Climate Impacts Committee	Wednesday	11	1:00 p.m.	1 st Floor, Yerba Buena Room
Board of Directors Meeting - CANCELLED	Wednesday	18	9:00 a.m.	1 st Floor Board Room
Board of Directors Special Finance and Administration Committee	Wednesday	18	10:00 a.m.	1 st Floor Board Room
Board of Directors Community Equity, Health and Justice Committee	Wednesday	18	1:00 p.m.	1 st Floor Board Room

HL 9/13/2023 – 12:55 p.m.
G/Board/Executive Office/Moncal

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairperson John J. Bauters and Members
of the Board of Directors

From: Philip M. Fine
Executive Officer/APCO

Date: September 20, 2023

Re: Approval of the Draft Minutes of the Board of Directors Meeting of September 6,
2023

RECOMMENDED ACTION

Approve the draft minutes of the Board of Directors meeting of September 6, 2023.

BACKGROUND

None.

DISCUSSION

Attached for your review and approval are the Draft Minutes of the Board of Directors meeting of September 6, 2023.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Philip M. Fine
Executive Officer/APCO

Prepared by: Marcy Hiratzka
Reviewed by: Vanessa Johnson

ATTACHMENTS:

1. Draft Minutes of the Board of Directors Meeting of September 6, 2023

Bay Area Air Quality Management District
375 Beale Street, Suite 600
San Francisco, CA 94105
(415) 749-5073

Board of Directors Regular Meeting
Wednesday, September 6, 2023

DRAFT MINUTES

This meeting was webcast, and a video recording is available on the website of the Bay Area Air Quality Management District at www.baaqmd.gov/bodagendas

CALL TO ORDER

1. **Opening Comments:** Board of Directors (Board) Chairperson, John J. Bauters, called the meeting to order at 9:01 a.m.

Roll Call:

Present, In-Person (Bay Area Metro Center, 375 Beale Street, 1st Floor Board Room, San Francisco, California, 94105): Chairperson John J. Bauters; Vice Chairperson Davina Hurt; and Directors Ken Carlson, Juan Gonzalez, David Haubert, Tyrone Jue, Sergio Lopez, Myrna Melgar, and Shamann Walton.

Present, In-Person Satellite Location: (Office of Contra Costa County Supervisor John Gioia, Conference Room, 11780 San Pablo Avenue, Suite D, El Cerrito, California, 94530): Directors Joelle Gallagher, John Gioia, Mark Ross, and Steve Young.

Present, In-Person Satellite Location: (City of Palo Alto City Hall, 250 Hamilton Avenue, 7th Floor, Palo Alto, California, 94301): Directors Margaret Abe-Koga, and Ray Mueller.

Present, In-Person Satellite Location: (County of Sonoma County Administrator's Office, 575 Administration Drive, Sunroom, Suite #110A, Santa Rosa, California, 95403): Secretary Lynda Hopkins.

Present, In-Person Satellite Location: (Santa Rose Junior College, Doyle Library, 1501 Mendocino Ave., Room 148 Santa Rosa, California, 95401): Director Brian Barnacle.

Present, In-Person Satellite Location: (Bloomington City Hall, 401 N. Morton St., Dunlap Conference Room, #235, Bloomington, Indiana, 47404): Director Vicki Veenker.

Present, In-Person Satellite Location: (Office of Santa Clara County Supervisor Otto Lee, 70 W Hedding St., East Wing, 10th Floor, San Jose, California, 95110): Directors Noelia Corzo and Otto Lee.

Absent: Directors Erin Hannigan, David Hudson, Nate Miley, and Katie Rice.

2. **PLEDGE OF ALLEGIANCE**

3. **SPECIAL ORDERS OF THE DAY**

Chair Bauters introduced Heidi Howerton, a new Staff Specialist I in the Air District’s Strategic Incentives Division. He also announced the promotion of Dr. Wendy Goodfriend, now Director of the Air District’s Planning & Climate Protection Division, and the upcoming retirement of Scott Owen, Supervising Air Quality Engineer, who will be retiring after 38 years at the Air District.

NOTED PRESENT: Director Lee was noted present at 9:04 a.m., and Director Gallagher was noted present at 9:10 a.m.

CONSENT CALENDAR (ITEMS 4 – 21)

4. Approval of the Draft Minutes of the Board of Directors Regular Meeting of July 19, 2023
5. Board Communications Received from July 19, 2023, through September 5, 2023
6. Personnel Out-of-State Business Travel Report for July 2023
7. Notices of Violations Issued and Settlements in Excess of \$10,000 in the Months of June 2023 and July 2023
8. Quarterly Reports of California Air Resources Board Representative – Hon. Davina Hurt
9. Authorization to Amend Contract with Kadash & Associates LLC for Federal Legislative Advocacy Services
10. Authorization to Amend Contract with Moore Iacofano Goltsman, Inc., for the AB 617 Richmond-North Richmond-San Pablo Path to Clean Air Community Emissions Reduction Plan Community Steering Committee
11. Authorization to Amend Contract with DIFF WORKS, LLC for Videography Services
12. Authorization to Execute Lease Amendments for Compliance and Enforcement Field Office Space in Richmond
13. Authorization to Accept Grant Program Funds from the U.S. Environmental Protection Agency for Mobile and Portable Monitoring and to Procure Equipment Using Those Funds
[Link to signed Board Resolution No. 2023–16 will be available here](#)
14. Authorization to Amend Master Services Agreement with Just Cities, LLC for East Oakland AB 617 Community Steering Committee Support
15. Authorization to Amend Signature Authority for Air District Accounts Held With the San Mateo County Treasurer
[Link to signed Board Resolution No. 2023–17 will be available here](#)
16. Authorization for a One-Year Contract Renewal with Microsoft Corporation for Unified Support and Expanded Cybersecurity Operation Services
17. Authorization to Execute a Multi-Year Contract with Ideal Computer Services, Inc. for Hosting Services of the Legacy Systems
18. Amendments to Administrative Code Regarding Probationary Periods and Return Rights for Current Employees Promoted to Deputy Executive Officer or Senior Assistant Counsel

19. Authorization to Add and Amend Position Classifications to Reduce Barriers to Recruiting and Provide for Span of Control
20. Report of the Stationary Source and Climate Impacts Committee Meeting of July 12, 2023
21. Report of the Community Advisory Council Meeting of July 20, 2023

Public Comments

No requests received.

Board Comments

None.

Board Action

Director Gonzalez made a motion, seconded by Vice Chair Hurt, to **approve** Consent Calendar Items 4 – 21, inclusive; and the motion **carried** by the following vote of the Board:

AYES: Abe-Koga, Barnacle, Bauters, Carlson, Corzo, Gallagher, Gioia, Gonzalez, Haubert, Hopkins, Hurt, Jue, Lee, Melgar, Veenker, Walton, Young.
NOES: None.
ABSTAIN: None.
ABSENT: Hannigan, Hudson, Lopez, Mueller, Miley, Rice, Ross.

OTHER BUSINESS

22. PUBLIC COMMENT ON NON-AGENDA MATTERS

Public comments were given by Eddie Ahn, Brightline Defense.

NOTED PRESENT: Director Lopez was noted present at 9:16 a.m.

23. BOARD MEMBER COMMENTS

None.

24. REPORT OF THE EXECUTIVE OFFICER/AIR POLLUTION CONTROL OFFICER (APCO)

Dr. Philip M. Fine, Executive Officer/APCO, announced that on September 5, 2023, the Air District and Communities for a Better Environment partnered to increase transparency and community participation in evaluating industrial health risks, via an agreement to enhance Air District Regulation 11-18 Health Risk Assessment process. The associated press release can be found [here](#).

Dr. Fine announced that the Air District offered the following positions to the following candidates: Dr. Meredith Bauer as Deputy Executive Officer of Engineering & Compliance; Hyacinth “Hy” Hinojosa as Deputy Executive Officer of Finance & Administration; and Viet Tran as Deputy Executive Officer of Public Affairs. The associated press release can be found [here](#).

Veronica Eady, Deputy Executive Officer of Equity & Community Programs, described the upcoming Community Advisory Council retreat, which will take place in Petaluma, California, on September 14 and 15, 2023.

25. **CHAIRPERSON'S REPORT**

Chair Bauters announced that the Board's Finance and Administration Committee will meet following this meeting (on September 6, 2023), no earlier than 1:00 p.m.

26. **TIME AND PLACE OF NEXT MEETING**

Wednesday, September 20, 2023, at 9:00 a.m. at 375 Beale Street, San Francisco, CA 94105. The meeting will be in-person for the board members and members of the public will be able to either join in-person or via webcast.

CLOSED SESSION (9:24 a.m.)

NOTED PRESENT: Director Mueller was noted present at 9:24 a.m., and Director Ross was noted present at 9:25 a.m.

27. **CONFERENCE WITH LEGAL COUNSEL REGARDING EXISTING LITIGATION (GOVERNMENT CODE SECTION 54956.9(a))**

Pursuant to Government Code Section 54956.9(a), the Board met in closed session with Legal Counsel to discuss the following cases:

Chevron U.S.A Inc. v. Bay Area Air Quality Management District, Contra Costa Superior Court Case No. MSN21-1739;

Martinez Refining Co. LLC v. Bay Area Air Quality Management District, Contra Costa Superior Court Case No. MSN21-1568;

Stephen (Rex) Sanders v. Bay Area Air Quality Management District, San Francisco Superior Court Case No. CGC-23-608095;

Terri Levels v. Bay Area Air Quality Management District, San Francisco Superior Court Case No. CGC-23-608122.

REPORTABLE ACTION: Alexander Crockett, District Counsel, had nothing to report, regarding the cases listed above in Item 27. However, Mr. Crockett did report action from the Board's Closed Session at its July 19, 2023 meeting. The Board voted to authorize the Executive Officer/APCO to accept and execute a settlement agreement in the case of Communities for a Better Environment v. Bay Area Air Quality Management District et al all (Alameda County Sup. Ct. No. 22CV020451.) Pursuant to Section 54957.1 (a)(3)(B) of the Brown Act, that action was not publicly recorded reported at that time. Under that Brown Act provision, settlements of pending litigation are not reported until the settlement becomes final. The settlement agreement was finalized on September 2, 2023, and so under the Brown Act, Mr. Crockett used the September 6, 2023 Board meeting to publicly report the action taken to approve the settlement

agreement that occurred in Closed Session on July 19, 2023. The vote to approve the settlement agreement was unanimous, with the following Directors present and voting in favor: Directors Gonzalez, Gallagher, Lopez, Young, Abe-Koga, Jue, Gioia, Rice, Miley, Carlson, Corzo, Mueller, and Veenker, Secretary Hopkins, and Chair Bauters. There were no votes against and no abstentions.

28. **CONFERENCE WITH LABOR NEGOTIATORS PURSUANT TO GOVERNMENT CODE SECTION 54957.6**

Conference with Labor Negotiators

Pursuant to Government Code Section 54957.6

Agency Designated Representatives:

Laura A. Izon , Atkinson, Andelson, Loya, Ruud & Romo

John Chiladakis, Acting Deputy Executive Officer of Finance and Administration

Employee organization: BAAQMD Employees' Association

REPORTABLE ACTION: Mr. Crockett had nothing to report.

OPEN SESSION (11:14 a.m.)

29. **ADJOURNMENT**

The meeting was adjourned at 11:15 a.m.

Marcy Hiratzka
Clerk of the Boards

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson John J. Bauters and Members
of the Board of Directors

From: Philip M. Fine
Executive Officer/APCO

Date: September 20, 2023

Re: Board Communications Received from September 6, 2023 through September 19,
2023

RECOMMENDED ACTION

None; receive and file.

BACKGROUND

None.

DISCUSSION

Copies of communications directed to the Board of Directors received by the Air District from September 6, 2023 through September 19, 2023, if any, will be distributed to the Board Members by way of email.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Philip M. Fine
Executive Officer/APCO

Prepared by: Michelle Beteta
Reviewed by: Vanessa Johnson

ATTACHMENTS:

None

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairperson John J. Bauters and Members
of the Board of Directors

From: Philip M. Fine
Executive Officer/APCO

Date: September 20, 2023

Re: Personnel Out-of-State Business Travel Report for August 2023

RECOMMENDED ACTION

None; receive and file.

BACKGROUND

In accordance with Division II, Section 5.4(b) of the District's Administrative Code, the Board is hereby notified of District personnel who have traveled on out-of-state business. The report covers out-of-state business travel for the month of August 2023. The monthly out-of-state business travel report is presented in the month following travel completion.

DISCUSSION

There were no out-of-state business travel activities that occurred in the month of August 2023.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Philip M. Fine
Executive Officer/APCO

Prepared by: Michelle Hutson
Reviewed by: Stephanie Osaze

ATTACHMENTS:

None

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairperson John J. Bauters and Members
of the Board of Directors

From: Philip M. Fine
Executive Officer/APCO

Date: September 20, 2023

Re: Projects and Contracts with Proposed Grant Awards Over \$500,000

RECOMMENDED ACTION

1. Approve recommended projects with proposed grant awards over \$500,000 as shown in Attachment 2; and
2. Authorize the Executive Officer/Air Pollution Control Officer to enter into all necessary agreements with applicants for the recommended projects.

BACKGROUND

Carl Moyer Program and Mobile Source Incentive Fund

The Bay Area Air Quality Management District (Air District) has participated in the Carl Moyer Program (CMP), in cooperation with the California Air Resources Board (CARB), since the program began in fiscal year 1998-1999. The CMP provides grants to public and private entities to reduce emissions of nitrogen oxides (NOx), reactive organic gases (ROG), and particulate matter (PM) from existing heavy-duty engines by either replacing or retrofitting them. Projects eligible under the CMP guidelines include heavy-duty diesel engine applications such as on-road trucks and buses, off-road construction, agricultural equipment, marine vessels, locomotives, stationary agricultural pump engines, and refueling or recharging infrastructure that supports the deployment of new zero-emission vehicles and equipment. Per AB 1390, at least 50% of CMP funds must be awarded to projects that benefit communities with the most significant exposure to air contaminants or localized air contaminants.

Assembly Bill (AB) 923 (Firebaugh), enacted in 2004 (codified as Health and Safety Code (HSC) Section 44225), authorized local air districts to increase motor-vehicle-registration surcharges by up to \$2 additional per vehicle and use the revenue to fund projects eligible under the CMP guidelines. AB 923 revenue is deposited in the Air District's Mobile Source Incentive Fund (MSIF).

The Board of Directors (Board) authorizes the Air District's participation in each cycle of the CMP, including an allocation of MSIF revenue as match funds.

Community Air Protection Program - Incentives

In 2017, AB 617 directed CARB, in conjunction with local air districts to establish a new community-focused action framework to improve air quality and reduce exposure to criteria air pollutants and toxic air contaminants in communities most impacted by air pollution. The AB 617 initiative calls for strategies to address air quality issues in impacted communities, including community-level monitoring, uniform emission reporting across the State, stronger regulation of pollution sources, and incentives for reducing air pollution and public health impacts from mobile and stationary sources.

Beginning in fiscal year ending (FYE) 2018, the California Legislature approved funding from the State's Greenhouse Gas Reduction Fund (GGRF), which is used to reduce criteria pollutants, toxic air contaminants, and greenhouse gases for the Community Air Protection Program (CAPP). CAPP Incentives funds may be used to fund projects eligible under the CMP and on-road truck replacements under the Proposition 1B Goods Movement Emission Reduction Program. Following additional approvals from CARB, CAPP Incentive funds may also potentially be used to fund stationary source and mobile source projects that have been identified and prioritized by communities with a Community Emissions Reduction Program, pursuant to HSC Section 44391.2. At least 80% of CAPP Incentives funds must be allocated to projects that benefit disadvantaged communities (Senate Bill (SB)535), and low-income communities (AB 1550).

Funding Agricultural Replacement Measures for Emission Reductions

In February 2018, CARB developed the Funding Agricultural Replacement Measures for Emission Reductions (FARMER) Program Guidelines that outline requirements for eligible agricultural equipment replacement projects evaluated under the CMP guidelines, including harvesting equipment, pump engines, tractors, and other equipment used in agricultural operations. Subsequent updates to the FARMER guidelines expanded eligible projects to include zero-emission demonstration projects and added flexibility for funding zero-emission equipment. Under the California State Budget, GGRF funds are appropriated to CARB for each new cycle of the FARMER program for the continued reduction of criteria, toxic, and greenhouse gas emissions from the agricultural sector.

Transportation Fund for Clean Air

In 1991, the California State Legislature authorized the Air District to impose a \$4 surcharge on motor vehicles registered within the nine-county Bay Area to fund projects that reduce on-road motor vehicle emissions within the Air District's jurisdiction. The statutory authority and requirements for the Transportation Fund for Clean Air (TFCA) are set forth in HSC Sections 44241 and 44242. Sixty percent of TFCA monies are awarded by the Air District to eligible projects and programs implemented directly by the Air District (e.g., Spare the Air program) and to a program referred to as the Regional Fund. The remaining forty percent, referred to as the TFCA County Program Manager Fund, is required to be allocated by formula to the designated Bay Area transportation agencies, who in turn award these monies to eligible projects within their county. Each year, the Board allocates funding and adopts policies and evaluation criteria that govern the expenditure of TFCA monies. On April 5, 2023, the Board authorized funding allocations of the sixty-percent portion of the TFCA revenue for use in FYE 2024, and cost-effectiveness limits for Air District-sponsored programs that will be implemented during FYE

2024. On May 17, 2023, the Board adopted policies and evaluation criteria that will govern use of the 60% portion during FYE 2024. This report discusses only the 60% portion of the TFCA revenue, which is the portion that is awarded directly by the Air District.

Attachment 1 shows a list of the Air District's sources of new revenue for incentive projects by funding cycle, including CMP, TFCA, CAPP, MSIF and FARMER. Funding from each cycle must be awarded and liquidated (paid out) within two to four years, depending on the source, and as new projects are recommended for award, staff works to obligate (encumber) the oldest source/cycle of funding for which a specific project is eligible. For this reason, typically a portion of the oldest funding shown in Attachment 1 has already been awarded to projects in the previous fiscal year, and some of the newer funding may remain unallocated during the current year and will be made available in future years..

Applications for grant funding received by the Air District are reviewed and evaluated for eligibility under the respective governing policies and guidelines established by each funding source, e.g., CARB, the Board. At least quarterly, staff provides updates to the Mobile Source and Climate Impacts Committee or Board of Directors on the status of incentive funding for the current fiscal year, including total funding awarded, remaining funds available for award, funds allocated by county and by equipment category type, and percentage of funding to projects where emissions reductions benefit low-income residents and impacted communities, including disadvantaged SB 535 communities, low-income AB 1550 communities, and/or Air District-identified Community Air Risk Evaluation (CARE) areas.

On April 6, 2022, the Board authorized the Air Pollution Control Office (APCO)/Executive Officer to approve projects with awards up to \$500,000. For all projects with proposed awards greater than \$500,000, staff bring recommendations of these projects to the Board for approval.

DISCUSSION

As of July 1, 2023, the Air District had approximately \$144 million available in CMP, MSIF, CAPP Incentives, FARMER, and TFCA funds for eligible projects from new revenue and prior year funds. The mobile source projects that are currently recommended for award were evaluated through a solicitation that opened September 19, 2022, and closed on June 8, 2023. Under this solicitation, applications were accepted on a rolling basis and evaluated on a first-come, first-served basis. Between July 1, 2023, and August 18, 2023, staff completed evaluations of seven applications that were received during the solicitation that closed on June 8th, that had proposed awards of over \$500,000. These seven projects will:

- Replace two compressed natural gas school busses and eight diesel school busses with ten electric school busses and install supporting charging infrastructure,
- Replace 18 heavy-duty trucks with 18 electric heavy-duty trucks and install twenty-three supporting electric charging infrastructure stations that will be used in food delivery service throughout the Bay Area,

- Replace seven diesel switcher locomotives with three diesel switcher locomotives to the cleanest diesel standard, and,
- Repower six diesel marine engines to the cleanest diesel standard.

The proposed projects are estimated to reduce over 54.72 tons of NO_x, ROG, and PM emissions per year. Six of the seven projects will provide emissions benefits in priority areas and the seventh project may also provide some benefits to priority communities. Staff recommends approval of the allocation of up to \$18,453,750 for these projects from a combination of CMP, MSIF, CAPP Incentives, and TFCA revenues. Attachment 2 provides additional information on the projects.

Attachment 3, updated at least quarterly, lists all eligible projects that have been awarded by the Air District between July 1, 2023, and August 18, 2023, including information about project equipment, award amounts, project locations, estimated emissions reductions, and whether the project will benefit air quality in priority communities. Over \$29 million has been awarded or recommended, with over 79% of these funds awarded or allocated to low-income residents or to projects that reduce emissions in disadvantaged SB 535 communities, low-income AB 1550 communities, and/or CARE communities. These results do not include data from “regional” projects, where all communities receive benefits, or projects where the location of the benefit has not yet been determined.

The Air District’s competitive solicitation for electric infrastructure projects opened on July 19, 2023, and will close on September 12th. Recommendations for the award of funding to the highest ranked applications are anticipated to occur by early 2024. A solicitation for other types of project categories for the coming year is under development and anticipated to open later this calendar year.

BUDGET CONSIDERATION/FINANCIAL IMPACT

The Air District distributes the CMP, MSIF, CAPP Incentive, FARMER, and TFCA funding to project sponsors on a reimbursement basis. The seven recommended projects listed on Attachment 1 will be awarded a total of \$18,453,750 that will be paid for by one or more of these state and local incentive fund sources upon project completion, expected within the next one to three years. In some cases, for example, if a project is delayed or is completed ahead of schedule, the source of funding that is used to pay for a project may be different than what is initially identified in this report to ensure that the oldest funding sources are all liquidated on time. Funding for administrative costs to implement these programs, including evaluating, contracting, and monitoring projects for multiple years, is provided by each funding source.

Respectfully submitted,

Philip M. Fine
Executive Officer/APCO

Prepared by: Daniel Langmaid and Linda Hui
Reviewed by: Alona Davis and Karen Schkolnick

ATTACHMENTS:

1. Sources of Incentive Program Revenue (FYE 2024)
2. Projects with grant awards greater than \$500,000 (evaluated 7.1.23 to 8.18.23)
3. All projects - awarded, allocated, and recommended (7.1.23 to 8.18.23)

Attachment 1

Sources of Incentive Program Revenue (FYE 2024)*

Funding Source Cycle**	\$ for Projects and Programs (in Millions)	Award Date	Source
CMP Year 24	\$ 26.7***	3/16/2022	CARB
CMP Year 24 State Reserve	\$ 4.5	6/3/2022	CARB
CMP Year 25	\$ 13.6	2/22/2023	CARB
CMP Year 25 State Reserve	\$ 2.8	5/19/2023	CARB
CAPP Incentives Year 5	\$ 35.4***	6/23/2022	CARB
CAPP Incentives Year 6	\$ 32.7	12/27/2022	CARB
FARMER Year 5	\$ 2.4***	12/14/2022	CARB
TFCA Regional Fund FYE 2024	\$ 13.5	accrues monthly	\$4 DMV fees
Mobile Source Incentive Fund	\$ 11.2	accrues monthly	\$2 DMV fees
Total	\$142.8		

* This is not a complete listing of all sources of incentive funds managed by the Air District but covers the sources that are discussed in this report.

** Includes Carl Moyer Program (CMP), Community Air Protection Program (CAPP), Funding Agricultural Replacement Measures for Emissions Reduction (FARMER), and Transportation Fund for Clean Air (TFCA).

*** Some revenues were partially obligated to projects in fiscal year ending (FYE) 2023 and therefore full amounts may not be available for award to projects in FYE 2024.

ATTACHMENT 2

Projects with grant awards greater than \$500k (Evaluated between 7/1/23 and 8/18/23)
 Carl Moyer Program, Transportation Fund for Clean Air, Mobile Source Incentive Fund, FARMER, and Community Air Protection Program

Project #	Applicant Name	Project Category	Project Description	Proposed Contract Award	Total Project Cost	Emission Reductions (tons per year)			County	Benefits Priority Area(s)
						NO _x	ROG	PM		
23SBP64	Sunnyvale School District	School Bus	Replace 2 compressed natural gas school buses with 2 electric school buses	\$847,000	\$948,009	0.0776	0.0042	0.0004	Santa Clara	Yes
23MOY150*	Sysco San Francisco	Heavy-Duty Truck	Replace 18 diesel-powered heavy heavy-duty trucks with 18 electric heavy heavy-duty trucks and install 23 electric vehicle charging stations	\$4,595,084	\$10,894,386	0.9673	0.0638	0.0022	Alameda	No**
23SBP10	San Mateo Union High School District	School Bus	Replace 8 diesel school buses with 8 electric school buses and associated infrastructure	\$2,749,666	\$5,924,937	0.295	0.017	0.005	San Mateo	Yes
23MOY52	Napa Valley Wine Train	Locomotive	Replace 7 switcher locomotives with 3 switcher locomotives using two 3-for-1 replacements and one 1-for-1 replacement	\$3,345,000	\$8,235,000	11.878	1.204	0.417	Napa	Yes
23MOY12	Brian Collier	Marine	Repower two Tier 0 engines to Tier 4 engines on a commercial fishing vessel	\$867,000	\$1,020,224	2.554	0.119	0.077	Alameda / Contra Costa	Yes
23MOY145*	Amnav Maritime, LLC	Marine	Repower two 2018 Tier 3 main engines to 2023 Tier 4 diesel engines on the tug boat Revolution	\$2,900,000	\$6,519,243	15.478	1.935	0.302	Alameda / Contra Costa / San Francisco / San Mateo / Solano	Yes
23MOY146*	Amnav Maritime, LLC	Marine	Repower two 2018 Tier 3 main engines to 2023 Tier 4 diesel engines on the tug boat Sandra Hugh	\$3,150,000	\$6,519,243	16.885	2.110	0.330	Alameda / Contra Costa / San Francisco / San Mateo / Solano	Yes
7	Projects		Totals	\$18,453,750	\$40,061,042	48.135	5.453	1.133		

* Final project approval is pending a case-by-case approval from CARB.

** The trucks are not domiciled (parked) in a priority area, but trucks will travel throughout the Bay Area, including through priority communities.

ATTACHMENT 3

Data in this table are updated quarterly. Funds awarded or allocated after the date range below will be reflected in the next quarterly update.

CMP/MSIF, TFCA, FARMER and Community Air Protection Program projects (awarded and allocated between 7/1/23 and 8/18/23)

Project #	Project Category	Project Description	Number of Engines	Proposed Contract Award	Applicant Name	Emission Reductions (tons per year)			County	Board/APCO Approval Date	Benefits Priority Area(s)	Projected Funding Source ¹
						NOx	ROG	PM				
24R01	Trip Reduction	Enhanced Mobile Source & Commuter Benefits Enforcement	n/a	\$ 150,000	BAAQMD	TBD*	TBD*	TBD*	Regional	6/7/2023**	N/A	1
24R02	Light Duty (LD) Vehicles	Vehicle Buy Back Program Implementation	n/a	\$ 700,000	BAAQMD	N/A	N/A	N/A	Regional	6/7/2023**	N/A	1
24R03	Trip Reduction	Spare The Air/ Intermittent Control/ Flex Your Commute Programs	n/a	\$ 2,290,000	BAAQMD	TBD*	TBD*	TBD*	Regional	6/7/2023**	N/A	1
23SBP53	School Bus	Equipment replacement + Infrastructure	14	\$ 4,822,770	Safrans Transportation, Inc.	0.739	0.040	0.004	Santa Clara	7/19/23	Yes	1, 2
23MOY44	Off-Road	Engine Replacement	5	\$ 1,065,200	Everport Terminal Services	3.707	0.308	0.051	Alameda	7/19/23	Yes	2
23MOY119	Locomotive	Locomotive Replacement	1	\$ 828,000	Richmond Pacific Railroad	2.501	0.431	0.124	Contra Costa	7/19/23	Yes	2
23MOY62	Ag/ off-road	Equipment Replacement	2	\$ 88,000	B/S Ranch	0.140	0.024	0.017	Marin	7/14/23	Yes	2
23MOY155	Ag/ off-road	Equipment Replacement	3	\$ 232,950	Kistler Vineyards LLC	0.609	0.085	0.066	Sonoma	7/24/23	Yes	2
23MOY93	Ag/ off-road	Equipment replacement	1	\$ 58,250	Massa LLC	0.091	0.005	0.005	Napa	7/24/23	No	2
23MOY118	Ag/ off-road	Equipment replacement	2	\$ 147,600	Renteria Vineyard Management, LLC	0.239	0.045	0.035	Napa	7/26/23	Yes	2
23MOY96	Ag/ off-road	Equipment replacement	2	\$ 60,600	T and M Agricultural Services LLC	0.052	0.046	0.012	Napa	7/26/23	No	2
23MOY98	Ag/ off-road	Equipment replacement	1	\$ 73,900	Fiorio Farm, Inc	0.588	0.076	0.044	Santa Clara	8/4/23	No	2
23MOY116	Ag/ off-road	Equipment replacement	1	\$ 21,000	Tru2Earth Farm LLC	0.029	0.024	0.006	Santa Clara	8/10/23	Yes	2
23MOY74	Ag/ off-road	Equipment replacement	1	\$ 45,000	Sequoia Grove Vineyards, LP	0.036	0.007	0.005	Napa	8/15/23	No	2
23MOY166	Ag/ off-road	Equipment replacement	2	\$ 145,600	V. Sattui Winery	0.274	0.045	0.033	Napa	8/16/23	No	2
23MOY132	Ag/ off-road	Equipment replacement	2	\$ 182,500	Dotu Bros. LLC	0.352	0.045	0.028	Sonoma	8/16/23	No	2
23MOY126	Ag/ off-road	Equipment replacement	1	\$ 76,300	Krasilsa Pacific Farms, LLC	0.134	0.016	0.011	Sonoma	8/18/23	No	2
23MOY108	Ag/ off-road	Equipment replacement	1	\$ 62,900	Rocca Family Vineyards	0.130	0.033	0.026	Napa	8/21/23	No	2
23MOY121	Marine	Engine Replacement	1	\$ 78,100	Crowl Holdings, LLC	0.205	-0.005	0.009	Marin / San Francisco	8/4/23	Yes	2
23MOY128	Marine	Engine Replacement	1	\$ 15,750	Golden Gate Scenic Steamship	0.052	0.009	0.003	Alameda/ Marin/ San Francisco	8/4/23	Yes	2
23SBP54	School Bus	Equipment replacement	2	\$ 847,000	Sunnyvale School District	0.078	0.004	0.000	Santa Clara	TBD	Yes	1, 2
23MOY150***	EV Trucks and infrastructure	Equipment replacement	18	\$ 4,595,084	Sysco	0.967	0.064	0.002	Alameda	TBD	No	1,2
23SBP10	School Bus	Equipment replacement	8	\$ 2,749,666	San Mateo Union High School District	0.295	0.017	0.005	San Mateo	TBD	Yes	1,2
23MOY52	Locomotive	Equipment Replacement	7	\$ 3,345,000	Napa Valley Wine Train	11.878	1.204	0.417	Napa	TBD	Yes	2
23MOY12	Marine	Engine Replacement	1	\$ 867,000	Brian Collier	2.554	0.119	0.077	Alameda/ Contra Costa	TBD	Yes	2
23MOY145***	Marine	Engine Replacement	1	\$ 2,900,000	Amnav Maritime, LLC	15.478	1.935	0.302	Alameda / Contra Costa / San Francisco / San Mateo / Solano	TBD	Yes	2
23MOY146***	Marine	Engine Replacement	1	\$ 3,150,000	Amnav Maritime, LLC	16.885	2.110	0.330	Alameda / Contra Costa / San Francisco / San Mateo / Solano	TBD	Yes	2
TOTALS	27 Projects		79	\$ 29,598,170		58.0	6.7	1.6				

¹ Projected Funding Source includes (1) Transportation Fund for Clean Air; (2) CMP/MSIF, FARMER and Community Air Protection Program. At the time of award, this funding source is assigned based on funding availability and project eligibility. However, the actual funding source used to pay out a project may be different from the Projected Funding Source due to a variety of factors such as delays in project implementation or other funding sources becoming available.

* Funds have been allocated to these programs and projects and results will be determined at the end of project period.

** Date when BOD approved the program budget for FYE 2024

*** Final project approval is pending Board of Director approval and a case-by-case approval by the California Air Resources Board.

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairperson John J. Bauters and Members
of the Board of Directors

From: Philip M. Fine
Executive Officer/APCO

Date: September 20, 2023

Re: Authorization to Execute Lease Extensions for Air Monitoring Stations in Redwood
City and Sebastopol

RECOMMENDED ACTION

Recommend the Board of Directors authorize the Executive Officer/APCO to execute an amendment to the Air District's lease agreement with:

1. Ronald Grove for office and air monitoring space effective March 1, 2023 through Feb 28, 2028 which would result in lease payments up to \$95,044.68 over five years.
2. Tombe Realty for office and air monitoring space effective December 1, 2023 through November 30, 2028 which would result in lease payments and fees up to \$156,243.65 over five years, including electrical and HVAC surcharges.

BACKGROUND

The Air District maintains a comprehensive air quality monitoring network, consisting of over 30 stations distributed among the nine Bay Area counties. This network measures concentrations of pollutants for which health-based ambient air quality standards have been set by the U.S. Environmental Protection Agency and the California Air Resources Board. The network also measures concentrations of various pollutants designated as Toxic Air Contaminants by the state of California. This information is used to determine compliance with state and federal air quality standards, prepare air quality forecasts, develop air quality plans, provide information for permit modeling, prepare environmental impact reports, and track air quality trends.

DISCUSSION

The Air District began air monitoring measurements in Redwood City, CA at 891 Barron Avenue, Unit 1 in 1967. The purpose of the lease amendment is to continue to support a federally mandated State and Local Air Monitoring Station (SLAMS) located in Redwood City, San Mateo County, CA within the San Francisco-Oakland-Berkeley Metropolitan Statistical Area. There is an existing lease agreement with Ronald Grove (Attachment 1) which has expired and requires an amendment.

The Board is requested to authorize the Executive Officer/APCO to execute a five-year lease extension, effective March 1, 2023 through February 28, 2028 (Attachment 2). The rent and fees for the five-year lease being proposed for Board approval is anticipated to be approximately \$95,044.68 over five years. The monthly rents are listed in Table 1.

Table 1: Redwood City Anticipated Monthly Rents

Year	Monthly Amt
Starting March 1, 2023	\$ 1,462.32
Starting March 1, 2024	\$ 1,520.81
Starting March 1, 2025	\$ 1,581.64
Starting March 1, 2026	\$ 1,644.91
Starting March 1, 2027	\$ 1,710.71

The Air District began air monitoring measurements in Sebastopol, CA at 103 Morris St, Ste T in 2013. The purpose of the lease amendment is to continue to support a federally mandated State and Local Air Monitoring Station (SLAMS) located in Sebastopol, Sonoma County, CA within the Santa Rosa - Petaluma Metropolitan Statistical Area. There is an existing lease agreement with Tombe Realty (Attachment 3) which has expired and requires an amendment.

The Board is requested to authorize the Executive Officer/APCO to execute a five-year lease extension, effective December 1, 2023 through November 30, 2028 (Attachment 4). The rent and fees for the five-year lease being proposed for Board approval is anticipated to be approximately \$156,243.65 over five years. The monthly rents are listed in Table 2.

Table 2: Sebastopol Anticipated Monthly Rents and Surcharges

Year	Monthly Amt
Starting December 1, 2023	\$ 2,422.97
Starting December 1, 2024	\$ 2,509.27
Starting December 1, 2025	\$ 2,599.72
Starting December 1, 2026	\$ 2,694.50
Starting December 1, 2027	\$ 2,793.84

BUDGET CONSIDERATION/FINANCIAL IMPACT

The rental costs for Fiscal Year Ending (FYE) 2024 are included in the approved FYE 2024 budget for Program Code 802. The rental costs for future years will be proposed in the FYE 2025 through FYE 2029 budgets.

Respectfully submitted,

Philip M. Fine
Executive Officer/APCO

Prepared by: Jun Liu
Reviewed by: Ila Perkins

ATTACHMENTS:

- 1. Attachment 1: Most recent executed lease and extension for Redwood City
- 2. Attachment 2: Proposed amended lease for Redwood City
- 3. Attachment 3: Most recent executed lease for Sebastopol
- 4. Attachment 4: Proposed amended lease for Sebastopol



COMMERCIAL LEASE AGREEMENT

(C.A.R. Form CL, Revised 12/15)

Date (For reference only): April 19, 2017

Bay Area Air Quality Management District
Ron Grove

(Landlord) and (Tenant) agree as follows;

1. PROPERTY: Landlord rents to Tenant and Tenant rents from Landlord, the real property and improvements described as: 897 Barron Ave. Unit #1, Redwood City CA 94063 (Premises), which comprise approximately % of the total square footage of rentable space in the entire property. See exhibit for a further description of the Premises.

2. TERM: The term begins on (date) March 1, 2015 (Commencement Date); (Check A or B):

X A. Lease: and shall terminate on (date) February 28, 2020 at 5 AM X PM. Any holding over after the term of this agreement expires, with Landlord's consent, shall create a month-to-month tenancy that either party may terminate as specified in paragraph 2B. Rent shall be at a rate equal to the rent for the immediately preceding month, payable in advance. All other terms and conditions of this agreement shall remain in full force and effect.

B. Month-to-month: and continues as a month-to-month tenancy. Either party may terminate the tenancy by giving written notice to the other at least 30 days prior to the intended termination date, subject to any applicable laws. Such notice may be given on any date.

C. RENEWAL OR EXTENSION TERMS: See attached addendum

3. BASE RENT:

A. Tenant agrees to pay Base Rent at the rate of (CHECK ONE ONLY):

X (1) \$ 1,250.00 per month, for the term of the agreement.

(2) \$ per month, for the first 12 months of the agreement. Commencing with the 13th month, and upon expiration of each 12 months thereafter, rent shall be adjusted according to any increase in the U.S. Consumer Price Index of the Bureau of Labor Statistics of the Department of Labor for All Urban Consumers ("CPI") for (the city nearest the location of the Premises), based on the following formula: Base Rent will be multiplied by the most current CPI preceding the first calendar month during which the adjustment is to take effect, and divided by the most recent CPI preceding the Commencement Date. In no event shall any adjusted Base Rent be less than the Base Rent for the month immediately preceding the adjustment. If the CPI is no longer published, then the adjustment to Base Rent shall be based on an alternate index that most closely reflects the CPI.

(3) \$ per month for the period commencing and ending and \$ per month for the period commencing and ending and \$ per month for the period commencing and ending

(4) In accordance with the attached rent schedule.

(5) Other:

B. Base Rent is payable in advance on the 1st (or) day of each calendar month, and is delinquent on the next day.

C. If the Commencement Date falls on any day other than the first day of the month, Base Rent for the first calendar month shall be prorated based on a 30-day period. If Tenant has paid one full month's Base Rent in advance of Commencement Date, Base Rent for the second calendar month shall be prorated based on a 30-day period.

4. RENT:

A. Definition: ("Rent") shall mean all monetary obligations of Tenant to Landlord under the terms of this agreement, except security deposit.

B. Payment: Rent shall be paid to (Name) Ron Grove at (address) 865 Sweeney Ave, Redwood City CA 94063 or at any other location specified by Landlord in writing to Tenant.

C. Timing: Base Rent shall be paid as specified in paragraph 3. All other Rent shall be paid within 30 days after Tenant is billed by Landlord.

5. EARLY POSSESSION: Tenant is entitled to possession of the Premises on

If Tenant is in possession prior to the Commencement Date, during this time (i) Tenant is not obligated to pay Base Rent, and (ii) Tenant is not obligated to pay Rent other than Base Rent. Whether or not Tenant is obligated to pay Rent prior to Commencement Date, Tenant is obligated to comply with all other terms of this agreement.

6. SECURITY DEPOSIT:

A. Tenant agrees to pay Landlord \$ as a security deposit. Tenant agrees not to hold Broker responsible for its return. (IF CHECKED:) If Base Rent increases during the term of this agreement, Tenant agrees to increase security deposit by the same proportion as the increase in Base Rent.

B. All or any portion of the security deposit may be used, as reasonably necessary, to: (i) cure Tenant's default in payment of Rent, late charges, non-sufficient funds ("NSF") fees, or other sums due; (ii) repair damage, excluding ordinary wear and tear, caused by Tenant or by a guest or licensee of Tenant; (iii) broom clean the Premises, if necessary, upon termination of tenancy; and (iv) cover any other unfulfilled obligation of Tenant. SECURITY DEPOSIT SHALL NOT BE USED BY TENANT IN LIEU OF PAYMENT OF LAST MONTH'S RENT. If all or any portion of the security deposit is used during tenancy, Tenant agrees to reinstate the total security deposit within 5 days after written notice is delivered to Tenant. Within 30 days after Landlord receives possession of the Premises, Landlord shall: (i) furnish Tenant an itemized statement indicating the amount of any security deposit received and the basis for its disposition, and (ii) return any remaining portion of security deposit to Tenant. However, if the Landlord's only claim upon the security deposit is for unpaid Rent, then the remaining portion of the security deposit, after deduction of unpaid Rent, shall be returned within 14 days after the Landlord receives possession.

C. No interest will be paid on security deposit, unless required by local ordinance.

Landlord's Initials (R)

Tenant's Initials (JR)

© 2015, California Association of REALTORS®, Inc.

CL REVISED 12/15 (PAGE 1 of 6)

COMMERCIAL LEASE AGREEMENT (CL PAGE 1 OF 6)



Sequoia Realty Services 135 Franklin Street Redwood City, CA 94063 Gregory Garcia

Phone: 650-771-0656 Produced with zipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48026 www.zipLogix.com

Fax:

Bay Area Air

7. PAYMENTS:

	TOTAL DUE	PAYMENT RECEIVED	BALANCE DUE	DUE DATE
A. Rent: From <u>05/01/2017</u> To <u>05/31/2017</u> Date Date	\$ 1,250.00	\$	\$ 1,250.00	05/01/2017
B. Security Deposit	\$	\$	\$	
C. Other: Category	\$	\$	\$	
D. Other: Category	\$	\$	\$	
E. Total:	\$ 1,250.00	\$	\$ 1,250.00	

8. **PARKING:** Tenant is entitled to _____ unreserved and one reserved vehicle parking spaces. The right to parking X is not included in the Base Rent charged pursuant to paragraph 3. If not included in the Base Rent, the parking rental fee shall be an additional \$ _____ per month. Parking space(s) are to be used for parking operable motor vehicles, except for trailers, boats, campers, buses or trucks (other than pick-up trucks). Tenant shall park in assigned space(s) only. Parking space(s) are to be kept clean. Vehicles leaking oil, gas or other motor vehicle fluids shall not be parked in parking spaces or on the Premises. Mechanical work or storage of inoperable vehicles is not allowed in parking space(s) or elsewhere on the Premises. No overnight parking is permitted.

9. **ADDITIONAL STORAGE:** Storage is permitted as follows:
The right to additional storage space is X is not included in the Base Rent charged pursuant to paragraph 3. If not included in Base Rent, storage space shall be an additional \$ _____ per month. Tenant shall store only personal property that Tenant owns, and shall not store property that is claimed by another, or in which another has any right, title, or interest. Tenant shall not store any improperly packaged food or perishable goods, flammable materials, explosives, or other dangerous or hazardous material. Tenant shall pay for, and be responsible for, the clean-up of any contamination caused by Tenant's use of the storage area.

10. **LATE CHARGE; INTEREST; NSF CHECKS:** Tenant acknowledges that either late payment of Rent or issuance of a NSF check may cause Landlord to incur costs and expenses, the exact amount of which are extremely difficult and impractical to determine. These costs may include, but are not limited to, processing, enforcement and accounting expenses, and late charges imposed on Landlord. If any installment of Rent due from Tenant is not received by Landlord within **5 calendar days** after date due, or if a check is returned NSF, Tenant shall pay to Landlord, respectively, \$ **62.50** as late charge, plus 10% interest per annum on the delinquent amount and \$25.00 as a NSF fee, any of which shall be deemed additional Rent. Landlord and Tenant agree that these charges represent a fair and reasonable estimate of the costs Landlord may incur by reason of Tenant's late or NSF payment. Any late charge, delinquent interest, or NSF fee due shall be paid with the current installment of Rent. Landlord's acceptance of any late charge or NSF fee shall not constitute a waiver as to any default of Tenant. Landlord's right to collect a Late Charge or NSF fee shall not be deemed an extension of the date Rent is due under paragraph 4, or prevent Landlord from exercising any other rights and remedies under this agreement, and as provided by law.

11. **CONDITION OF PREMISES:** Tenant has examined the Premises and acknowledges that Premise is clean and in operative condition, with the following exceptions:
Items listed as exceptions shall be dealt with in the following manner:

12. **ZONING AND LAND USE:** Tenant accepts the Premises subject to all local, state and federal laws, regulations and ordinances ("Laws"). Landlord makes no representation or warranty that Premises are now or in the future will be suitable for Tenant's use. Tenant has made its own investigation regarding all applicable Laws.

13. **TENANT OPERATING EXPENSES:** Tenant agrees to pay for all utilities and services directly billed to Tenant **except water which will be paid by landlord.**

14. **PROPERTY OPERATING EXPENSES:**

A. Tenant agrees to pay its proportionate share of Landlord's estimated monthly property operating expenses, including but not limited to, common area maintenance, consolidated utility and service bills, insurance, and real property taxes, based on the ratio of the square footage of the Premises to the total square footage of the rentable space in the entire property.

OR B. X (If checked) Paragraph 14 does not apply.

15. **USE:** The Premises are for the sole use as _____
No other use is permitted without Landlord's prior written consent. If any use by Tenant causes an increase in the premium on Landlord's existing property insurance, Tenant shall pay for the increased cost. Tenant will comply with all Laws affecting its use of the Premises.

16. **RULES/REGULATIONS:** Tenant agrees to comply with all rules and regulations of Landlord (and, if applicable, Owner's Association) that are at any time posted on the Premises or delivered to Tenant. Tenant shall not, and shall ensure that guests and licensees of Tenant do not, disturb, annoy, endanger, or interfere with other tenants of the building or neighbors, or use the Premises for any unlawful purposes, including, but not limited to, using, manufacturing, selling, storing, or transporting illicit drugs or other contraband, or violate any law or ordinance, or committing a waste or nuisance on or about the Premises.

17. **MAINTENANCE:**

A. Tenant OR X (If checked, Landlord) shall professionally maintain the Premises including heating, air conditioning, electrical, plumbing and water systems, if any, and keep glass, windows and doors in operable and safe condition. Unless Landlord is checked, if Tenant fails to maintain the Premises, Landlord may contract for or perform such maintenance, and charge Tenant for Landlord's cost.

B. Landlord OR (If checked, Tenant) shall maintain the roof, foundation, exterior walls, common areas and

Landlord's Initials (RL)

Tenant's Initials (JR)



- 18. **ALTERATIONS:** Tenant shall not make any alterations in or about the Premises, including installation of trade fixtures and signs, without Landlord's prior written consent, which shall not be unreasonably withheld. Any alterations to the Premises shall be done according to Law and with required permits. Tenant shall give Landlord advance notice of the commencement date of any planned alteration, so that Landlord, at its option, may post a Notice of Non-Responsibility to prevent potential liens against Landlord's interest in the Premises. Landlord may also require Tenant to provide Landlord with lien releases from any contractor performing work on the Premises.
- 19. **GOVERNMENT IMPOSED ALTERATIONS:** Any alterations required by Law as a result of Tenant's use shall be Tenant's responsibility. Landlord shall be responsible for any other alterations required by Law.
- 20. **ENTRY:** Tenant shall make Premises available to Landlord or Landlord's agent for the purpose of entering to make inspections, necessary or agreed repairs, alterations, or improvements, or to supply necessary or agreed services, or to show Premises to prospective or actual purchasers, tenants, mortgagees, lenders, appraisers, or contractors. Landlord and Tenant agree that 24 hours notice (oral or written) shall be reasonable and sufficient notice. In an emergency, Landlord or Landlord's representative may enter Premises at any time without prior notice.
- 21. **SIGNS:** Tenant authorizes Landlord to place a FOR SALE sign on the Premises at any time, and a FOR LEASE sign on the Premises within the 90 (or) day period preceding the termination of the agreement.
- 22. **SUBLETTING/ASSIGNMENT:** Tenant shall not sublet or encumber all or any part of Premises, or assign or transfer this agreement or any interest in it, without the prior written consent of Landlord, which shall not be unreasonably withheld. Unless such consent is obtained, any subletting, assignment, transfer, or encumbrance of the Premises, agreement, or tenancy, by voluntary act of Tenant, operation of law, or otherwise, shall be null and void, and, at the option of Landlord, terminate this agreement. Any proposed sublessee, assignee, or transferee shall submit to Landlord an application and credit information for Landlord's approval, and, if approved, sign a separate written agreement with Landlord and Tenant. Landlord's consent to any one sublease, assignment, or transfer, shall not be construed as consent to any subsequent sublease, assignment, or transfer, and does not release Tenant of Tenant's obligation under this agreement.
- 23. **POSSESSION:** If Landlord is unable to deliver possession of Premises on Commencement Date, such date shall be extended to the date on which possession is made available to Tenant. However, the expiration date shall remain the same as specified in paragraph 2. If Landlord is unable to deliver possession within 60 (or) calendar days after the agreed Commencement Date, Tenant may terminate this agreement by giving written notice to Landlord, and shall be refunded all Rent and security deposit paid.
- 24. **TENANT'S OBLIGATIONS UPON VACATING PREMISES:** Upon termination of agreement, Tenant shall: (i) give Landlord all copies of all keys or opening devices to Premises, including any common areas; (ii) vacate Premises and surrender it to Landlord empty of all persons and personal property; (iii) vacate all parking and storage spaces; (iv) deliver Premises to Landlord in the same condition as referenced in paragraph 11; (v) clean Premises; (vi) give written notice to Landlord of Tenant's forwarding address; and (vii)

All improvements installed by Tenant, with or without Landlord's consent, become the property of Landlord upon termination. Landlord may nevertheless require Tenant to remove any such improvement that did not exist at the time possession was made available to Tenant.

- 25. **BREACH OF CONTRACT/EARLY TERMINATION:** In event Tenant, prior to expiration of this agreement, breaches any obligation in this agreement, abandons the premises, or gives notice of tenant's intent to terminate this tenancy prior to its expiration, in addition to any obligations established by paragraph 24, Tenant shall also be responsible for lost rent, rental commissions, advertising expenses, and painting costs necessary to ready Premises for re-rental. Landlord may also recover from Tenant: (i) the worth, at the time of award, of the unpaid Rent that had been earned at the time of termination; (ii) the worth, at the time of award, of the amount by which the unpaid Rent that would have been earned after expiration until the time of award exceeds the amount of such rental loss the Tenant proves could have been reasonably avoided; and (iii) 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 such rental loss that Tenant proves could be reasonably avoided. Landlord may elect to continue the tenancy in effect for so long as Landlord does not terminate Tenant's right to possession, by either written notice of termination of possession or by reletting the Premises to another who takes possession, and Landlord may enforce all Landlord's rights and remedies under this agreement, including the right to recover the Rent as it becomes due.
- 26. **DAMAGE TO PREMISES:** If, by no fault of Tenant, Premises are totally or partially damaged or destroyed by fire, earthquake, accident or other casualty, Landlord shall have the right to restore the Premises by repair or rebuilding. If Landlord elects to repair or rebuild, and is able to complete such restoration within 90 days from the date of damage, subject to the terms of this paragraph, this agreement shall remain in full force and effect. If Landlord is unable to restore the Premises within this time, or if Landlord elects not to restore, then either Landlord or Tenant may terminate this agreement by giving the other written notice. Rent shall be abated as of the date of damage. The abated amount shall be the current monthly Base Rent prorated on a 30-day basis. If this agreement is not terminated, and the damage is not repaired, then Rent shall be reduced based on the extent to which the damage interferes with Tenant's reasonable use of the Premises. If total or partial destruction or damage occurs as a result of an act of Tenant or Tenant's guests, (i) only Landlord shall have the right, at Landlord's sole discretion, within 30 days after such total or partial destruction or damage to treat the lease as terminated by Tenant, and (ii) Landlord shall have the right to recover damages from Tenant.
- 27. **HAZARDOUS MATERIALS:** Tenant shall not use, store, generate, release or dispose of any hazardous material on the Premises or the property of which the Premises are part. However, Tenant is permitted to make use of such materials that are required to be used in the normal course of Tenant's business provided that Tenant complies with all applicable Laws related to the hazardous materials. Tenant is responsible for the cost of removal and remediation, or any clean-up of any contamination caused by Tenant.
- 28. **CONDEMNATION:** If all or part of the Premises is condemned for public use, either party may terminate this agreement as of the date possession is given to the condemner. All condemnation proceeds, exclusive of those allocated by the condemner to Tenant's relocation costs and trade fixtures, belong to Landlord.
- 29. **INSURANCE:** Tenant's personal property, fixtures, equipment, inventory and vehicles are not insured by Landlord against loss or damage due to fire, theft, vandalism, rain, water, criminal or negligent acts of others, or any other cause. Tenant is to carry Tenant's own property insurance to protect Tenant from any such loss. In addition, Tenant shall carry (i) liability insurance in an amount of not less than \$ 1,000,000.00 and (ii) property insurance in an amount sufficient to cover the replacement cost of the property if Tenant is responsible for maintenance under paragraph 17B. Tenant's insurance shall name Landlord and Landlord's agent as additional insured. Tenant, upon Landlord's request, shall provide Landlord with a certificate of insurance establishing Tenant's compliance. Landlord shall maintain liability insurance insuring Landlord, but not Tenant, in an amount of at least \$ 1,000,000.00 , plus property insurance in an amount sufficient to cover the replacement cost of the property unless Tenant is responsible for maintenance pursuant to paragraph 17B. Tenant is advised to carry business interruption insurance in an amount at least sufficient to cover Tenant's complete rental obligation to Landlord. Landlord is advised to obtain a policy of rental loss insurance. Both Landlord and Tenant release each other, and waive their respective rights to subrogation against each other, for loss or damage covered by insurance.

Landlord's Initials (RJ) ()

Tenant's Initials (JR) ()

CL REVISED 12/15 (PAGE 3 of 6)

COMMERCIAL LEASE AGREEMENT (CL PAGE 3 OF 6)



- 30. **TENANCY STATEMENT (ESTOPPEL CERTIFICATE):** Tenant shall execute and return a tenancy statement (estoppel certificate), delivered to Tenant by Landlord or Landlord's agent, within 3 days after its receipt. The tenancy statement shall acknowledge that this agreement is unmodified and in full force, or in full force as modified, and state the modifications. Failure to comply with this requirement: (i) shall be deemed Tenant's acknowledgment that the tenancy statement is true and correct, and may be relied upon by a prospective lender or purchaser; and (ii) may be treated by Landlord as a material breach of this agreement. Tenant shall also prepare, execute, and deliver to Landlord any financial statement (which will be held in confidence) reasonably requested by a prospective lender or buyer.
- 31. **LANDLORD'S TRANSFER:** Tenant agrees that the transferee of Landlord's interest shall be substituted as Landlord under this agreement. Landlord will be released of any further obligation to Tenant regarding the security deposit, only if the security deposit is returned to Tenant upon such transfer, or if the security deposit is actually transferred to the transferee. For all other obligations under this agreement, Landlord is released of any further liability to Tenant, upon Landlord's transfer.
- 32. **SUBORDINATION:** This agreement shall be subordinate to all existing liens and, at Landlord's option, the lien of any first deed of trust or first mortgage subsequently placed upon the real property of which the Premises are a part, and to any advances made on the security of the Premises, and to all renewals, modifications, consolidations, replacements, and extensions. However, as to the lien of any deed of trust or mortgage entered into after execution of this agreement, Tenant's right to quiet possession of the Premises shall not be disturbed if Tenant is not in default and so long as Tenant pays the Rent and observes and performs all of the provisions of this agreement, unless this agreement is otherwise terminated pursuant to its terms. If any mortgagee, trustee, or ground lessor elects to have this agreement placed in a security position prior to the lien of a mortgage, deed of trust, or ground lease, and gives written notice to Tenant, this agreement shall be deemed prior to that mortgage, deed of trust, or ground lease, or the date of recording.
- 33. **TENANT REPRESENTATIONS; CREDIT:** Tenant warrants that all statements in Tenant's financial documents and rental application are accurate. Tenant authorizes Landlord and Broker(s) to obtain Tenant's credit report at time of application and periodically during tenancy in connection with approval, modification, or enforcement of this agreement. Landlord may cancel this agreement: (i) before occupancy begins, upon disapproval of the credit report(s); or (ii) at any time, upon discovering that information in Tenant's application is false. A negative credit report reflecting on Tenant's record may be submitted to a credit reporting agency, if Tenant fails to pay Rent or comply with any other obligation under this agreement.
- 34. **CONSTRUCTION-RELATED ACCESSIBILITY STANDARDS:** Landlord states that the Premises has, or has not been inspected by a Certified Access Specialist. If so, Landlord states that the Premises has, or has not been determined to meet all applicable construction-related accessibility standards pursuant to Civil Code Section 55.53.

35. **DISPUTE RESOLUTION:**

- A. **MEDIATION:** Tenant and Landlord agree to mediate any dispute or claim arising between them out of this agreement, or any resulting transaction, before resorting to arbitration or court action, subject to paragraph 35B(2) below. Paragraphs 35B(2) and (3) apply whether or not the arbitration provision is initiated. Mediation fees, if any, shall be divided equally among the parties involved. If for any dispute or claim to which this paragraph applies, any party commences an action without first attempting to resolve the matter through mediation, or refuses to mediate after a request has been made, then that party shall not be entitled to recover attorney fees, even if they would otherwise be available to that party in any such action. THIS MEDIATION PROVISION APPLIES WHETHER OR NOT THE ARBITRATION PROVISION IS INITIALED.
- B. **ARBITRATION OF DISPUTES:** (1) Tenant and Landlord agree that any dispute or claim in Law or equity arising between them out of this agreement or any resulting transaction, which is not settled through mediation, shall be decided by neutral, binding arbitration, including and subject to paragraphs 35B(2) and (3) below. The arbitrator shall be a retired judge or justice, or an attorney with at least 5 years of real estate transactional law experience, unless the parties mutually agree to a different arbitrator, who shall render an award in accordance with substantive California Law. In all other respects, the arbitration shall be conducted in accordance with Part III, Title 9 of the California Code of Civil Procedure. Judgment upon the award of the arbitrator(s) may be entered in any court having jurisdiction. The parties shall have the right to discovery in accordance with Code of Civil Procedure §1283.05.
- (2) **EXCLUSIONS FROM MEDIATION AND ARBITRATION:** The following matters are excluded from Mediation and Arbitration hereunder: (i) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or installment land sale contract as defined in Civil Code §2985; (ii) an unlawful detainer action; (iii) the filing or enforcement of a mechanic's lien; (iv) any matter that is within the jurisdiction of a probate, small claims, or bankruptcy court; and (v) an action for bodily injury or wrongful death, or for latent or patent defects to which Code of Civil Procedure §337.1 or §337.15 applies. The filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a violation of the mediation and arbitration provisions.
- (3) **BROKERS:** Tenant and Landlord agree to mediate and arbitrate disputes or claims involving either or both Brokers, provided either or both Brokers shall have agreed to such mediation or arbitration, prior to, or within a reasonable time after the dispute or claim is presented to Brokers. Any election by either or both Brokers to participate in mediation or arbitration shall not result in Brokers being deemed parties to the agreement.

"NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY."

"WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION TO NEUTRAL ARBITRATION."

Landlord's Initials *RJ*

Tenant's Initials *JRT*

Landlord's Initials (*RJ*) ()

Tenant's Initials (*JRT*) ()

CL REVISED 12/15 (PAGE 4 of 6)

COMMERCIAL LEASE AGREEMENT (CL PAGE 4 OF 6)



36. **JOINT AND INDIVIDUAL OBLIGATIONS:** If there is more than one Tenant, each one shall be individually and completely responsible for the performance of all obligations of Tenant under this agreement, jointly with every other Tenant, and individually, whether or not in possession.

37. **NOTICE:** Notices may be served by mail, facsimile, or courier at the following address or location, or at any other location subsequently designated:

Landlord: Ron Grove
865 Sweeney Ave, Redwood City CA 94063
650-867-3531

Tenant: Bay Area Air Quality Management District
375 Beale Street, San Francisco CA 94105

Notice is deemed effective upon the earliest of the following: (i) personal receipt by either party or their agent; (ii) written acknowledgement of notice; or (iii) 5 days after mailing notice to such location by first class mail, postage pre-paid.

38. **WAIVER:** The waiver of any breach shall not be construed as a continuing waiver of the same breach or a waiver of any subsequent breach.

39. **INDEMNIFICATION:** Tenant shall indemnify, defend and hold Landlord harmless from all claims, disputes, litigation, judgments and attorney fees arising out of Tenant's use of the Premises.

40. **OTHER TERMS AND CONDITIONS/SUPPLEMENTS:** *THE LESSEE MAY, AT ITS OPTION, EXTEND THE TERM OF THIS LEASE FOR TWO SUCCESSIVE ONE-YEAR PERIODS DURING WHICH ALL TERMS AND CONDITIONS OF THIS LEASE SHALL REMAIN IN EFFECT EXCEPT THAT THE RENT PAYABLE HEREUNDER SHALL BE DETERMINED BY MUTUAL AGREEMENT AT THE END OF EACH YEAR. NOTICE OF LESSEE'S INTENT TO EXERCISE SUCH OPTION SHALL BE GIVEN TO THE LESSOR AT LEAST SIXTY (60) DAYS PRIOR TO EXPIRATION OF THE CURRENT LEASE TERM.*

The following ATTACHED supplements/exhibits are incorporated in this agreement: Option Agreement (C.A.R. Form OA)

41. **ATTORNEY FEES:** In any action or proceeding arising out of this agreement, the prevailing party between Landlord and Tenant shall be entitled to reasonable attorney fees and costs from the non-prevailing Landlord or Tenant, except as provided in paragraph 35A.

42. **ENTIRE CONTRACT:** Time is of the essence. All prior agreements between Landlord and Tenant are incorporated in this agreement, which constitutes the entire contract. It is intended as a final expression of the parties' agreement, and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. The parties further intend that this agreement constitutes the complete and exclusive statement of its terms, and that no extrinsic evidence whatsoever may be introduced in any judicial or other proceeding, if any, involving this agreement. Any provision of this agreement that is held to be invalid shall not affect the validity or enforceability of any other provision in this agreement. This agreement shall be binding upon, and inure to the benefit of, the heirs, assignees and successors to the parties.

43. **BROKERAGE:** Landlord and Tenant shall each pay to Broker(s) the fee agreed to, if any, in a separate written agreement. Neither Tenant nor Landlord has utilized the services of, or for any other reason owes compensation to, a licensed real estate broker (individual or corporate), agent, finder, or other entity, other than as named in this agreement, in connection with any act relating to the Premises, including, but not limited to, inquiries, introductions, consultations, and negotiations leading to this agreement. Tenant and Landlord each agree to indemnify, defend and hold harmless the other, and the Brokers specified herein, and their agents, from and against any costs, expenses, or liability for compensation claimed inconsistent with the warranty and representation in this paragraph 43.

44. **AGENCY CONFIRMATION:** The following agency relationships are hereby confirmed for this transaction:
Listing Agent: _____ (Print Firm Name) is the agent of (check one):
the Landlord exclusively; or both the Tenant and Landlord.
Selling Agent: _____ (Print Firm Name) (if not same as Listing Agent) is the agent of (check one):
the Tenant exclusively; or the Landlord exclusively; or both the Tenant and Landlord.
Real Estate Brokers are not parties to the agreement between Tenant and Landlord.

Landlord's Initials (*Rg*) ()

Tenant's Initials (*JR*) ()



Landlord and Tenant acknowledge and agree that Brokers: (i) do not guarantee the condition of the Premises; (ii) cannot verify representations made by others; (iii) will not verify zoning and land use restrictions; (iv) cannot provide legal or tax advice; (v) will not provide other advice or information that exceeds the knowledge, education or experience required to obtain a real estate license. Furthermore, if Brokers are not also acting as Landlord in this agreement, Brokers: (vi) do not decide what rental rate a Tenant should pay or Landlord should accept; and (vii) do not decide upon the length or other terms of tenancy. Landlord and Tenant agree that they will seek legal, tax, insurance, and other desired assistance from appropriate professionals.

Tenant *[Signature]* Date *4/26/17*
(Print name) BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Address 375 Beale Street City San Francisco State CA Zip 94105

Tenant _____ Date _____
(Print name) _____
Address _____ City _____ State _____ Zip _____

GUARANTEE: In consideration of the execution of this Agreement by and between Landlord and Tenant and for valuable consideration, receipt of which is hereby acknowledged, the undersigned ("Guarantor") does hereby: (i) guarantee unconditionally to Landlord and Landlord's agents, successors and assigns, the prompt payment of Rent or other sums that become due pursuant to this Agreement, including any and all court costs and attorney fees included in enforcing the Agreement; (ii) consent to any changes, modifications or alterations of any term in this Agreement agreed to by Landlord and Tenant; and (iii) waive any right to require Landlord and/or Landlord's agents to proceed against Tenant for any default occurring under this Agreement before seeking to enforce this Guarantee.

Guarantor (Print Name) _____ Date _____
Guarantor _____ State _____ Zip _____
Address _____ City _____
Telephone _____ Fax _____ E-mail _____

Landlord agrees to rent the Premises on the above terms and conditions.

Landlord *[Signature]* Date *4-19-17*
(owner or agent with authority to enter into this agreement) Ron Grove
Address 865 Sweeney Ave City Redwood City State CA Zip 94063

Landlord _____ Date _____
(owner or agent with authority to enter into this agreement)
Address _____ City _____ State _____ Zip _____

Agency relationships are confirmed as above. Real estate brokers who are not also Landlord in this agreement are not a party to the agreement between Landlord and Tenant.

Real Estate Broker (Leasing Firm) _____ CalBRE Lic. # _____
By (Agent) _____ CalBRE Lic. # _____ Date _____
Address _____ City _____ State _____ Zip _____
Telephone _____ Fax _____ E-mail _____

Real Estate Broker (Listing Firm) _____ CalBRE Lic. # _____
By (Agent) _____ CalBRE Lic. # _____ Date _____
Address _____ City _____ State _____ Zip _____
Telephone _____ Fax _____ E-mail _____

© 2015, California Association of REALTORS®, Inc. United States copyright law (Title 17 U.S. Code) forbids the unauthorized distribution, display and reproduction of this form, or any portion thereof, by photocopy machine or any other means, including facsimile or computerized formats. THIS FORM HAS BEEN APPROVED BY THE CALIFORNIA ASSOCIATION OF REALTORS® (C.A.R.). NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ACCURACY OF ANY PROVISION IN ANY SPECIFIC TRANSACTION. A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL.

Published and Distributed by:
REAL ESTATE BUSINESS SERVICES, INC.
a subsidiary of the California Association of REALTORS®
525 South Virgil Avenue, Los Angeles, California 90020

Reviewed by _____ Date _____



CL REVISED 12/15 (PAGE 6 of 6)

COMMERCIAL LEASE AGREEMENT (CL PAGE 6 OF 6)



COMMERCIAL LEASE CONSTRUCTION ACCESSIBILITY ADDENDUM

(C.A.R. Form CLCA 11/16)

This is an addendum to the Commercial Lease Agreement (lease) dated in which Ron Grove and Bay Area Air Quality Management District Paragraph 34 of the lease is deleted in its entirety and replaced by the following;

April 19, 2017

is referred to as "Landlord" is referred to as "Tenant".

Paragraph 34. CONSTRUCTION-RELATED ACCESSIBILITY STANDARDS:

- A. Landlord states that the Premises have, or X have not been inspected by a Certified Access Specialist (CASp).
B. If the Premises have been inspected by a CASp, (1) Landlord states that the Premises have, or X have not been determined to meet all applicable construction-related accessibility standards pursuant to Civil Code Section 55.53. Landlord shall provide Tenant a copy of the report prepared by the CASp (and, if applicable a copy of the disability access inspection certificate) as specified below. (2) (i) Tenant has received a copy of the report at least 48 hours before executing this lease. Tenant has no right to rescind the lease based upon information contained in the report. OR (ii) Tenant has received a copy of the report prior to, but no more than, 48 hours before, executing this lease. Based upon information contained in the report, Tenant has 72 hours after execution of this lease to rescind it. OR (iii) Tenant has not received a copy of the report prepared by the CASp prior to execution of this lease. Landlord shall provide a copy of the report prepared by the CASp (and, if applicable a copy of the disability access inspection certificate) within 7 days after execution of this lease. Tenant shall have up to 3 days thereafter to rescind the lease based upon information in the report.
C. If the Premises have not been inspected by a CASp or a certificate was not issued by the CASp who conducted the inspection, "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."
D. Notwithstanding anything to the contrary in paragraph 17, 18, 19 or elsewhere in the lease, any repairs or modifications necessary to correct violations of construction related accessibility standards are the responsibility of Tenant Landlord Other

Tenant (Signature) [Signature] Date 4/27/17
Tenant (Print name) Bay Area Air Quality Management District
Tenant (Signature) Date
Tenant (Print name)
Landlord (Signature) [Signature] Date 4-19-17
Landlord (Print name) Ron Grove
Landlord (Signature) Date
Landlord (Print name)

© 2016, California Association of REALTORS®, Inc. United States copyright law (Title 17 U.S. Code) forbids the unauthorized distribution, display and reproduction of this form, or any portion thereof, by photocopy machine or any other means, including facsimile or computerized formats. THIS FORM HAS BEEN APPROVED BY THE CALIFORNIA ASSOCIATION OF REALTORS® (C.A.R.). NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ACCURACY OF ANY PROVISION IN ANY SPECIFIC TRANSACTION. A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL.

Published and Distributed by: REAL ESTATE BUSINESS SERVICES, INC. a subsidiary of the California Association of REALTORS® 525 South Virgil Avenue, Los Angeles, California 90020

Reviewed by Date





TENANT ESTOPPEL CERTIFICATE (C.A.R. Form TEC, Revised 4/11)

Tenant: Bay Area Air Quality Management District
Premises: 897 Barron Ave Unit 1, Redwood City, CA 94063

To whom it may concern: The undersigned is the Tenant of the above premises and makes the following representations:

1. LEASE TERMS:

- A. (X If checked) A copy of the Lease is attached hereto.
B. Date of the Lease: April 19, 2017
C. Name of the current Landlord: Ron Grove
D. Name of the current Tenant: Bay Area Air Quality Management District
E. Current monthly base rent: \$ 1,250.00, paid through: April 30, 2017
F. Security deposit: \$, Other deposits: \$
G. Expiration date of current term: February 28, 2020
H. Number and Location of Parking Spaces: 1
I. Number and Location of Storage Spaces: none
J. Who pays utilities services: Water: X Landlord Tenant; Electric: Landlord X Tenant; Gas: Landlord X Tenant; Waste Disposal: Landlord X Tenant; Gardener: Landlord X Tenant; Sewer: X Landlord Tenant; Other: Landlord Tenant
K. Who owns appliances: Stove: Landlord Tenant; Refrigerator: Landlord Tenant; Washer/Dryer: Landlord Tenant; Microwave: Landlord Tenant; Other: Landlord Tenant
2. The Tenant represents that the original Lease remains in full force and effect and constitutes the entire agreement between Tenant and Landlord, except for the following modifications, amendments, addendums, assignments, extensions, and/or preferential rights or options to purchase/lease.

There are no verbal or written agreements or understandings between Landlord and Tenant with respect to the Premises, except as set forth above.

- 3. Tenant is the actual occupant and is in possession of the Leased Premises. Tenant has not assigned, transferred or hypothecated its interest under the Lease. Any construction, build-out, improvements, alterations, or additions to the Premises required under the Lease have been fully completed in accordance with the plans and specifications described in the Lease.
4. All obligations of Landlord under the Lease have been fully performed and Landlord is not in default under any term of the Lease. Tenant has no defenses, off-sets or counterclaims to the payment of rent or other amounts due from Tenant to Landlord under the Lease.
5. Tenant has not been given any free rent, partial rent, rebates, rent abatements, or rent concessions of any kind, except as follows:
6. Tenant has not filed and is not the subject of any filing for bankruptcy or reorganization under federal bankruptcy laws or similar state laws.
7. Tenant represents that Tenant: (a) is not in default of the performance of any obligations under the Lease; (b) has not committed any breach of the Lease; and (c) has not received any notice of default under the Lease, which has not been cured.
8. The correct address for notices to Tenant is the Premises above unless otherwise specified in writing.
9. The person signing below represents that he/she is duly authorized by Tenant to execute this Statement in Tenant's behalf.
10. Tenant understands that: (a) a lender may make a loan secured in whole or part by the Premises, and that if Lender does so, Lender's action will be in material reliance on this Estoppel Certificate; and/or (b) a buyer may acquire the Premises or the building in which the Premises is located, and if buyer completes the purchase, buyer will do so in material reliance on this Estoppel Certificate.

Date:

4/26/17

Tenant: [Signature] Bay Area Air Quality Management District

Tenant: [Signature]
By: Ron Grove

Owner Title

Receipt Acknowledged

Landlord or Manager

Date:

By: Title

The copyright laws of the United States (Title 17 U.S. Code) forbid the unauthorized reproduction of this form, or any portion thereof, by photocopy machine or any other means, including facsimile or computerized formats. Copyright © 1990-2011, CALIFORNIA ASSOCIATION OF REALTORS®, INC. ALL RIGHTS RESERVED. THIS FORM HAS BEEN APPROVED BY THE CALIFORNIA ASSOCIATION OF REALTORS® (C.A.R.). NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION IN ANY SPECIFIC TRANSACTION. A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL. This form is available for use by the entire real estate industry. It is not intended to identify the user as a REALTOR®, REALTOR® is a registered collective membership mark which may be used only by members of the NATIONAL ASSOCIATION OF REALTORS® who subscribe to its Code of Ethics.

Published and Distributed by: REAL ESTATE BUSINESS SERVICES, INC. a subsidiary of the California Association of REALTORS® 525 South Virgil Avenue, Los Angeles, California 90020

Reviewed by Date



TEC REVISED 4/11 (PAGE 1 OF 1)

TENANT ESTOPPEL CERTIFICATE (TEC PAGE 1 OF 1)



EXTENSION OF LEASE
(C.A.R. Form EL 11/11)

The following terms and conditions are hereby incorporated in and made a part of the Residential Lease
 other _____ ("Lease"),
 dated April 19, 2017, on property known as 897 Barron Ave., Unit #1,
Redwood City, CA 94063 ("Premises"),
 in which Bay Area Air Quality Management District is referred to as ("Tenant")
 and Ron Grove is referred to as ("Landlord").

The terms of the tenancy are changed as follows. Unless otherwise provided, the change shall take effect on the date the Lease was scheduled to terminate.

- EXTENSION OF TERM:** The scheduled termination date is extended to February 28, 2023 (Date).
- Rent shall be \$ 1,300.00 per month.
- Security deposit shall be increased by \$ 0.00.
- ADDITIONAL TERMS:** Rent will be \$1,300.00 per month starting March 1, 2020 with a 4% increase every 13th month thereafter.
\$1,352.00 per month for the period commencing March 1, 2021 and ending February 28, 2022
\$1,406.08 per month for the period commencing March 1, 2022 and ending February 28, 2023

By signing below, Tenant and Landlord acknowledge that each has read, understands, and received a copy of and agrees to the terms of this Extension of Lease.


Tenant  Date 8/4/20
Jack P. Broadbent, Executive officer /AFCO

Tenant _____ Date _____

Landlord  Date 3-2-2020

Landlord _____ Date _____

© 2011, California Association of REALTORS®, Inc.; United States copyright law (Title 17 U.S. Code) forbids the unauthorized distribution, display and reproduction of this form, or any portion thereof, by photocopy machine or any other means, including facsimile or computerized formats.
 THIS FORM HAS BEEN APPROVED BY THE CALIFORNIA ASSOCIATION OF REALTORS®, NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ACCURACY OF ANY PROVISION IN ANY SPECIFIC TRANSACTION, A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO ADVISE ON REAL ESTATE TRANSACTIONS, IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL.
 This form is made available to real estate professionals through an agreement with or purchase from the California Association of REALTORS®, it is not intended to identify the user as a REALTOR®, REALTOR® is a registered collective membership mark which may be used only by members of the NATIONAL ASSOCIATION OF REALTORS® who subscribe to its Code of Ethics.

 Published and Distributed by:
 REAL ESTATE BUSINESS SERVICES, LLC,
 a subsidiary of the California Association of REALTORS®
 525 South Virgil Avenue, Los Angeles, California 90020

EL 11/11 (PAGE 1 OF 1)

EXTENSION OF LEASE (EL PAGE 1 OF 1)



STANDARD INDUSTRIAL/COMMERCIAL MULTI-TENANT LEASE - GROSS

1 Basic Provisions ("Basic Provisions").

1.1 **Parties.** This Lease ("Lease"), dated for reference purposes only February 7, 2023, is made by and between Ronald Grove ("Lessor") and Bay Area Air Quality Management District ("Lessee"), (collectively the "Parties", or individually a "Party").

1.2(a) **Premises:** That certain real property, including all improvements therein or to be provided by Lessor under the terms of this Lease, commonly known as (street address, unit/suite, city, state, zip): 897 Barron Avenue, Unit # L Redwood City, CA 94063 ("Premises"). The Premises are located in the County of San Mateo, and are generally described as (describe briefly the nature of the Premises and the "Project"): office space. In addition to Lessee's rights to use and occupy the Premises as hereinafter specified, Lessee shall have non-exclusive rights to any utility raceways of the building containing the Premises ("Building") and to the Common Areas (as defined in Paragraph 2.7 below), but shall not have any rights to the roof, or exterior walls of the Building or to any other buildings in the Project. The Premises, the Building, the Common Areas, the land upon which they are located, along with all other buildings and improvements thereon, are herein collectively referred to as the "Project." (See also Paragraph 2)

1.2(b) **Parking:** two reserved vehicle parking spaces. (See also Paragraph 2.6)

1.3 **Term:** 5 years and 0 months ("Original Term") commencing March 1, 2023 ("Commencement Date") and ending February 28, 2028 ("Expiration Date"). (See also Paragraph 3)

1.4 **Early Possession:** If the Premises are available Lessee may have non-exclusive possession of the Premises commencing _____ ("Early Possession Date"). (See also Paragraphs 3.2 and 3.3)

1.5 **Base Rent:** \$1,462.32 per month ("Base Rent"), payable on the 1st day of each month commencing March 1, 2023. (See also Paragraph 4)

If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted. See Paragraph 5-0

1.6 **lessee's Share of Common Area Operating Expenses:** zero percent (0%) ("Lessee's Share"). In the event that the size of the Premises and/or the Project are modified during the term of this Lease, Lessor shall recalculate Lessee's Share to reflect such modification.

1.7 Base Rent and Other Monies Paid Upon Execution:

- (a) **Base Rent:** _____ for the period _____
- (b) **Common Area Operating Expenses:** The current estimate for the period _____ is _____
- (c) **Security Deposit:** _____ ("Security Deposit"). (See also Paragraph 5)
- (d) **Other:** _____ for _____
- (e) **Total Due Upon Execution of this Lease:** _____

1.8 **Agreed Use:** office space with access to roof. (See also Paragraph 6)

1.9 **Insuring Party.** Lessor is the "Insuring Party". (See also Paragraph 8)

1.10 **Real Estate Brokers.** (See also Paragraphs 15 and 25)

(a) **Representation.** Each Party acknowledges receiving a Disclosure Regarding Real Estate Agency Relationship, confirms and consents to the following agency relationships in this Lease with the following real estate brokers ("Broker(s)") and/or their agents ("Agent(s)"):

Lessor's Brokerage Firm _____ License No. _____ is the broker of (check one): the Lessor; or both the Lessee and Lessor (dual agent).
 Lessor's Agent _____ License No. _____ is (check one): the Lessor's Agent (salesperson or broker associate); or both the Lessee's Agent and the Lessor's Agent (dual agent).
 Lessee's Brokerage Firm _____ License No. _____ is the broker of (check one): the Lessee; or both the Lessee and Lessor (dual agent).
 Lessee's Agent _____ License No. _____ is (check one): the Lessee's Agent (salesperson or broker associate); or both the Lessee's Agent and the Lessor's Agent (dual agent).

(b) **Payment to Brokers.** Upon execution and delivery of this Lease by both Parties, Lessor shall pay to the Brokers the brokerage fee agreed to in a separate written agreement (or if there is no such agreement, the sum of _____ or _____ % of the total Base Rent) for the brokerage services rendered by the Brokers.

1.11 **Guarantor.** The obligations of the Lessee under this Lease are to be guaranteed by _____ ("Guarantor"). (See also Paragraph 37)

1.12 **Attachments.** Attached hereto are the following, all of which constitute a part of this Lease:

- an Addendum consisting of Paragraphs _____ through _____
- a site plan depicting the Premises;
- a site plan depicting the Project;
- a current set of the Rules and Regulations for the Project;
- a current set of the Rules and Regulations adopted by the owners' association;
- a Work Letter;
- other (specify): _____

2 Premises.

INITIALS

© 2019 AIR CRE. All Rights Reserved.

MTG-24.40, Revised 10-22-2020

INITIALS

Last Edited: 2/7/2023 1:52 PM

Page 1 of 18

21 **letting.** lessor hereby leases to lessee, and lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. While the approximate square footage of the Premises may have been used in the marketing of the Premises for purposes of comparison, the Base Rent stated herein is NOT tied to square footage and is not subject to adjustment should the actual size be determined to be different. **NOTE: lessee is advised to verify the actual size prior to executing this lease.**

22 **Condition.** Lessor shall deliver that portion of the Premises contained within the Building ("Unit") to Lessee broom clean and free of debris on the Commencement Date or the Early Possession Date, whichever first occurs ("**Start Date**"), and, so long as the required service contracts described in Paragraph 7.1(b) below are obtained by Lessee and in effect within thirty days following the Start Date, warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems ("**HVAC**"), loading doors, sump pumps, if any, and all other such elements in the Unit, other than those constructed by lessee, shall be in good operating condition on said date, that the structural elements of the roof, bearing walls and foundation of the Unit shall be free of material defects, and that the Unit does not contain hazardous levels of any mold or fungi defined as toxic under applicable state or federal law. If a non-compliance with such warranty exists as of the Start Date, or if one of such systems or elements should malfunction or fail within the appropriate warranty period, Lessor shall, as Lessor's sole obligation with respect to such matter, except as otherwise provided in this Lease, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, malfunction or failure, rectify same at Lessor's expense. ~~The warranty periods shall be as follows: (i) 6 months as to the HVAC systems, and (ii) 30 days as to the remaining systems and other elements of the Unit.~~ If Lessee does not give Lessor the required notice within the appropriate warranty period, correction of any such non-compliance, malfunction or failure shall be the obligation of Lessee at Lessee's sole cost and expense (except for the repairs to the fire sprinkler systems, roof, foundations, and/or bearing walls - see Paragraph 7). Lessor also warrants, that unless otherwise specified in writing, Lessor is unaware of (i) any recorded Notices of Default affecting the Premise; (ii) any delinquent amounts due under any loan secured by the Premises; and (iii) any bankruptcy proceeding affecting the Premises.

23 **Compliance.** Lessor warrants that to the best of its knowledge the improvements on the Premises and the Common Areas comply with the building codes, applicable laws, covenants or restrictions of record, regulations, and ordinances ("**Applicable Requirements**") that were in effect at the time that each improvement, or portion thereof, was constructed. Said warranty does not apply to the use to which Lessee will put the Premises, modifications which may be required by the Americans with Disabilities Act or any similar laws as a result of Lessee's use (see Paragraph 49), or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. **NOTE: lessee is responsible for determining whether or not the Applicable Requirements, and especially the zoning are appropriate for lessee's intended use, and acknowledges that past uses of the Premises may no longer be allowed.** If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same at Lessor's expense. ~~If Lessee does not give Lessor written notice of a non-compliance with this warranty within 6 months following the Start Date, correction of that non-compliance shall be the obligation of Lessee at Lessee's sole cost and expense.~~ If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the construction of an addition to or an alteration of the Unit, Premises and/or Building, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Unit, Premises and/or Building ("**Capital Expenditure**"), Lessor and Lessee shall allocate the cost of such work as follows:

(a) Subject to Paragraph 2.3(c) below, if such Capital Expenditures are required as a result of the specific and unique use of the Premises by Lessee as compared with uses by tenants in general, Lessee shall be fully responsible for the cost thereof, provided, however, that if such Capital Expenditure is required during the last 2 years of this Lease and the cost thereof exceeds 6 months' Base Rent, Lessee may instead terminate this Lease unless Lessor notifies Lessee, in writing, within 10 days after receipt of Lessee's termination notice that Lessor has elected to pay the difference between the actual cost thereof and the amount equal to 6 months' Base Rent. If Lessee elects termination, Lessee shall immediately cease the use of the Premises which requires such Capital Expenditure and deliver to Lessor written notice specifying a termination date at least 90 days thereafter. Such termination date shall, however, in no event be earlier than the last day that Lessee could legally utilize the Premises without commencing such Capital Expenditure.

~~(b) If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally mandated seismic modifications), then Lessor shall pay for such Capital Expenditure and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease or any extension thereof, on the date that on which the Base Rent is due, an amount equal to 1/144th of the portion of such costs reasonably attributable to the Premises. Lessee shall pay interest on the balance but may prepay its obligation at any time. If, however, such Capital Expenditure is required during the last 2 years of this Lease or if Lessor reasonably determines that it is not economically feasible to pay its share thereof, Lessor shall have the option to terminate this Lease upon 90 days prior written notice to Lessee unless Lessee notifies Lessor, in writing, within 10 days after receipt of Lessor's termination notice that Lessee will pay for such Capital Expenditure. If Lessor does not elect to terminate, and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct same, with interest, from Rent until Lessor's share of such costs have been fully paid. If Lessee is unable to finance Lessor's share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis, Lessee shall have the right to terminate this Lease upon 30 days written notice to Lessor.~~

(c) Notwithstanding the above, the provisions concerning Capital Expenditures are intended to apply only to non-voluntary, unexpected, and new Applicable Requirements. If the Capital Expenditures are instead triggered by Lessee as a result of an actual or proposed change in use, change in intensity of use, or modification to the Premises then, and in that event, Lessee shall either: (i) immediately cease such changed use or intensity of use and/or take such other steps as may be necessary to eliminate the requirement for such Capital Expenditure, or (ii) complete such Capital Expenditure at its own expense. Lessee shall not have any right to terminate this Lease.

24 **Acknowledgements.** Lessee acknowledges that: (a) it has been given an opportunity to inspect and measure the Premises; (b) it has been advised by Lessor and/or Brokers to satisfy itself with respect to the size and condition of the Premises (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements and the Americans with Disabilities Act), and their suitability for Lessee's intended use; (c) Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its occupancy of the Premises; (d) it is not relying on any representation as to the size of the Premises made by Brokers or Lessor; (e) the square footage of the Premises was not material to Lessee's decision to lease the Premises and pay the Rent stated herein; and (f) neither Lessor, Lessor's agents, nor Brokers have made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease. In addition, Lessor acknowledges that: (i) Brokers have made no representations, promises or warranties concerning Lessee's ability to honor the Lease or suitability to occupy the Premises, and (ii) it is Lessor's sole responsibility to investigate the financial capability and/or suitability of all proposed tenants.

25 **lessee as Prior Owner/Occupant.** The warranties made by Lessor in Paragraph 2 shall be of no force or effect if immediately prior to the Start Date Lessee was the owner or occupant of the Premises. In such event, Lessee shall be responsible for any necessary corrective work.

26 **Vehicle Parking.** Lessee shall be entitled to use the number of Parking Spaces specified in Paragraph 1.2(b) on those portions of the Common Areas designated from time to time by Lessor for parking. Lessee shall not use more parking spaces than said number. Said parking spaces shall be used for parking by vehicles no larger than full-size passenger automobiles or pick-up trucks, herein called "**Permitted Size Vehicles.**" Lessor may regulate the loading and unloading of vehicles by adopting Rules and Regulations as provided in Paragraph 2.9. No vehicles other than Permitted Size Vehicles may be parked in the Common Area without

INITIALS

© 2019 AIR CRE. All Rights Reserved.

MTG-24.40, Revised 10-22-2020

INITIALS

Last Edited: 2/7/2023 1:52 PM

Page 2 of 18

Page 41 of 169

the prior written permission of Lessor. In addition:

- (a) Lessee shall not permit or allow any vehicles that belong to or are controlled by Lessee or Lessee's employees, suppliers, shippers, customers, contractors or invitees to be loaded, unloaded, or parked in areas other than those designated by Lessor for such activities.
- (b) Lessee shall not service or store any vehicles in the Common Areas.
- (c) If Lessee permits or allows any of the prohibited activities described in this Paragraph 2.6, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

27 **Common Areas - Definition.** The term "**Common Areas**" is defined as all areas and facilities outside the Premises and within the exterior boundary line of the Project and interior utility raceways and installations within the Unit that are provided and designated by the Lessor from time to time for the general non-exclusive use of Lessor, Lessee and other tenants of the Project and their respective employees, suppliers, shippers, customers, contractors and invitees, including parking areas, loading and unloading areas, trash areas, roofs, roadways, walkways, driveways and landscaped areas.

28 **Common Areas - Lessee's Rights.** Lessor grants to Lessee, for the benefit of Lessee and its employees, suppliers, shippers, contractors, customers and invitees, during the term of this Lease, the non-exclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by Lessor under the terms hereof or under the terms of any rules and regulations or restrictions governing the use of the Project. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas. Any such storage shall be permitted only by the prior written consent of Lessor or Lessor's designated agent, which consent may be revoked at any time. In the event that any unauthorized storage shall occur, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

29 **Common Areas - Rules and Regulations.** Lessor or such other person(s) as Lessor may appoint shall have the exclusive control and management of the Common Areas and shall have the right, from time to time, to establish, modify, amend and enforce reasonable rules and regulations ("**Rules and Regulations**") for the management, safety, care, and cleanliness of the grounds, the parking and unloading of vehicles and the preservation of good order, as well as for the convenience of other occupants or tenants of the Building and the Project and their invitees. Lessee agrees to abide by and conform to all such Rules and Regulations, and shall use its best efforts to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform. Lessor shall not be responsible to Lessee for the non-compliance with said Rules and Regulations by other tenants of the Project.

2.10 **Common Areas - Changes.** Lessor shall have the right, in Lessor's sole discretion, from time to time:

- (a) To make changes to the Common Areas, including, without limitation, changes in the location, size, shape and number of driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, walkways and utility raceways;
- (b) To close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available;
- (c) To designate other land outside the boundaries of the Project to be a part of the Common Areas;
- (d) To add additional buildings and improvements to the Common Areas;
- (e) To use the Common Areas while engaged in making additional improvements, repairs or alterations to the Project, or any portion thereof; and
- (f) To do and perform such other acts and make such other changes in, to or with respect to the Common Areas and Project as Lessor may, in the exercise of sound business judgment, deem to be appropriate.

3 Term.

3.1 **Term.** The Commencement Date, Expiration Date and Original Term of this Lease are as specified in Paragraph 1.3.

3.2 **Early Possession.** Any provision herein granting Lessee Early Possession of the Premises is subject to and conditioned upon the Premises being available for such possession prior to the Commencement Date. Any grant of Early Possession only conveys a non-exclusive right to occupy the Premises. If Lessee totally or partially occupies the Premises prior to the Commencement Date, the obligation to pay Base Rent shall be abated for the period of such Early Possession. All other terms of this Lease (including but not limited to the obligations to pay Lessee's Share of Common Area Operating Expenses, Real Property Taxes and insurance premiums and to maintain the Premises) shall be in effect during such period. Any such Early Possession shall not affect the Expiration Date.

3.3 **Delay In Possession.** Lessor agrees to use commercially reasonable efforts to deliver exclusive possession of the Premises to Lessee by the Commencement Date. If, despite said efforts, Lessor is unable to deliver possession by such date, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease or change the Expiration Date. Lessee shall not, however, be obligated to pay Rent or perform its other obligations until Lessor delivers possession of the Premises and any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed under the terms hereof, but minus any days of delay caused by the acts or omissions of Lessee. If possession is not delivered within 60 days after the Commencement Date, as the same may be extended under the terms of any Work Letter executed by Parties, Lessee may, at its option, by notice in writing within 10 days after the end of such 60 day period, cancel this Lease, in which event the Parties shall be discharged from all obligations hereunder. If such written notice is not received by Lessor within said 10 day period, Lessee's right to cancel shall terminate. If possession of the Premises is not delivered within 120 days after the Commencement Date, this Lease shall terminate unless other agreements are reached between Lessor and Lessee, in writing.

3.4 **Lessee Compliance.** Lessor shall not be required to tender possession of the Premises to Lessee until Lessee complies with its obligation to provide evidence of insurance (Paragraph 8.5). Pending delivery of such evidence, Lessee shall be required to perform all of its obligations under this Lease from and after the Start Date, including the payment of Rent, notwithstanding Lessor's election to withhold possession pending receipt of such evidence of insurance. Further, if Lessee is required to perform any other conditions prior to or concurrent with the Start Date, the Start Date shall occur but Lessor may elect to withhold possession until such conditions are satisfied.

4 Rent.

4.1 **Rent Defined.** All monetary obligations of Lessee to Lessor under the terms of this Lease (except for the Security Deposit) are deemed to be rent ("**Rent**").

4.2 **Common Area Operating Expenses.** Lessee shall pay to Lessor during the term hereof, in addition to the Base Rent, Lessee's Share (as specified in Paragraph 1.6) of all Common Area Operating Expenses, as hereinafter defined, during each calendar year of the term of this Lease, in accordance with the following provisions:

- (a) The following costs relating to the ownership and operation of the Project are defined as "**Common Area Operating Expenses**":
 - (i) Costs relating to the operation, repair and maintenance, in neat, clean, good order and condition, but not the replacement (see subparagraph (e)), of the following:
 - (aa) The Common Areas and Common Area improvements, including parking areas, loading and unloading areas, trash areas, roadways, parkways, walkways, driveways, landscaped areas, bumpers, irrigation systems, Common Area lighting facilities, fences and gates, elevators, roofs, exterior walls of the buildings, building systems and roof drainage systems.

INITIALS

INITIALS

(bb) Exterior signs and any tenant directories.

(cc) Any fire sprinkler systems.

(dd) All other areas and improvements that are within the exterior boundaries of the Project but outside of the Premises and/or any other space

occupied by a tenant.

(i) The cost of water, gas, electricity and telephone to service the Common Areas and any utilities not separately metered.

(ii) The cost of trash disposal, pest control services, property management, security services, owners' association dues and fees, the cost to repaint the exterior of any structures and the cost of any environmental inspections.

(iv) Reserves set aside for maintenance and repair of Common Areas and Common Area equipment.

(v) Any increase above the Base Real Property Taxes (as defined in Paragraph 10).

(vi) Any "Insurance Cost Increase" (as defined in Paragraph 8).

(vii) Any deductible portion of an insured loss concerning the Building or the Common Areas.

(viii) Auditors', accountants' and attorneys' fees and costs related to the operation, maintenance, repair and replacement of the Project.

(ix) The cost of any capital improvement to the Building or the Project not covered under the provisions of Paragraph 2.3 provided; however, that Lessor shall allocate the cost of any such capital improvement over a 12 year period and Lessee shall not be required to pay more than Lessee's Share of 1/144th of the cost of such capital improvement in any given month. Lessee shall pay Interest on the unamortized balance but may prepay its obligation at any time.

(x) The cost of any other services to be provided by Lessor that are stated elsewhere in this Lease to be a Common Area Operating Expense.

(b) Any Common Area Operating Expenses and Real Property Taxes that are specifically attributable to the Unit, the Building or to any other building in the Project or to the operation, repair and maintenance thereof, shall be allocated entirely to such Unit, Building, or other building. However, any Common Area Operating Expenses and Real Property Taxes that are not specifically attributable to the Building or to any other building or to the operation, repair and maintenance thereof, shall be equitably allocated by Lessor to all buildings in the Project.

(c) The inclusion of the improvements, facilities and services set forth in Subparagraph 4.2(a) shall not be deemed to impose an obligation upon Lessor to either have said improvements or facilities or to provide those services unless the Project already has the same, Lessor already provides the services, or Lessor has agreed elsewhere in this Lease to provide the same or some of them.

(d) Lessee's Share of Common Area Operating Expenses is payable monthly on the same day as the Base Rent is due hereunder. The amount of such payments shall be based on Lessor's estimate of the annual Common Area Operating Expenses. Within 60 days after written request (but not more than once each year) Lessor shall deliver to Lessee a reasonably detailed statement showing Lessee's Share of the actual Common Area Operating Expenses for the preceding year. If Lessee's payments during such year exceed Lessee's Share, Lessor shall credit the amount of such over-payment against Lessee's future payments. If Lessee's payments during such year were less than Lessee's Share, Lessee shall pay to Lessor the amount of the deficiency within 10 days after delivery by Lessor to Lessee of the statement.

(e) Common Area Operating Expenses shall not include the cost of replacing equipment or capital components such as the roof, foundations, exterior walls or Common Area capital improvements, such as the parking lot paving, elevators, fences that have a useful life for accounting purposes of 5 years or more.

(f) Common Area Operating Expenses shall not include any expenses paid by any tenant directly to third parties, or as to which Lessor is otherwise reimbursed by any third party, other tenant, or insurance proceeds.

4.3 Payment. Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States, without offset or deduction (except as specifically permitted in this Lease), on or before the day on which it is due. All monetary amounts shall be rounded to the nearest whole dollar. In the event that any statement or invoice prepared by Lessor is inaccurate such inaccuracy shall not constitute a waiver and Lessee shall be obligated to pay the amount set forth in this Lease. Rent for any period during the term hereof which is for less than one full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor's endorsement of any check so stating. In the event that any check, draft, or other instrument of payment given by Lessee to Lessor is dishonored for any reason, Lessee agrees to pay to Lessor the sum of \$25 in addition to any Late Charge and Lessor, at its option, may require all future Rent be paid by cashier's check. Payments will be applied first to accrued late charges and attorney's fees, second to accrued interest, then to Base Rent and Common Area Operating Expenses, and any remaining amount to any other outstanding charges or costs.

5 Security Deposit. Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount already due Lessor, for Rents which will be due in the future, and/ or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of the Security Deposit, Lessee shall within 10 days after written request therefor deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. If the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional monies with Lessor so that the total amount of the Security Deposit shall at all times bear the same proportion to the increased Base Rent as the initial Security Deposit bore to the initial Base Rent. Should the Agreed Use be amended to accommodate a material change in the business of Lessee or to accommodate a sublessee or assignee, Lessor shall have the right to increase the Security Deposit to the extent necessary, in Lessor's reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result thereof. If a change in control of Lessee occurs during this Lease and following such change the financial condition of Lessee is, in Lessor's reasonable judgment, significantly reduced, Lessee shall deposit such additional monies with Lessor as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on such change in financial condition. Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within 90 days after the expiration or termination of this Lease, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. Lessor shall upon written request provide Lessee with an accounting showing how that portion of the Security Deposit that was not returned was applied. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease. **THE SECURITY DEPOSIT SHALL NOT BE USED BY LESSEE IN LIEU OF PAYMENT OF THE LAST MONTH'S RENT.**

6 Use.

6.1 Use. Lessee shall use and occupy the Premises only for the Agreed Use, or any other legal use which is reasonably comparable thereto, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties. Other than guide, signal and seeing eye dogs, Lessee shall not keep or allow in the Premises any pets, animals, birds, fish, or reptiles. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Use, so long as the same will not impair the structural integrity of the Building or the mechanical or electrical systems therein, and/or is not significantly more burdensome to the Project. If Lessor elects to withhold consent, Lessor shall within 7 days after such request give written notification of same, which notice shall include an explanation of Lessor's

INITIALS

INITIALS

objections to the change in the Agreed Use. Lessee shall have access to the roof to install and maintain air quality monitoring equipment.

6.2 Hazardous Substances.

(a) **Reportable Uses Require Consent.** The term "Hazardous Substance" as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises; (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, byproducts or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance (at Lessee's expense) with all Applicable Requirements. "Reportable Use" shall mean (i) the installation or use of any above or below ground storage tank; (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use, ordinary office supplies (copier toner, liquid paper, glue, etc.) and common household cleaning materials, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration or termination) of protective modifications (such as concrete encasements) and/or increasing the Security Deposit.

(b) **Duty to Inform Lessor.** If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.

(c) **Lessee Remediation.** Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, comply with all Applicable Requirements and take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease, by or for Lessee, ~~or any third party.~~

(d) **Lessee Indemnification.** Lessee shall indemnify, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and reasonable attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, ~~or any third party~~ (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from areas outside of the Project not caused or contributed to by Lessee). Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease. No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.

(e) **Lessor Indemnification.** Except as otherwise provided in paragraph 8.7, Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation ~~and expenses, including attorney's fees,~~ which are suffered as a direct result of Hazardous Substances on the Premises prior to Lessee taking possession or which are caused by the ~~gross-~~ negligence or willful misconduct of Lessor, its agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

(f) **Investigations and Remediations.** Lessor shall retain the responsibility and pay for any investigations or remediation measures required by governmental entities having jurisdiction with respect to the existence of Hazardous Substances on the Premises prior to the Lessee taking possession, ~~unless such remediation measure is required as a result of Lessee's use (including "Alterations", as defined in paragraph 7.3(a) below) of the Premises, in which event Lessee shall be responsible for such payment.~~ Lessee shall cooperate fully in any such activities at the request of Lessor, including allowing Lessor and Lessor's agents to have reasonable access to the Premises at reasonable times in order to carry out Lessor's investigative and remedial responsibilities.

(g) **Lessor Termination Option.** If a Hazardous Substance Condition (see Paragraph 9.1(e)) occurs during the term of this Lease, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by the Applicable Requirements and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 6.2(d) and Paragraph 13), Lessor may, at Lessor's option, either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to remediate such condition exceeds 12 times the then monthly Base Rent or \$100,000, whichever is greater, give written notice to Lessee, within 30 days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor's desire to terminate this Lease as of the date 60 days following the date of such notice. In the event Lessor elects to give a termination notice, Lessee may, within 10 days thereafter, give written notice to Lessor of Lessee's commitment to pay the amount by which the cost of the remediation of such Hazardous Substance Condition exceeds an amount equal to 12 times the then monthly Base Rent or \$100,000, whichever is greater. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days following such commitment. In such event, this Lease shall continue in full force and effect, and Lessor shall proceed to make such remediation as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time provided, this Lease shall terminate as of the date specified in Lessor's notice of termination.

6.3 **Lessee's Compliance with Applicable Requirements.** Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants which relate in any manner to the Premises, without regard to whether said Applicable Requirements are now in effect or become effective after the Start Date. Lessee shall, within 10 days after receipt of Lessor's written request, provide Lessor with copies of all permits and other documents, and other information evidencing Lessee's compliance with any Applicable Requirements specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements. Likewise, Lessee shall immediately give written notice to Lessor of: (i) any water damage to the Premises and any suspected seepage, pooling, dampness or other condition conducive to the production of mold; or (ii) any mustiness or other odors that might indicate the presence of mold in the Premises.

6.4 **Inspection; Compliance.** Lessor and Lessor's "Lender" (as defined in Paragraph 30) and consultants authorized by Lessor shall have the right to enter into Premises at any time in the case of an emergency, and otherwise at reasonable times after reasonable notice, for the purpose of inspecting and/or testing the

INITIALS

INITIALS

condition of the Premises and/or for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a Hazardous Substance Condition (see Paragraph 9.1(e)) is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination. In addition, Lessee shall provide copies of all relevant material safety data sheets (MSDS) to Lessor within 10 days of the receipt of written request therefor. Lessee acknowledges that any failure on its part to allow such inspections or testing will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, should the Lessee fail to allow such inspections and/or testing in a timely fashion the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater for the remainder to the Lease. The Parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to allow such inspection and/or testing. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to such failure nor prevent the exercise of any of the other rights and remedies granted hereunder.

7. Maintenance; Repairs; Utility Installations; Trade Fixtures and Alterations.

7.1 Lessee's Obligations.

(a) **In General.** Subject to the provisions of Paragraph 2.2 (Condition), 2.3 (Compliance), 6.3 (Lessee's Compliance with Applicable Requirements), 7.2 (Lessor's Obligations), 9 (Damage or Destruction), and 14 (Condemnation), Lessee shall, at Lessee's sole expense, keep the Premises, Utility Installations (intended for Lessee's exclusive use, no matter where located), and Alterations in good order, condition and repair (whether or not the portion of the Premises requiring repairs, or the means of repairing the same, are reasonably or readily accessible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of the Premises), including, but not limited to, all equipment or facilities, such as plumbing, HVAC equipment, electrical, lighting facilities, ~~boilers, pressure vessels~~, fixtures, interior walls, interior surfaces of exterior walls, ceilings, floors, windows, doors, and plate glass, and skylights but excluding any items which are the responsibility of Lessor pursuant to Paragraph 7.2. Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices, specifically including the procurement and maintenance of the service contracts required by Paragraph 7.1(b) below. Lessee's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair.

(b) **Service Contracts.** Lessee shall, at Lessee's sole expense, procure and maintain contracts, with copies to Lessor, in customary form and substance for, and with contractors specializing and experienced in the maintenance of the following equipment and improvements, if any, if and when installed on the Premises: (i) HVAC equipment, (ii) boiler and pressure vessels, and (iii) clarifiers. However, Lessor reserves the right, upon notice to Lessee, to procure and maintain any or all of such service contracts, and provide the Lessee an opportunity to review cost prior to executing service contracts, and Lessee shall reimburse, at a reasonable cost to Lessor, upon demand, for the cost thereof.

(c) **Failure to Perform.** If Lessee fails to perform Lessee's obligations under this Paragraph 7.1, Lessor may enter upon the Premises after 10 days' prior to written notice to Lessee (except in the case of an emergency, in which case no notice shall be required), perform such obligations on Lessee's behalf, and put the Premises in good order, condition and repair, and Lessee shall promptly pay to Lessor a sum equal to 115% of the cost thereof.

(d) **Replacement.** Subject to Lessee's indemnification of Lessor as set forth in Paragraph 8.7 below, and without relieving Lessee of liability resulting from Lessee's failure to exercise and perform good maintenance practices, if an item described in Paragraph 7.1(b) cannot be repaired other than at a cost which is in excess of 50% of the cost of replacing such item, then such item shall be replaced by Lessor, and the cost thereof shall be prorated between the Parties and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease or any extension thereof, on the date on which Base Rent is due, an amount equal to the product of multiplying the cost of such replacement by a fraction, the numerator of which is one, and the denominator of which is 144 (i.e. 1/144th of the cost per month). Lessee shall pay interest on the unamortized balance but may prepay its obligation at anytime.

7.2 **Lessor's Obligations.** Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 4.2 (Common Area Operating Expenses), 6 (Use), 7.1 (Lessee's Obligations), 9 (Damage or Destruction) and 14 (Condemnation), Lessor, subject to reimbursement pursuant to Paragraph 4.2, shall keep in good order, condition and repair the foundations, exterior walls, structural condition of interior bearing walls, exterior roof, fire sprinkler system, Common Area fire alarm and/or smoke detection systems, fire hydrants, parking lots, walkways, parkways, driveways, landscaping, fences, signs and utility systems serving the Common Areas and all parts thereof, as well as providing the services for which there is a Common Area Operating Expense pursuant to Paragraph 4.2. Lessor shall not be obligated to paint the exterior or interior surfaces of exterior walls nor shall Lessor be obligated to maintain, repair or replace windows, doors or plate glass of the Premises.

7.3 Utility Installations; Trade Fixtures; Alterations.

(a) **Definitions.** The term "**Utility Installations**" refers to all floor and window coverings, air and/or vacuum lines, power panels, electrical distribution, security and fire protection systems, communication cabling, lighting fixtures, HVAC equipment, plumbing, and fencing in or on the Premises. The term "**Trade Fixtures**" shall mean Lessee's machinery and equipment that can be removed without doing material damage to the Premises. The term "**Alterations**" shall mean any modification of the improvements, other than Utility Installations or Trade Fixtures, whether by addition or deletion. "**Lessee Owned Alterations and/or Utility Installations**" are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor pursuant to Paragraph 7.4(a).

(b) **Consent.** Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent. Lessee may, however, make non-structural Alterations or Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life safety systems, do not trigger the requirement for additional modifications and/or improvements to the Premises resulting from Applicable Requirements, such as compliance with Title 24, and the cumulative cost thereof during this Lease as extended does not exceed a sum equal to 3 month's Base Rent in the aggregate or a sum equal to one month's Base Rent in any one year. Notwithstanding the foregoing, Lessee shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Lessor. Lessor may, as a precondition to granting such approval, require Lessee to utilize a contractor chosen and/or approved by Lessor. Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall be performed in a workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with as-built plans and specifications. For work which costs an amount in excess of one month's Base Rent, Lessor may condition its consent upon Lessee providing a lien and completion bond in an amount equal to 150% of the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor.

(c) **Liens; Bonds.** Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use on the Premises, which claims are or may be secured by any mechanic's or materialmen's lien against the Premises or any interest therein. Lessee shall give Lessor not less than 10 days notice prior to the commencement of any work in, on or about the Premises, and Lessor shall have the right to post notices of non-responsibility. If Lessee shall contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend and protect itself, Lessor and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof. If Lessor shall require, Lessee shall furnish

INITIALS

INITIALS

© 2019 AIR CRE. All Rights Reserved.

MTG-24.40, Revised 10-22-2020

Last Edited: 2/7/2023 1:52 PM

Page 6 of 18
Page 43 of 169

a surety bond in an amount equal to 150% of the amount of such contested lien, claim or demand, indemnifying Lessor against liability for the same. If Lessor elects to participate in any such action, Lessee shall pay Lessor's reasonable attorneys' fees and costs.

7.4 Ownership; Removal; Surrender; and Restoration.

(a) **Ownership.** Subject to Lessor's right to require removal or elect ownership as hereinafter provided, all Alterations and Utility Installations made by Lessee shall be the property of Lessee, but considered a part of the Premises. Lessor may, at any time, elect in writing to be the owner of all or any specified part of the Lessee Owned Alterations and Utility Installations. Unless otherwise instructed per paragraph 7.4(b) hereof, all Lessee Owned Alterations and Utility Installations shall, at the expiration or termination of this Lease, become the property of Lessor and be surrendered by Lessee with the Premises.

(b) **Removal.** By delivery to Lessee of written notice from Lessor not earlier than 90 and not later than 30 days prior to the end of the term of this Lease, Lessor may require that any or all Lessee Owned Alterations or Utility Installations be removed by the expiration or termination of this Lease. Lessor may require the removal at any time of all or any part of any Lessee Owned Alterations or Utility Installations made without the required consent.

(c) **Surrender; Restoration.** Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the improvements, parts and surfaces thereof broom clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Notwithstanding the foregoing and the provisions of Paragraph 7.1(a), if the Lessee occupies the Premises for 12 months or less, then Lessee shall surrender the Premises in the same condition as delivered to Lessee on the Start Date with NO allowance for ordinary wear and tear. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Lessee owned Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Lessee shall also remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Lessee, or any third party (except Hazardous Substances which were deposited via underground migration from areas outside of the Premises) to the level specified in Applicable Requirements. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. Any personal property of Lessee not removed on or before the Expiration Date or any earlier termination date shall be deemed to have been abandoned by Lessee and may be disposed of or retained by Lessor as Lessor may desire. The failure by Lessee to timely vacate the Premises pursuant to this Paragraph 7.4(c) without the express written consent of Lessor shall constitute a holdover under the provisions of Paragraph 26 below.

8 Insurance; Indemnity.

8.1 Payment of Premium Increases.

(a) As used herein, the term "**Insurance Cost Increase**" is defined as any increase in the actual cost of the insurance applicable to the Building and/or the Project and required to be carried by Lessor, pursuant to Paragraphs 8.2(b), 8.3(a) and 8.3(b), over and above the Base Premium, as hereinafter defined, calculated on an annual basis. Insurance Cost Increase shall include, but not be limited to, requirements of the holder of a mortgage or deed of trust covering the Premises, Building and/or Project, increased valuation of the Premises, Building and/or Project, and/or a general premium rate increase. The term Insurance Cost Increase shall not, however, include any premium increases resulting from the nature of the occupancy of any other tenant of the Building. The "**Base Premium**" shall be the annual premium applicable to the 12 month period immediately preceding the Start Date. If, however, the Project was not insured for the entirety of such 12 month period, then the Base Premium shall be the lowest annual premium reasonably obtainable for the Required Insurance as of the Start Date, assuming the most nominal use possible of the Building. In no event, however, shall Lessee be responsible for any portion of the premium cost attributable to liability insurance coverage in excess of \$2,000,000 procured under Paragraph 8.2(b).

(b) Lessee shall pay any Insurance Cost Increase to Lessor pursuant to Paragraph 4.2. Premiums for policy periods commencing prior to, or extending beyond, the term of this Lease shall be prorated to coincide with the corresponding Start Date or Expiration Date.

8.2 Liability Insurance.

(a) **Carried by Lessee.** Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$1,000,000 per occurrence with an annual aggregate of not less than \$2,000,000. Lessee shall add Lessor as an additional insured by means of an endorsement at least as broad as the Insurance Service Organization's "Additional Insured-Managers or Lessors of Premises" Endorsement. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "**insured contract**" for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. Lessee shall provide an endorsement on its liability policy(ies) which provides that its insurance shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only. ~~The Lessee should be named as an additional insured for the common areas and coverage should be primary and noncontributory other than for gross negligence.~~

(b) **Carried by Lessor.** Lessor shall maintain liability insurance as described in Paragraph 8.2(a), in addition to, and not in lieu of, the insurance required to be maintained by Lessee. Lessee shall not be named as an additional insured therein.

8.3 Property Insurance - Building, Improvements and Rental Value.

(a) **Building and Improvements.** Lessor shall obtain and keep in force a policy or policies of insurance in the name of Lessor, with loss payable to Lessor, any ground-lessor, and to any Lender insuring loss or damage to the Premises. The amount of such insurance shall be equal to the full insurable replacement cost of the Premises, as the same shall exist from time to time, or the amount required by any Lender, but in no event more than the commercially reasonable and available insurable value thereof. Lessee Owned Alterations and Utility Installations, Trade Fixtures, and Lessee's personal property shall be insured by Lessee not by Lessor. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender), including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, the deductible amount shall not exceed \$5,000 per occurrence.

(b) **Rental Value.** Lessor shall also obtain and keep in force a policy or policies in the name of Lessor with loss payable to Lessor and any Lender, insuring the loss of the full Rent for one year with an extended period of indemnity for an additional 180 days ("Rental Value insurance"). Said insurance shall contain an agreed valuation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected Rent otherwise payable by Lessee, for the next 12 month period.

(c) **Adjacent Premises.** Lessee shall pay for any increase in the premiums for the property insurance of the Building and for the Common Areas or other buildings in the Project if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

(d) **Lessee's Improvements.** Since Lessor is the Insuring Party, Lessor shall not be required to insure Lessee Owned Alterations and Utility Installations unless the item in question has become the property of Lessor under the terms of this Lease.

8.4 Lessee's Property; Business Interruption Insurance; Worker's Compensation Insurance.

INITIALS

© 2019 AIR CRE. All Rights Reserved.

MTG-24.40, Revised 10-22-2020

INITIALS

Last Edited: 2/7/2023 1:52 PM

Page 7 of 18

(a) **Property Damage.** Lessee shall obtain and maintain insurance coverage on all of Lessee's personal property, Trade Fixtures, and Lessee Owned Alterations and Utility Installations. Such insurance shall be full replacement cost coverage with a deductible of not to exceed \$1,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property, Trade Fixtures and Lessee Owned Alterations and Utility Installations.

(b) ~~Business Interruption.~~ Lessee shall obtain and maintain loss of income and extra expense insurance in amounts as Lessor will reimburse Lessee for direct or indirect loss of earnings attributable to all perils commonly insured against prudent lessees in the business of Lessee or attributable to prevention of access to the Premises as a result of such perils.

(c) **Worker's Compensation Insurance.** Lessee shall obtain and maintain Worker's Compensation Insurance in such amount as may be required by Applicable Requirements. Such policy shall include a 'Waiver of Subrogation' endorsement. Lessee shall provide Lessor with a copy of such endorsement along with the certificate of insurance or copy of the policy required by paragraph 8.5.

(d) **No Representation of Adequate Coverage.** Lessor makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover Lessee's property, business operations or obligations under this Lease.

85 **Insurance Policies.** Insurance required herein shall be by companies maintaining during the policy term a "General Policyholders Rating" of at least A-, VII, as set forth in the most current issue of "Best's Insurance Guide", or such other rating as may be required by a Lender. Lessee shall not do or permit to be done anything which invalidates the required insurance policies. Lessee shall, prior to the Start Date, deliver to Lessor certified copies of policies of such insurance or certificates with copies of the required endorsements evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after 30 days prior written notice to Lessor. Lessee shall, at least 10 days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may increase his liability insurance coverage and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure and maintain the same.

86 **Waiver of Subrogation.** Without affecting any other rights or remedies, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the insurance is not invalidated thereby.

87 **Indemnity.** ~~Lessee shall indemnify, defend and hold Lessor harmless from all claims, disputes, litigation, judgments and attorney fees arising out of Lessee's use of the Premises, except to the extent of Lessor's acts or omissions. Except for Lessor's gross negligence or willful misconduct, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground lessor, partners and Lenders, from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' fees, expenses and/or liabilities arising out of, involving, or in connection with, a Breach of the Lease by Lessee and/or the use and/or occupancy of the Premises and/or Project by Lessee and/or by Lessee's employees, contractors or invitees.~~ If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be defended or indemnified.

88 **Exemption of Lessor and its Agents from Liability.** Notwithstanding the negligence or breach of this Lease by Lessor or its agents, neither Lessor nor its agents shall be liable under any circumstances for: (i) injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, indoor air quality, the presence of mold or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the Building, or from other sources or places; (ii) any damages arising from any act or neglect of any other tenant of Lessor or from the failure of Lessor or its agents to enforce the provisions of any other lease in the Project; or (iii) injury to Lessee's business or for any loss of income or profit therefrom. Instead, it is intended that Lessee's sole recourse in the event of such damages or injury be to file a claim on the insurance policy(ies) that Lessee is required to maintain pursuant to the provisions of paragraph 8.

89 **Failure to Provide Insurance.** ~~Lessee acknowledges that any failure on its part to obtain or maintain the insurance required herein will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, for any month or portion thereof that Lessee does not maintain the required insurance and/or does not provide Lessor with the required binders or certificates evidencing the existence of the required insurance, the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then-existing Base Rent or \$100, whichever is greater. The parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to maintain the required insurance. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to maintain such insurance, prevent the exercise of any of the other rights and remedies granted hereunder, nor relieve Lessee of its obligation to maintain the insurance specified in this Lease.~~

9 Damage or Destruction.

9.1 Definitions.

(a) **"Premises Partial Damage"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, which can reasonably be repaired in 3 months or less from the date of the damage or destruction, and the cost thereof does not exceed a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(b) **"Premises Total Destruction"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in 3 months or less from the date of the damage or destruction and/or the cost thereof exceeds a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(c) **"Insured Loss"** shall mean damage or destruction to improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraph 8.3(a), irrespective of any deductible amounts or coverage limits involved.

(d) **"Replacement Cost"** shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Applicable Requirements, and without deduction for depreciation.

(e) **"Hazardous Substance Condition"** shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance, in, on, or under the Premises which requires restoration.

9.2 **Partial Damage - Insured Loss.** If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect.

INITIALS

INITIALS

~~provided, however, that Lessee shall, at Lessor's election, make the repair of any damage or destruction the total cost to repair of which is \$10,000 or less, and, in such event, Lessor shall make any applicable insurance proceeds available to Lessee on a reasonable basis for that purpose.~~ Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, the Insuring Party shall promptly contribute the shortage in proceeds and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within 10 days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said 10 day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, lessor may nevertheless elect by written notice to Lessee within 10 days thereafter to: (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or (ii) have this Lease terminate 30 days thereafter. Lessee shall not be entitled to reimbursement of any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

9.3 Partial Damage - Uninsured Loss. If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense), Lessor may either: (i) repair such damage as soon as reasonably possible at Lessor's expense (subject to reimbursement pursuant to Paragraph 4.2), in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within 30 days after receipt by Lessor of knowledge of the occurrence of such damage. Such termination shall be effective 60 days following the date of such notice. In the event Lessor elects to terminate this Lease, Lessee shall have the right within 10 days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

9.4 Total Destruction. Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate 60 days following such Destruction. If the damage or destruction was caused by the gross negligence or willful misconduct of Lessee, Lessor shall have the right to recover Lessor's damages from Lessee, except as provided in Paragraph 8.6.

9.5 Damage Near End of Term. If at any time during the last 6 months of this Lease there is damage for which the cost to repair exceeds one month's Base Rent, whether or not an Insured Loss, Lessor may terminate this Lease effective 60 days following the date of occurrence of such damage by giving a written termination notice to Lessee within 30 days after the date of occurrence of such damage. Notwithstanding the foregoing, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by (a) exercising such option and (b) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is 10 days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires. If Lessee duly exercises such option during such period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's commercially reasonable expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Lessee's option shall be extinguished.

9.6 Abatement of Rent; Lessee's Remedies.

(a) **Abatement.** In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition for which Lessee is not responsible under this Lease, the Rent payable by Lessee for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired, but not to exceed the proceeds received from the Rental Value insurance. All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein.

(b) **Remedies.** If Lessor is obligated to repair or restore the Premises and does not commence, in a substantial and meaningful way, such repair or restoration within 90 30 days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice, of Lessee's election to terminate this Lease on a date not less than 60 days following the giving of such notice. If Lessee gives such notice and such repair or restoration is not commenced within 30 days thereafter, this Lease shall terminate as of the date specified in said notice. If the repair or restoration is commenced within such 30 days, this Lease shall continue in full force and effect. "Commence" shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.

9.7 Termination; Advance Payments. Upon termination of this Lease pursuant to Paragraph 6.2(g) or Paragraph 9, an equitable adjustment shall be made concerning advance Base Rent and any other advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's Security Deposit as has not been, or is not then required to be, used by Lessor.

10 Real Property Taxes.

10.1 Definitions.

(a) **"Real Property Taxes."** As used herein, the term "Real Property Taxes" shall include any form of assessment; real estate, general, special, ordinary or extraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Project, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Project address. The term "Real Property Taxes" shall also include any tax, fee, levy, assessment or charge, or any increase therein: (i) imposed by reason of events occurring during the term of this Lease, including but not limited to, a change in the ownership of the Project; (ii) a change in the improvements thereon; and/or (iii) levied or assessed on machinery or equipment provided by Lessor to Lessee pursuant to this Lease.

(b) **"Base Real Property Taxes."** As used herein, the term "Base Real Property Taxes" shall be the amount of Real Property Taxes, which are assessed against the Project, during the entire calendar year in which the Lease is executed.

10.2 Payment of Taxes. Except as otherwise provided in Paragraph 10.3, Lessor shall pay the Real Property Taxes applicable to the Project, and said payments shall be included in the calculation of Common Area Operating Expenses in accordance with the provisions of Paragraph 4.2.

10.3 Additional Improvements. Common Area Operating Expenses shall not include Real Property Taxes specified in the tax assessor's records and work sheets as being caused by additional improvements placed upon the Project by other tenants or by Lessor for the exclusive enjoyment of such other Tenants. Notwithstanding Paragraph 10.2 hereof, Lessee shall, however, pay to Lessor at the time Common Area Operating Expenses are payable under Paragraph 4.2, the entirety of any increase in Real Property Taxes if assessed solely by reason of Alterations, Trade Fixtures or Utility Installations placed upon the Premises by Lessee or

INITIALS

INITIALS

at Lessee's request or by reason of any alterations or improvements to the Premises made by Lessor subsequent to the execution of this Lease by the Parties.

10.4 **Joint Assessment.** If the Building is not separately assessed, Real Property Taxes allocated to the Building shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available. Lessor's reasonable determination thereof, in good faith, shall be conclusive.

10.5 **Personal Property Taxes.** Lessee shall pay prior to delinquency all taxes assessed against and levied upon Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee contained in the Premises. When possible, Lessee shall cause its Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor. If any of Lessee's said property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee's property within 10 days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

11. Utilities and Services.

11.1 Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon. Notwithstanding the provisions of Paragraph 4.2, if at any time in Lessor's sole judgment, Lessor determines that Lessee is using a disproportionate amount of water, electricity or other commonly metered utilities, or that Lessee is generating such a large volume of trash as to require an increase in the size of the trash receptacle and/or an increase in the number of times per month that it is emptied, then Lessor may increase Lessee's Base Rent by an amount equal to such increased costs. There shall be no abatement of Rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor's reasonable control or in cooperation with governmental request or directions.

11.2 Within fifteen days of Lessor's written request, Lessee agrees to deliver to Lessor such information, documents and/or authorization as Lessor needs in order for Lessor to comply with new or existing Applicable Requirements relating to commercial building energy usage, ratings, and/or the reporting thereof.

12 Assignment and Subletting.

12.1 Lessor's Consent Required.

(a) Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or encumber (collectively, "assign or assignment") or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent.

(b) Unless Lessee is a corporation and its stock is publicly traded on a national stock exchange, a change in the control of Lessee shall constitute an assignment requiring consent. The transfer, on a cumulative basis, of 25% or more of the voting control of Lessee shall constitute a change in control for this purpose.

(c) The involvement of Lessee or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, transfer, leveraged buyout or otherwise), whether or not a formal assignment or hypothecation of this Lease or Lessee's assets occurs, which results or will result in a reduction of the Net Worth of Lessee by an amount greater than 25% of such Net Worth as it was represented at the time of the execution of this Lease or at the time of the most recent assignment to which Lessor has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, whichever was or is greater, shall be considered an assignment of this Lease to which Lessor may withhold its consent. "Net Worth of Lessee" shall mean the net worth of Lessee (excluding any guarantors) established under generally accepted accounting principles.

(d) An assignment or subletting without consent shall, at Lessor's option, be a Default curable after notice per Paragraph 13.1(d), or a non-curable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unapproved assignment or subletting as a non-curable Breach, Lessor may either: (i) terminate this Lease, or (ii) upon 30 days written notice, increase the monthly Base Rent to 110% of the Base Rent then in effect. Further, in the event of such Breach and rental adjustment, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to 110% of the price previously in effect, and (ii) all fixed and non-fixed rental adjustments scheduled during the remainder of the Lease term shall be increased to 110% of the scheduled adjusted rent.

(e) Lessee's remedy for any breach of Paragraph 12.1 by Lessor shall be limited to compensatory damages and/or injunctive relief.

(f) Lessor may reasonably withhold consent to a proposed assignment or subletting if Lessee is in Default at the time consent is requested.

(g) Notwithstanding the foregoing, allowing a de minimis portion of the Premises, i.e. 20 square feet or less, to be used by a third party vendor in connection with the installation of a vending machine or payphone shall not constitute a subletting.

12.2 Terms and Conditions Applicable to Assignment and Subletting.

(a) Regardless of Lessor's consent, no assignment or subletting shall: (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease, (ii) release Lessee of any obligations hereunder, or (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee.

(b) Lessor may accept Rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for Lessee's Default or Breach.

(c) Lessor's consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting.

(d) In the event of any Default or Breach by Lessee, Lessor may proceed directly against Lessee, any Guarantors or anyone else responsible for the performance of Lessee's obligations under this Lease, including any assignee or sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefor to Lessor, or any security held by Lessor.

(e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of \$500 as consideration for Lessor's considering and processing said request. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested. (See also Paragraph 36)

(f) Any assignee of, or sub lessee under, this Lease shall, by reason of accepting such assignment, entering into such sublease, or entering into possession of the Premises or any portion thereof, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing.

(g) Lessor's consent to any assignment or subletting shall not transfer to the assignee or sub lessee any Option granted to the original Lessee by this Lease unless such transfer is specifically consented to by Lessor in writing. (See Paragraph 39.2)

12.3 **Additional Terms and Conditions Applicable to Subletting.** The following terms and conditions shall apply to any subletting by Lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein:

(a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all Rent payable on any sublease, and Lessor may collect such Rent and apply

INITIALS

INITIALS

same toward Lessee's obligations under this Lease; provided, however, that until a Breach shall occur in the performance of Lessee's obligations, Lessee may collect said Rent. In the event that the amount collected by Lessor exceeds Lessee's then outstanding obligations any such excess shall be refunded to Lessee. Lessor shall not, by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of Rent, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor all Rent due and to become due under the sublease. Sublessee shall rely upon any such notice from Lessor and shall pay all Rents to Lessor without any obligation or right to inquire as to whether such Breach exists, notwithstanding any claim from Lessee to the contrary.

(b) In the event of a Breach by Lessee, Lessor may, at its option, require sublessee to attorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any prior Defaults or Breaches of such sublessor.

(c) Any matter requiring the consent of the sublessor under a sublease shall also require the consent of Lessor.

(d) No sublessee shall further assign or sublet all or any part of the Premises without Lessor's prior written consent.

(e) Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee.

13 Default; Breach; Remedies.

13.1 **Default; Breach.** A "Default" is defined as a failure by the Lessee to comply with or perform any of the terms, covenants, conditions or Rules and Regulations under this Lease. A "Breach" is defined as the occurrence of one or more of the following Defaults, and the failure of Lessee to cure such Default within any applicable grace period:

(a) **The abandonment of the Premises; the vacating of the Premises prior to the expiration or termination of this Lease without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Paragraph 8.3 is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism; or failure to deliver to Lessor exclusive possession of the entire Premises in accordance herewith prior to the expiration or termination of this Lease.**

(b) The failure of Lessee to make any payment of Rent or any Security Deposit required to be made by Lessee hereunder, whether to Lessor or to a third party, when due, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of 3 business days following written notice to Lessee. THE ACCEPTANCE BY LESSOR OF A PARTIAL PAYMENT OF RENT OR SECURITY DEPOSIT SHALL NOT CONSTITUTE A WAIVER OF ANY OF LESSOR'S RIGHTS, INCLUDING LESSOR'S RIGHT TO RECOVER POSSESSION OF THE PREMISES.

(c) The failure of Lessee to allow Lessor and/or its agents access to the Premises or the commission of waste, act or acts constituting public or private nuisance, and/or an illegal activity on the Premises by Lessee, where such actions continue for a period of 3 business days following written notice to Lessee. In the event that Lessee commits waste, a nuisance or an illegal activity a second time then, the Lessor may elect to treat such conduct as a non-curable Breach rather than a Default.

(d) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate or financial statements, (v) a requested subordination, (vi) evidence concerning any guaranty and/or Guarantor, (vii) any document requested under Paragraph 41, (viii) material safety data sheets (MSDS), or (ix) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of 10 days following written notice to Lessee.

(e) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 2.9 hereof, other than those described in subparagraphs 13.1(a), (b), (c) or (d), above, where such Default continues for a period of 30 days after written notice; provided, however, that if the nature of Lessee's Default is such that more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

(f) The occurrence of any of the following events: (i) the making of any general arrangement or assignment for the benefit of creditors; (ii) becoming a "debtor" as defined in 11 U.S.C. § 101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within 30 days; provided, however, in the event that any provision of this subparagraph is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

(g) The discovery that any financial statement of Lessee or of any Guarantor given to Lessor was materially false.

(h) If the performance of Lessee's obligations under this Lease is guaranteed: (i) the death of a Guarantor, (ii) the termination of a Guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty, (iii) a Guarantor's becoming insolvent or the subject of a bankruptcy filing, (iv) a Guarantor's refusal to honor the guaranty, or (v) a Guarantor's breach of its guaranty obligation on an anticipatory basis, and Lessee's failure, within 60 days following written notice of any such event, to provide written alternative assurance or security, which, when coupled with the then existing resources of Lessee, equals or exceeds the combined financial resources of Lessee and the Guarantors that existed at the time of execution of this Lease.

13.2 **Remedies.** If Lessee fails to perform any of its affirmative duties or obligations, within 10 days after written notice (or in case of an emergency, without notice), Lessor may, at its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. Lessee shall pay to Lessor an amount equal to 115% of the costs and expenses incurred by Lessor in such performance upon receipt of an invoice therefor. In the event of a Breach, Lessor may, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Lessee proves could have been reasonably avoided; (iii) 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 such rental loss that the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding

INITIALS

INITIALS

sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent. Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover any damages to which Lessor is otherwise entitled. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under Paragraph 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 13.1. In such case, the applicable grace period required by Paragraph 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

(b) Continue the Lease and Lessee's right to possession and recover the Rent as it becomes due, in which event Lessee may sublet or assign, subject only to reasonable limitations. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Lessor's interests, shall not constitute a termination of the Lessee's right to possession.

(c) Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

133 Inducement Recapture. Any agreement for free or abated rent or other charges, the cost of tenant improvements for Lessee paid for or performed by Lessor, or for the giving or paying by Lessor to or for Lessee of any cash or other bonus, inducement or consideration for Lessee's entering into this Lease, all of which concessions are hereinafter referred to as "Inducement Provisions," shall be deemed conditioned upon Lessee's full and faithful performance of all of the terms, covenants and conditions of this Lease. Upon Breach of this Lease by Lessee, any such Inducement Provision shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Lessor under such an Inducement Provision shall be immediately due and payable by Lessee to Lessor, notwithstanding any subsequent cure of said Breach by Lessee. The acceptance by Lessor of rent or the cure of the Breach which initiated the operation of this paragraph shall not be deemed a waiver by Lessor of the provisions of this paragraph unless specifically so stated in writing by Lessor at the time of such acceptance.

134 Late Charges. Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by any Lender. Accordingly, if any Rent shall not be received by Lessor within 5 days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall immediately pay to Lessor a one-time late charge equal to 10% of each such overdue amount or \$100, whichever is greater. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default or Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for 3 consecutive installments of Base Rent, then notwithstanding any provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance.

135 Interest. Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due shall bear interest from the 31st day after it was due. The interest ("**Interest**") charged shall be computed at the rate of 10% per annum but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Paragraph 13.4.

136 Breach by Lessor.

(a) **Notice of Breach.** Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph, a reasonable time shall in no event be less than ~~30~~ 21 days after receipt by Lessor, and any Lender whose name and address shall have been furnished to Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor's obligation is such that more than ~~30~~ 21 days are reasonably required for its performance, then Lessor shall not be in breach if performance is commenced within such ~~30~~ 21 day period and thereafter diligently pursued to completion.

(b) **Performance by Lessee on Behalf of Lessor.** In the event that neither Lessor nor Lender cures said breach within 30 days after receipt of said notice, or if having commenced said cure they do not diligently pursue it to completion, then Lessee may elect to cure said breach at Lessee's expense and offset from Rent the actual and reasonable cost to perform such cure, provided however, that such offset shall not exceed an amount equal to the greater of one month's Base Rent or the Security Deposit, reserving Lessee's right to reimbursement from Lessor for any such expense in excess of such offset. Lessee shall document the cost of said cure and supply said documentation to Lessor.

14 Condemnation. If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively "**Condemnation**"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the floor area of the Unit, or more than 25% of the parking spaces is taken by Condemnation, Lessee may, at Lessee's option, to be exercised in writing within 10 days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within 10 days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages; provided, however, that Lessee shall be entitled to any compensation paid by the condemner for Lessee's relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Paragraph. All Alterations and Utility Installations made to the Premises by Lessee, for purposes of Condemnation only, shall be considered the property of the Lessee and Lessee shall be entitled to any and all compensation which is payable therefor. In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises caused by such Condemnation.

15 Brokerage Fees.

151 Additional Commission. In addition to the payments owed pursuant to Paragraph 1.10 above, Lessor agrees that: ~~(a) if Lessee exercises any Option, (b) if Lessee or anyone affiliated with Lessee acquires from Lessor any rights to the Premises or other premises owned by Lessor and located within the Project, (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of this Lease, or~~ (d) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then, Lessor shall pay Brokers a fee in accordance with the fee schedule of the Brokers in effect at the time the Lease was executed. The provisions of this paragraph are intended to supersede the provisions of any earlier agreement to the contrary.

152 Assumption of Obligations. Any buyer or transferee of Lessor's interest in this Lease shall be deemed to have assumed Lessor's obligation hereunder. Brokers shall be third party beneficiaries of the provisions of Paragraphs 1.10, 15, 22 and 31. If Lessor fails to pay to Brokers any amounts due as and for brokerage

INITIALS

© 2019 AIR CRE. All Rights Reserved.

MTG-24.40, Revised 10-22-2020

INITIALS

Last Edited: 2/7/2023 1:52 PM

Page 12 of 18

fees pertaining to this Lease when due, then such amounts shall accrue Interest. In addition, if Lessor fails to pay any amounts to Lessee's Broker when due, Lessee's Broker may send written notice to Lessor and Lessee of such failure and if Lessor fails to pay such amounts within 10 days after said notice, Lessee shall pay said monies to its Broker and offset such amounts against Rent. In addition, Lessee's Broker shall be deemed to be a third party beneficiary of any commission agreement entered into by and/or between Lessor and Lessor's Broker for the limited purpose of collecting any brokerage fee owed.

15 Representations and Indemnities of Broker Relationships. Lessee and Lessor each represent and warrant to the other that it has had no dealings with any person, firm, broker, agent or finder (other than the Brokers and Agents, if any) in connection with this Lease, and that no one other than said named Brokers and Agents is entitled to any commission or finder's fee in connection herewith. Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, attorneys' fees reasonably incurred with respect thereto.

16 Estoppel Certificates.

(a) Each Party (as "**Responding Party**") shall within 10 days after written notice from the other Party (the "**Requesting Party**") execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the then most current "**Estoppel Certificate**" form published by AIR CRE, plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

(b) If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such 10 day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's performance, and (iii) if Lessor is the Requesting Party, not more than one month's rent has been paid in advance. Prospective purchasers and encumbrancers may rely upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate. In addition, Lessee acknowledges that any failure on its part to provide such an Estoppel Certificate will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, should the Lessee fail to execute and/or deliver a requested Estoppel Certificate in a timely fashion the monthly Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater for remainder of the Lease. The Parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to provide the Estoppel Certificate. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to provide the Estoppel Certificate nor prevent the exercise of any of the other rights and remedies granted hereunder.

(c) If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee and all Guarantors shall within 10 days after written notice from Lessor deliver to any potential lender or purchaser designated by Lessor such financial statements as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past 3 years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

17. Definition of Lessor. The term "**Lessor**" as used herein shall mean the owner or owners at the time in question of the fee title to the Premises, or, if this is a sublease, of the Lessee's interest in the prior lease. In the event of a transfer of Lessor's title or interest in the Premises or this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Lessor. Upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined.

18 Severability. The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

19 Days. Unless otherwise specifically indicated to the contrary, the word "**days**" as used in this Lease shall mean and refer to calendar days.

20 Limitation on Liability. The obligations of Lessor under this Lease shall not constitute personal obligations of Lessor, or its partners, members, directors, officers or shareholders, and Lessee shall look to the Premises, and to no other assets of Lessor, for the satisfaction of any liability of Lessor with respect to this Lease, and shall not seek recourse against Lessor's partners, members, directors, officers or shareholders, or any of their personal assets for such satisfaction.

21. Time of Essence. Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

22 No Prior or Other Agreements; Broker Disclaimer. This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. Lessor and Lessee each represents and warrants to the Brokers that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Lease and as to the use, nature, quality and character of the Premises. Brokers have no responsibility with respect thereto or with respect to any default or breach hereof by either Party.

23 Notices.

231 Notice Requirements. All notices required or permitted by this Lease or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, or by email, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 23. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notices. Either Party may by written notice to the other specify a different address for notice, except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for notice. A copy of all notices to Lessor shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate in writing.

232 Date of Notice. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 72 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices delivered by hand, or transmitted by facsimile transmission or by email shall be deemed delivered upon actual receipt. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

233 Options. Notwithstanding the foregoing, in order to exercise any Options (see paragraph 39), the Notice must be sent by Certified Mail (return receipt requested), Express Mail (signature required), courier (signature required) or some other methodology that provides a receipt establishing the date the notice was received by the Lessor.

24 Waivers.

(a) No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof. Lessor's consent to,

INITIALS

© 2019 AIR CRE. All Rights Reserved.

MTG-24.40, Revised 10-22-2020

INITIALS

Last Edited: 2/7/2023 1:52 PM

Page 13 of 18

or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent.

(b) The acceptance of Rent by Lessor shall not be a waiver of any Default or Breach by Lessee. Any payment by Lessee may be accepted by Lessor on account of monies or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

(c) ~~THE PARTIES AGREE THAT THE TERMS OF THIS LEASE SHALL GOVERN WITH REGARD TO ALL MATTERS RELATED THERETO AND HEREBY WAIVE THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE TO THE EXTENT THAT SUCH STATUTE IS INCONSISTENT WITH THIS LEASE.~~

25 Disclosures Regarding The Nature of a Real Estate Agency Relationship.

(a) When entering into a discussion with a real estate agent regarding a real estate transaction, a Lessor or Lessee should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction. Lessor and Lessee acknowledge being advised by the Brokers in this transaction, as follows:

¶ Lessor's Agent. A Lessor's agent under a listing agreement with the Lessor acts as the agent for the Lessor only. A Lessor's agent or subagent has the following affirmative obligations: To the Lessor: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessor. To the Lessee and the Lessor: (a) Diligent exercise of reasonable skills and care in performance of the agent's duties. (b) A duty of honest and fair dealing and good faith. (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

¶ Lessee's Agent. An agent can agree to act as agent for the Lessee only. In these situations, the agent is not the Lessor's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Lessor. An agent acting only for a Lessee has the following affirmative obligations. To the Lessee: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessee. To the Lessee and the Lessor: (a) Diligent exercise of reasonable skills and care in performance of the agent's duties. (b) A duty of honest and fair dealing and good faith. (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

¶ Agent Representing Both Lessor and Lessee. A real estate agent, either acting directly or through one or more associate licensees, can legally be the agent of both the Lessor and the Lessee in a transaction, but only with the knowledge and consent of both the Lessor and the Lessee. In a dual agency situation, the agent has the following affirmative obligations to both the Lessor and the Lessee: (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Lessor or the Lessee. (b) Other duties to the Lessor and the Lessee as stated above in subparagraphs (i) or (ii). In representing both Lessor and Lessee, the agent may not, without the express permission of the respective Party, disclose to the other Party confidential information, including, but not limited to, facts relating to either Lessee's or Lessor's financial position, motivations, bargaining position, or other personal information that may impact rent, including Lessor's willingness to accept a rent less than the listing rent or Lessee's willingness to pay rent greater than the rent offered. The above duties of the agent in a real estate transaction do not relieve a Lessor or Lessee from the responsibility to protect their own interests. Lessor and Lessee should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional. Both Lessor and Lessee should strongly consider obtaining tax advice from a competent professional because the federal and state tax consequences of a transaction can be complex and subject to change.

(b) Brokers have no responsibility with respect to any default or breach hereof by either Party. The Parties agree that no lawsuit or other legal proceeding involving any breach of duty, error or omission relating to this Lease may be brought against Broker more than one year after the Start Date and that the liability (including court costs and attorneys' fees), of any Broker with respect to any such lawsuit and/or legal proceeding shall not exceed the fee received by such Broker pursuant to this Lease; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

(c) Lessor and Lessee agree to identify to Brokers as "Confidential" any communication or information given Brokers that is considered by such Party to be confidential.

26 No Right To Holdover. Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. At or prior to the expiration or termination of this Lease Lessee shall deliver exclusive possession of the Premises to Lessor. For purposes of this provision and Paragraph 13.1(a), exclusive possession shall mean that Lessee shall have vacated the Premises, removed all of its personal property therefrom and that the Premises have been returned in the condition specified in this Lease. In the event that Lessee does not deliver exclusive possession to Lessor as specified above, then Lessor's damages during any holdover period shall be computed at the amount of the Rent (as defined in Paragraph 4.1) due during the last full month before the expiration or termination of this Lease (disregarding any temporary abatement of Rent that may have been in effect), but with Base Rent being 150% of the Base Rent payable during such last full month. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

27. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

28 Covenants and Conditions; Construction of Agreement. All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions. In construing this Lease, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa. This Lease shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

29 Binding Effect; Choice of Law. This Lease shall be binding upon the Parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located. Signatures to this Lease accomplished by means of electronic signature or similar technology shall be legal and binding.

30 Subordination; Attornment; Non-Disturbance.

301 Subordination. This Lease and any Option granted hereby shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or security device (collectively, "**Security Device**"), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof. Lessee agrees that the holders of any such Security Devices (in this Lease together referred to as "**Lender**") shall have no liability or obligation to perform any of the obligations of Lessor under this Lease. Any Lender may elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device by giving written notice thereof to Lessee, whereupon this Lease and such Options shall be deemed prior to such

INITIALS

INITIALS

Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

302 Attornment. In the event that Lessor transfers title to the Premises, or the Premises are acquired by another upon the foreclosure or termination of a Security Device to which this Lease is subordinated (i) Lessee shall, subject to the non-disturbance provisions of Paragraph 30.3, attorn to such new owner, and upon request, enter into a new lease, containing all of the terms and provisions of this Lease, with such new owner for the remainder of the term hereof, or, at the election of the new owner, this Lease will automatically become a new lease between Lessee and such new owner, and (ii) Lessor shall thereafter be relieved of any further obligations hereunder and such new owner shall assume all of Lessor's obligations. ~~The Lessor which transfers its interest shall immediately pay any offsets and return prepaid rents in excess of one month, except that such new owner shall not: (a) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership; (b) be subject to any offsets or defenses which Lessee might have against any prior lessor, (c) be bound by prepayment of more than one month's rent, or (d) be liable for the return of any security deposit paid to any prior lessor which was not paid or credited to such new owner.~~

303 Non-Disturbance. With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance agreement (a "**Non-Disturbance Agreement**") from the Lender which Non-Disturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises. Further, within 60 days after the execution of this Lease, Lessor shall, if requested by Lessee, use its commercially reasonable efforts to obtain a Non-Disturbance Agreement from the holder of any pre-existing Security Device which is secured by the Premises. In the event that Lessor is unable to provide the Non-Disturbance Agreement within said 60 days, then Lessee may, at Lessee's option, directly contact Lender and attempt to negotiate for the execution and delivery of a Non-Disturbance Agreement.

304 Self-Executing. The agreements contained in this Paragraph 30 shall be effective without the execution of any further documents; provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or Non-Disturbance Agreement provided for herein.

31 Attorneys' Fees. If any Party or Broker brings an action or proceeding involving the Premises whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "**Prevailing Party**" shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. In addition, Lessor shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting Breach (\$200 is a reasonable minimum per occurrence for such services and consultation).

32 Lessor's Access; Showing Premises; Repairs. Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable prior notice for the purpose of showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary or desirable and the erecting, using and maintaining of utilities, services, pipes and conduits through the Premises and/or other premises as long as there is no material adverse effect on Lessee's use of the Premises. All such activities shall be without abatement of rent or liability to Lessee.

33 Auctions. Lessee shall not conduct, nor permit to be conducted, any auction upon the Premises without Lessor's prior written consent. Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to permit an auction.

34 Signs. Lessor may place on the Premises ordinary "For Sale" signs at any time and ordinary "For Lease" signs during the last 6 months of the term hereof. Except for ordinary "For Sublease" signs which may be placed only on the Premises, Lessee shall not place any sign upon the Project without Lessor's prior written consent. All signs must comply with all Applicable Requirements.

35 Termination; Merger. Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, that Lessor may elect to continue any one or all existing subtenancies. Lessor's failure within 10 days following any such event to elect to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

36 Consents. All requests for consent shall be in writing. Except as otherwise provided herein, wherever in this Lease the consent of a Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. Lessor's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent, including but not limited to consents to an assignment, a subletting or the presence or use of a Hazardous Substance, shall be paid by Lessee upon receipt of an invoice and supporting documentation therefor. Lessor's consent to any act, assignment or subletting shall not constitute an acknowledgment that no Default or Breach by Lessee of this lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing by Lessor at the time of such consent. The failure to specify herein any particular condition to Lessor's consent shall not preclude the imposition by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given. In the event that either Party disagrees with any determination made by the other hereunder and reasonably requests the reasons for such determination, the determining party shall furnish its reasons in writing and in reasonable detail within 10 business days following such request.

37. Guarantor.

37.1 Execution. The Guarantors, if any, shall each execute a guaranty in the form most recently published by AIR CRE

37.2 Default. It shall constitute a Default of the Lessee if any Guarantor fails or refuses, upon request to provide: (a) evidence of the execution of the guaranty, including the authority of the party signing on Guarantor's behalf to obligate Guarantor, and in the case of a corporate Guarantor, a certified copy of a resolution of its board of directors authorizing the making of such guaranty, (b) current financial statements, (c) an Estoppel Certificate, or (d) written confirmation that the guaranty is still in effect.

38 Quiet Possession. Subject to payment by Lessee of the Rent and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession and quiet enjoyment of the Premises during the term hereof.

39 Options. If Lessee is granted any Option, as defined below, then the following provisions shall apply.

39.1 Definition. "**Option**" shall mean: (a) the right to extend or reduce the term of or renew this Lease or to extend or reduce the term of or renew any lease that Lessee has on other property of Lessor; (b) the right of first refusal or first offer to lease either the Premises or other property of Lessor; (c) the right to purchase,

INITIALS

INITIALS

the right of first offer to purchase or the right of first refusal to purchase the Premises or other property of Lessor.

392 **Options Personal To Original Lessee.** Any Option granted to Lessee in this Lease is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and, if requested by Lessor, with Lessee certifying that Lessee has no intention of thereafter assigning or subletting.

393 **Multiple Options.** In the event that Lessee has any multiple Options to extend or renew this Lease, a later Option cannot be exercised unless the prior Options have been validly exercised.

394 **Effect of Default on Options.**

(a) Lessee shall have no right to exercise an Option: (i) during the period commencing with the giving of any notice of Default and continuing until said Default is cured, (ii) during the period of time any Rent is unpaid (without regard to whether notice thereof is given Lessee), (iii) during the time Lessee is in Breach of this Lease, or (iv) in the event that Lessee has been given 3 or more notices of separate Default, whether or not the Defaults are cured, during the 12 month period immediately preceding the exercise of the Option.

(b) The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of Paragraph 39.4(a).

(c) An Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and prior to the commencement of the extended term or completion of the purchase, (i) Lessee fails to pay Rent for a period of 30 days after such Rent becomes due (without any necessity of Lessor to give notice thereof), or (ii) if Lessee commits a Breach of this Lease.

40 **Security Measures.** Lessee hereby acknowledges that the Rent payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties.

41 **Reservations.** Lessor reserves the right: (i) to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary; (ii) to cause the recordation of parcel maps and restrictions; and (iii) to create and/or install new utility raceways, so long as such easements, rights, dedications, maps, restrictions, and utility raceways do not unreasonably interfere with the use of the Premises by Lessee. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate such rights.

42 **Performance Under Protest.** If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay. A Party who does not initiate suit for the recovery of sums paid "under protest" within 6 months shall be deemed to have waived its right to protest such payment.

43 **Authority; Multiple Parties; Execution.**

(a) If either Party hereto is a corporation, trust, limited liability company, partnership, or similar entity, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on its behalf. Each Party shall, within 30 days after request, deliver to the other Party satisfactory evidence of such authority.

(b) If this Lease is executed by more than one person or entity as "Lessee", each such person or entity shall be jointly and severally liable hereunder. It is agreed that any one of the named Lessees shall be empowered to execute any amendment to this Lease, or other document ancillary thereto and bind all of the named Lessees, and Lessor may rely on the same as if all of the named Lessees had executed such document.

(c) This Lease may be executed by the Parties in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

44 **Conflict.** Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

45 **Offer.** Preparation of this Lease by either party or their agent and submission of same to the other Party shall not be deemed an offer to lease to the other Party. This Lease is not intended to be binding until executed and delivered by all Parties hereto.

46 **Amendments.** This Lease may be modified only in writing, signed by the Parties in interest at the time of the modification. As long as they do not materially change Lessee's obligations hereunder, Lessee agrees to make such reasonable non-monetary modifications to this Lease as may be reasonably required by a Lender in connection with the obtaining of normal financing or refinancing of the Premises.

47 **Waiver of Jury Trial.** ~~THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING INVOLVING THE PROPERTY OR ARISING OUT OF THIS AGREEMENT.~~

48 **Arbitration of Disputes.** An Addendum requiring the Arbitration of all disputes between the Parties and/or Brokers arising out of this Lease ~~X~~ is not attached to this Lease.

49 **Accessibility; Americans with Disabilities Act.**

(a) The Premises:

~~X~~ have not undergone an inspection by a Certified Access Specialist (CASp). Note: 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.

 have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises met all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq. Lessee acknowledges that it received a copy of the inspection report at least 48 hours prior to executing this Lease and agrees to keep such report confidential.

INITIALS

INITIALS

have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises did not meet all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq. Lessee acknowledges that it received a copy of the inspection report at least 48 hours prior to executing this Lease and agrees to keep such report confidential except as necessary to complete repairs and corrections of violations of construction related accessibility standards.

In the event that the Premises have been issued an inspection report by a CASp the Lessor shall provide a copy of the disability access inspection certificate to Lessee within 7 days of the execution of this Lease.

(b) Since compliance with the Americans with Disabilities Act (ADA) and other state and local accessibility statutes are dependent upon Lessee's specific use of the Premises, Lessor makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. In the event that Lessee's use of the Premises requires modifications or additions to the Premises in order to be in compliance with ADA or other accessibility statutes, Lessee agrees to make any such necessary modifications and/or additions at Lessee's expense.

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY AIR CRE OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:

- 1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.**
- 2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE.**

WARNING: IF THE PREMISES ARE LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THE LEASE MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PREMISES ARE LOCATED.

The parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

Executed at: ____

On: ____

Executed at: ____

On: ____

By LESSOR:

Ronald Grove

By LESSEE:

Bay Area Air Quality Management District

By: _____

Name Printed: _____

Title: _____

Phone: _____

Fax: _____

Email: _____

By: _____

Name Printed: _____

Title: _____

Phone: _____

Fax: _____

Email: _____

By: _____

Name Printed: _____

Title: _____

Phone: _____

Fax: _____

Email: _____

By: _____

Name Printed: _____

Title: _____

Phone: _____

Fax: _____

Email: _____

Address: 1011 Bransten Rd., Ste. D, San

Carlos, CA 94070

Federal ID No.: 94-3063931

Address: 37 5 Beale St., San Francisco, CA

94105

Federal ID No.: _____

BROKER

Attn: _____

Title: _____

Address: _____

Phone: _____

Fax: _____

Email: _____

Federal ID No.: _____

BROKER

Attn: _____

Title: _____

Address: _____

Phone: _____

Fax: _____

Email: _____

Federal ID No.: _____

INITIALS

INITIALS

Broker DRE License#: _____
Agent DRE License#: _____

Broker DRE License#: _____
Agent DRE License#: _____

AIR CRE * <https://www.aircre.com> * 213-687-8777 * contracts@aircre.com
NOTICE: No part of these works may be reproduced in any form without permission in writing.

INITIALS

INITIALS

**RENT ADJUSTMENT(S)
(ORIGINAL TERM)
STANDARD LEASE ADDENDUM**

Dated: February 7, 2023

By and Between

Lessor: Ronald Grove

Lessee: Bay Area Air Quality Management District

Property Address: 897 Barron Avenue, Unit #1, Redwood City, CA 94063
(street address, city, state, zip)

Paragraph: 50

The monthly Base Rent during the Original Term of the Lease shall be increased by using the method(s) selected below (*check method(s) to be used and fill in appropriately*):

I. Consumer Price Index.

a The monthly Base Rent shall be increased on _____ and every _____ months thereafter during the Original Term ("**CPI Increase Date(s)**") commensurate with the increase in the CPI (as herein defined) determined as follows: the monthly Base Rent scheduled for the first month of the Original Term shall be multiplied by a fraction the denominator of which is the Base CPI (as herein defined), and the numerator of which is the Comparison CPI (as herein defined). The amount so calculated shall constitute the new Base Rent until the next CPI Increase Date, but in no event shall any such new Base Rent be less than the Base Rent for the month immediately preceding the applicable CPI Increase Date.

b The term "CPI" shall mean the Consumer Price Index of the Bureau of Labor Statistics of the U.S. Department of Labor for (*select one*): CPI W (Urban Wage Earners and Clerical Workers) or CPI U (All Urban Consumers), for (*fill in Urban Area*): _____ or the area in which the Premises is located, All Items (1982-1984 = 100). The term "**Comparison CPI**" shall mean the CPI of the calendar month which is 2 full months prior to the applicable Original Term CPI Increase Date. The term "**Base CPI**" shall mean the CPI of the calendar month which is 2 full months prior to the Commencement Date of the Original Term.

c If the compilation and/or publication of the CPI is transferred to another governmental department, bureau or agency or is discontinued, then instead the index most nearly the same as the CPI shall be used to calculate the Base Rent increases hereunder. If the Parties cannot agree on such alternative index, then the matter shall be submitted for decision to the American Arbitration Association in accordance with the then rules of said association and the decision of the arbitrators shall be binding upon the parties, with the cost of such arbitration being paid equally by the Parties.

II. **Fixed Percentage.** The monthly Base Rent shall be increased on March 1, 2024 and every 12 months thereafter during the Original Term ("**Percentage Increase Date(s)**") by Four percent (4 %) of the monthly Base Rent scheduled to be paid for the month immediately preceding the applicable Percentage Increase Date.

D111. Fixed Rental Adjustment(s) ("FRA").

The monthly Base Rent shall be increased to the following amounts on the dates set forth below:

On (fill in FRA adjustment Date(s)):

March 1, 2024
March 1, 2025
March 1, 2026
March 1, 2027

The new Base Rent shall be:

\$1,520.81
\$1,581.64
\$1,644.91
\$1,710.71

BROKER'S FEE: For each adjustment in Base Rent specified above, the Brokers shall be paid a Brokerage Fee in accordance with paragraph 15 of the Lease or if applicable, paragraph 9 of the Sublease.

AIR CRE • <https://www.aircre.com> • 213-687-8777 • contracts@aircre.com

INITIALS

INITIALS

NOTICE: No part of these works may be reproduced in any form without permission in writing.

INITIALS

© 2017 AIR CRE. All Rights Reserved.
RA-8.00, Revised 10-13-2022

INITIALS

Last Edited: 2/7/2023 1:52 PM

Page 2 of 2

Page 59 of 169

COMMERCIAL LEASE AND DEPOSIT RECEIPT

AGENCY RELATIONSHIP CONFIRMATION. The following agency relationship is hereby confirmed for this transaction and supersedes any prior agency election (if no agency relationship, insert "NONE"):

LISTING AGENT: Tombe Realty is the agent of (check one):

the Lessor exclusively; or both the Lessee and the Lessor.

LEASING AGENT: _____ (if not the same as the Listing Agent) is the agent of (check one):

the Lessee exclusively; or the Lessor exclusively; or both the Lessee and the Lessor.

Note: This confirmation DOES NOT take the place of the AGENCY DISCLOSURE form which may be required by law.

RECEIVED FROM Bay Area Air Quality Management District hereinafter referred to as LESSEE, the sum of \$ 14,707.55 (Fourteen Thousand Seven Hundred Seven and 55/100 dollars), evidenced by Check payable to Tombe Realty as a deposit which will belong to Lessor and will be applied as follows:

	TOTAL	RECEIVED	BALANCE DUE PRIOR TO OCCUPANCY
Rent for the period from <u>December 1, 2013</u> to <u>January 1, 2014</u>	\$ <u>1,525.00</u>	\$ <u>0.00</u>	\$ <u>1,525.00</u>
Security deposit (not applicable toward last month's rent)	\$ <u>1,500.00</u>	\$ <u>0.00</u>	\$ <u>1,500.00</u>
Other <u>Tenant Improvements</u>	\$ <u>11,682.55</u>	\$ <u>0.00</u>	\$ <u>11,682.55</u>
TOTAL	\$ <u>14,707.55</u>	\$ <u>0.00</u>	\$ <u>14,707.55</u>

In the event this Lease is not accepted by the Lessor within 7 days, the total deposit received will be refunded.

Lessee offers to lease from Lessor the premises situated in the City of Sebastopol County of Sonoma State of California, described as 103 Morris St., Suite T, Sebastopol, CA 95472 ("the Premises") consisting of approximately 980 square feet, which is approximately _____ % of the total rental square footage of the entire property, upon the following terms and conditions:

- TERM.** The term will commence on (date) December 1, 2013 and end on (date) November 30, 2018.
- RENT.** The base rent will be \$ 1,100.00 per month payable on the 1st day of each month. After the first 12 months the rent will be adjusted as follows: effective upon the first day of the month immediately following the expiration of 12 months from date of commencement of the term, and upon the expiration of each 12 months thereafter, in accordance with changes in the U.S. Consumer Price Index for All Urban Consumers (1982-84 = 100), or (other index) See attached Exhibit A ("CPI"). The base rent will be increased to an amount equal to the monthly rent, multiplied by a fraction, the numerator of which is the CPI for the second calendar month immediately preceding the adjustment date, and the denominator of which is the CPI for the second calendar month preceding the commencement of the Lease term; provided however, that the monthly rent will not be less than that immediately preceding the adjustment. All rents will be paid to Lessor or his or her authorized agent, at the following address Tombe Realty - 127 North Main St., Sebastopol, CA 95472 or at such other places as may be designated by Lessor from time to time. In the event rent is not received by Lessor within 5 days after due date, Lessee agrees to pay a late charge of \$ 150.00 plus interest at 12 % per annum on the delinquent amount. Lessee further agrees to pay \$ 50.00 for each dishonored bank check. The late charge period is **not** a grace period, and Lessor is entitled to make written demand for any rent if not paid when due.
- NET LEASE PROVISIONS.** If checked AND INITIALED BELOW BY LESSEE, the following provisions are included in this Lease: Lessee agrees to pay, in addition to the base monthly rental set forth in Item 2, Lessee's proportionate share of the Lessor's operating expenses, including utility and service costs, insurance, real property taxes, and common area maintenance. Lessee's share is based on the ratio of the square footage of the Premises to the total square footage of the rental space of the entire property of which the Premises are a part. Lessee's monthly share of said expenses at the commencement of the term is \$ _____.
(initial) Lessee (_____ / _____) agrees to the foregoing additional rental provisions.
- USE.** The premises are to be used for the operation of Office - Lab and for no other purpose, without prior written consent of Lessor. Lessee will not commit any waste upon the premises, or any nuisance or act which may disturb the quiet enjoyment of any tenant in the building.
- USES PROHIBITED.** Lessee will not use any portion of the premises for purposes other than those specified. No use will be made or permitted to be made upon the premises, nor acts done, which will increase the existing rate of insurance upon the property, or cause cancellation of insurance policies covering the property. Lessee will not conduct or permit any sale by auction on the premises.
- ASSIGNMENT AND SUBLETTING.** Lessee will not assign this Lease or sublet any portion of the premises without prior written consent of the Lessor, which will not be unreasonably withheld. Any such assignment or subletting without consent will be void and, at the option of the Lessor, will terminate this Lease.

Lessee [Signature] [_____] has read this page.

CAUTION: The copyright laws of the United States forbid the unauthorized reproduction of this form by any means including scanning or computerized formats.



Property Address

103 Morris St., Suite T, Sebastopol, CA 95472

- 7. **ORDINANCES AND STATUTES.** Lessee will comply with all statutes, ordinances, and requirements of all municipal, state and federal authorities now in force, or which may later be in force, regarding the use of the premises. The commencement or pendency of any state or federal court abatement proceeding affecting the use of the premises will, at the option of the Lessor, be deemed a breach of this Lease.
- 8. **MAINTENANCE, REPAIRS, ALTERATIONS.** Unless otherwise indicated, Lessee acknowledges that the premises are in good order and repair. Lessee will, at his or her own expense, maintain the premises in a good and safe condition, including plate glass, electrical wiring, plumbing and heating and air conditioning installations, and any other system or equipment. The premises will be surrendered, at termination of the Lease, in as good condition as received, normal wear and tear excepted. Lessee will be responsible for all repairs required during the term of the lease, except the following which will be maintained by Lessor: roof, exterior walls, structural foundations (including any retrofitting required by governmental authorities) and the following: _____
 Lessee will, will not maintain the property adjacent to the premises, such as sidewalks, driveways, lawns, and shrubbery, which would otherwise be maintained by Lessor.
 No improvement or alteration of the premises will be made without the prior written consent of the Lessor. Prior to the commencement of any substantial repair, improvement, or alteration, Lessee will give Lessor at least **two (2) days written notice** in order that Lessor may post appropriate notices to avoid any liability for liens.
- 9. **ENTRY AND INSPECTION.** Lessee will permit Lessor or Lessor's agents to enter the premises at reasonable times and upon reasonable notice for the purpose of inspecting the premises, and will permit Lessor, at any time **within sixty (60) days** prior to the expiration of this Lease, to place upon the premises any usual "For Lease" signs, and permit persons desiring to lease the premises to inspect the premises at reasonable times.
- 10. **INDEMNIFICATION OF LESSOR.** Lessor will not be liable for any damage or injury to Lessee, or any other person, or to any property, occurring on the premises. Lessee agrees to hold Lessor harmless from any claims for damages arising out of Lessee's use of the premises, and to indemnify Lessor for any expense incurred by Lessor in defending any such claims.
- 11. **POSSESSION.** If Lessor is unable to deliver possession of the premises at the commencement date set forth above; Lessor will not be liable for any damage caused by the delay, nor will this Lease be void or voidable, but Lessee will not be liable for any rent until possession is delivered. Lessee may terminate this Lease if possession is not delivered within 30 days of the commencement term in Item 1.
- 12. **LESSEE'S INSURANCE.** Lessee, at his or her expense, will maintain plate glass, public liability, and property damage insurance insuring Lessee and Lessor with minimum coverage as follows: \$1,000,000.00
 Lessee will provide Lessor with a Certificate of Insurance showing Lessor as additional insured. The policy will require **ten (10) day's written notice to Lessor prior to cancellation or material change of coverage.**
- 13. **LESSOR'S INSURANCE.** Lessor will maintain hazard insurance covering one hundred percent (100%) actual cash value of the improvements throughout the Lease term. Lessor's insurance will not insure Lessee's personal property, leasehold improvements, or trade fixtures.
- 14. **SUBROGATION.** To the maximum extent permitted by insurance policies which may be owned by the parties, Lessor and Lessee waive any and all rights of subrogation against each other which might otherwise exist.
- 15. **UTILITIES.** Lessee agrees that he or she will be responsible for the payment of all ~~utilities, including water, gas, electricity, heat and other services delivered to the premises, except:~~ Surcharge Electrical, Surcharge HVAC, and Communication Services
- 16. **SIGNS.** Lessee will not place, maintain, nor permit any sign or awning on any exterior door, wall, or window of the premises without the express written consent of Lessor, which will not be unreasonably withheld, and of appropriate governmental authorities.
- 17. **ABANDONMENT OF PREMISES.** Lessee will not vacate or abandon the premises at any time during the term of this Lease. If Lessee does abandon or vacate the premises, or is dispossessed by process of law, or otherwise, any personal property belonging to Lessee left on the premises will be deemed to be abandoned, at the option of Lessor.
- 18. **CONDEMNATION.** If any part of the premises is condemned for public use, and a part remains which is susceptible of occupation by Lessee, this Lease will, as to the part taken, terminate as of the date the condemnor acquires possession. Lessee will be required to pay such proportion of the rent for the remaining term as the value of the premises remaining bears to the total value of the premises at the date of condemnation; provided, however, that either party may, at his or her option, terminate this Lease as of the date the condemnor acquires possession. In the event that the premises are condemned in whole, or the remainder is not susceptible for use by the Lessee, this Lease will terminate upon the date which the condemnor acquires possession. All sums which may be payable on account of any condemnation will belong solely to the Lessor; except that Lessee will be entitled to retain any amount awarded to him or her for his or her trade fixtures and moving expenses.
- 19. **TRADE FIXTURES.** Any and all improvements made to the premises during the term will belong to the Lessor, except trade fixtures of the Lessee. Lessee may, upon termination, remove all his or her trade fixtures, but will pay for all costs necessary to repair any damage to the premises occasioned by the removal.

Lessee [M] [] has read this page.

CAUTION: The copyright laws of the United States forbid the unauthorized reproduction of this form by any means including scanning or computerized formats.

Page 2 of 4

FORM 107.2 (02-2007) COPYRIGHT © 1987-2007 BY PROFESSIONAL PUBLISHING, NOVATO, CA



Form generated by: TrueForms™ www.TrueForms.com 800-499-9512

- 20. **DESTRUCTION OF PREMISES.** In the event of a partial destruction of the premises during the term, from any cause except acts or omission of Lessee, Lessor will promptly repair the premises, provided that such repairs can be reasonably made within sixty (60) days. Such partial destruction will not terminate this Lease, except that Lessee will be entitled to a proportionate reduction of rent while such repairs are being made, based upon the extent to which the making of such repairs interferes with the business of Lessee on the premises. If the repairs cannot be made **within sixty (60) days**, this Lease may be terminated at the option of either party by giving written notice to the other party **within the sixty (60) day period**.
- 21. **HAZARDOUS MATERIALS.** Lessee will not use, store, or dispose of any hazardous substances upon the premises, except the use and storage of such substances that are customarily used in Lessee's business, and are in compliance with all environmental laws. Hazardous substances means any hazardous waste, substance or toxic materials regulated under any environmental laws or regulations applicable to the property. Lessee will be responsible for the cost of removal of any toxic contamination caused by lessee's use of the premises.
- 22. **INSOLVENCY.** The appointment of a receiver, an assignment for the benefits of creditors, or the filing of a petition in bankruptcy by or against Lessee, will constitute a breach of this Lease by Lessee.
- 23. **DEFAULT.** In the event of any breach of this Lease by Lessee, Lessor may, at his or her option, terminate the Lease and recover from Lessee: (a) the worth at the time of award of the unpaid rent which had been earned at the time of termination; (b) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of the award exceeds the amount of such rental loss that the Lessee proves could have been reasonably avoided; (c) 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 such rental loss that the Lessee proves could be reasonably avoided; and (d) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform his or her obligations under the Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, that portion of any leasing commission paid by Lessor and applicable to the unexpired term of the lease.

Lessor may, in the alternative, continue this Lease in effect, as long as Lessor does not terminate Lessee's right to possession, and Lessor may enforce all of Lessor's rights and remedies under the Lease, including the right to recover the rent as it becomes due under the Lease. If said breach of Lease continues, Lessor may, at any time thereafter, elect to terminate the Lease.

These provisions will not limit any other rights or remedies which Lessor may have.

- 24. **SECURITY.** The security deposit will secure the performance of the Lessee's obligations. Lessor may, but will not be obligated to, apply all or portions of the deposit on account of Lessee's obligations. Any balance remaining upon termination will be returned to Lessee. Lessee will not have the right to apply the security deposit in payment of the last month's rent.
- 25. **DEPOSIT REFUNDS.** The balance of all deposits will be refunded **within thirty (30) days** (or as otherwise required by law), from date possession is delivered to Lessor or his or her authorized agent, together with a statement showing any charges made against the deposits by Lessor.
- 26. **ATTORNEY FEES.** In any action, arbitration, or other proceeding involving a dispute between Lessor and Lessee arising out of this Lease, the prevailing party will be entitled to reasonable attorney fee, expert witness fees, and costs.
- 27. **WAIVER.** No failure of Lessor to enforce any term of this Lease will be deemed to be a waiver.
- 28. **NOTICES.** Any notice which either party may or is required to give, will be given by mailing the notice, postage prepaid, to Lessee at the premises, or to Lessor at the address shown in Item 2, or at such other places as may be designated in writing by the parties from time to time. Notice will be effective **five (5) days after mailing**, or on personal delivery, or when receipt is acknowledged in writing.
- 29. **HOLDING OVER.** Any holding over after the expiration of this Lease, with the consent of Owner, will be a month-to-month tenancy at a monthly rent equal to the preceding month's rent plus \$100.00, payable in advance and otherwise subject to the terms of this Lease, as applicable, until either party terminates the tenancy by giving the other party **thirty (30) days written notice**.
- 30. **TIME.** Time is of the essence of this Lease.
- 31. **HEIRS, ASSIGNS, SUCCESSORS.** This Lease is binding upon and inures to the benefit of the heirs, assigns, and successors of the parties.
- 32. **OPTION TO RENEW.** Provided that Lessee is not in default in the performance of this Lease, Lessee will have the option to renew the Lease for an additional term of 60 months commencing at the expiration of the initial Lease term. All of the terms and conditions of the Lease will apply during the renewal term, except that the monthly rent will be the sum of \$ 1,500.00 which will be adjusted after commencement of the renewal term in accordance with the cost of living increase provision set forth in Item 2.
The option will be exercised by written notice given to Lessor **not less than 90 days** prior to the expiration of the initial Lease term. If notice is not given within the time specified, this Option will expire.
- 33. **AMERICANS WITH DISABILITIES ACT.** The parties are alerted to the existence of the Americans With Disabilities Act, which may require costly structural modifications. The parties are advised to consult with a professional familiar with the requirements of the Act.

Lessee [M] [] has read this page.

CAUTION: The copyright laws of the United States forbid the unauthorized reproduction of this form by any means including scanning or computerized formats.

Property Address 103 Morris St., Suite T, Sebastopol, CA 95472

34. LESSOR'S LIABILITY. In the event of a transfer of Lessor's title or interest to the property during the term of this Lease, Lessee agrees that the grantee of such title or interest will be substituted as the Lessor under this Lease, and the original Lessor will be released of all further liability; provided, that all deposits will be transferred to the grantee.

35. ESTOPPEL CERTIFICATE.

(a) On ten (10) days' prior written notice from Lessor, Lessee will execute, acknowledge, and deliver to Lessor a statement in writing: [1] certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect), the amount of any security deposit, and the date to which the rent and other charges are paid in advance, if any; and [2] acknowledging that there are not, to Lessee's knowledge, any uncured defaults on the part of Lessor, or specifying such defaults if any are claimed. Any such statement may be conclusively relied upon by any prospective buyer or encumbrancer of the premises.

(b) At Lessor's option, Lessee's failure to deliver such statement within such time will be a material breach of this Lease or will be conclusive upon Lessee: [1] that this Lease is in full force and effect, without modification except as may be represented by Lessor; [2] that there are no uncured defaults in Lessor's performance; and [3] that not more than one month's rent has been paid in advance.

(c) If Lessor desires to finance, refinance, or sell the premises, or any part thereof, Lessee agrees to deliver to any lender or buyer designated by Lessor such financial statements of Lessee as may be reasonably required by such lender or buyer. All financial statements will be received by the Lessor or the lender or buyer in confidence and will be used only for the purposes set forth.

36. SUBORDINATION. This Lease, at Lessor's option, will be subordinate to any mortgage, deed of trust, or other security now existing or later placed upon the property; provided, however, that Lessee's right to quiet possession will not be disturbed if Lessee is not in default on the payment of rent or other provision of this lease.

37. ENTIRE AGREEMENT. The foregoing constitutes the entire agreement between the parties and may be modified only in writing signed by all parties. The following exhibits are a part of this Lease:

Exhibit A: Additional Terms and Rent Schedule

Exhibit B: T.I. Construction Estimate

38. ADDITIONAL TERMS AND CONDITIONS.

The undersigned Lessee acknowledges that he or she has thoroughly read and approved each of the provisions contained in this Offer, and agrees to the terms and conditions specified.

Lessee [Signature] Date 9/27/13 Lessee _____ Date _____
BARQMD, By: Jack Broadbent, APCO

Receipt for deposit acknowledged by _____ Date _____

ACCEPTANCE

The undersigned Lessor accepts the foregoing Offer and agrees to lease the premises on the terms and conditions set forth above.

NOTICE: The amount or rate of real estate commissions is not fixed by law. They are set by each broker individually and may be negotiable between the owner and broker.

The Lessor agrees to pay to Tombe Realty, the Broker in this transaction, the sum of \$ _____ for services rendered and authorizes Broker to deduct said sum from the deposit received from Lessee.

In the event the Lease is extended for a definite period of time or on a month-to-month basis after expiration of the original term, Lessor will pay to Broker an additional commission of _____% of the total rental for the extended period. This commission will be due and payable at the commencement of the extended period if for a fixed term, or if on a month-to-month basis, at the termination of Lessee's occupancy or one year, whichever is earlier.

In any action for commission, the prevailing party will be entitled to reasonable attorney fees.

Lessor [Signature] Date 10-4-13 Lessor _____ Date _____
Tombe Realty, By: Chris Pellascini

Lessor's Address 127 North Main St. Sebastopol, CA 95472 Telephone (707) 823-6475 Fax (707) 823-6551

E-mail tombe@gte.net

Lessee acknowledges receipt of a copy of the accepted Lease on (date) _____ [] []
(initials)

CAUTION: The copyright laws of the United States forbid the unauthorized reproduction of this form by any means including scanning or computerized formats.



Exhibit A

1. Roof area above suite shall be included in lease
2. Electrical Surcharge shall be \$200.00 per month. Electrical Surcharge shall increase if lessee increases usage or adds equipment, or if PG&E rates increase above rate amount at time of lease execution, or rate schedule jumps to next tier due to amount of usage.
3. HVAC Surcharge shall be set at \$225.00 per month during the original term of the lease.
4. Lessee shall pay first month's rent, security deposit, and 50% of T.I. work upon execution of lease. Balance due of T.I. work shall be paid upon completion, prior to move-in.
5. Lessee shall remove and repair to original condition all tenant improvements upon termination of lease or move-out. If lessee occupies this suite for ten (10) years, lessee is not obligated to remove or repair tenant improvements.
6. Rent Schedule:

YEAR	BASE RENT	ELECTRICAL SURCHARGE	HVAC SURCHARGE	TOTAL MONTHLY
1	1100	200	225	\$1525
2	1200	200	225	\$1625
3	1300	200	225	\$1725
4	1400	200	225	\$1825
5	1500	200	225	\$1925
6 -10 (option to renew)	1500 (plus CPI)	200	225	\$1925 plus CPI)

7. Annual rental increases during the extended term of lease shall be based on CPI.

Exhibit B

Sustainable. Practical. Mindful.

Assembly#	Part#	Description	Ext. Price
-----------	-------	-------------	------------

Job: 282

Phase: 0 - None

Bid Item: 0 - None

103 MORRIS STREET SUITE T - T.I.

Supervision & Management
- Project Management 363.00
Provide Project Management for T.I. Scope of work. Project Management includes but is not limited to procuring of material, coordination and scheduling of trades, Quality Control, and opening/closing of jobsite for subs.

Rough Carpentry
- Framing 3,031.30
Includes labor and materials to head out (Joists to accommodate roof top opening for Ships Ladder. Includes framing of roof top curb (to be flashed and waterproofed by roofer), and includes installation of framing/blocking to allow for installation of drywall at stair access well.

- Ships Ladder & Roof Hatch 3,993.00
Labor includes installation of Ship Ladder and roof hatch.
Includes allowance for approx. 1' tall Ship Ladder and 36" x 48" fire rated roof hatch. Includes shipping crate, tax, and shipping.

Acoustical Ceiling
- Modify T-Bar Ceiling 605.00
Includes allowance to modify T-Bar ceiling to accommodate new roof top access opening. Assumes removal of existing acoustical panels, and "T" bar grid for framing and installation of new "L" bar to be fastened to stair well opening and modifying of previously removed panels to accommodate new layout.

Gypsum Board
- Drywall Stair Access Well 1,028.50
Supply material and labor to install 5/8" type X gypboard at framed stair well opening. Includes tape, mud, and texture. Texture to match existing drywall texture withing tenant space.

Assembly#	Part#	Description	Ext. Price
-----------	-------	-------------	------------

Painting

- Prime and Finish Paint

Provide material and labor to prime new sheetrock and includes finish paint. Finish paint color to match existing color within work room space.

393.25

Roofing

- Roof Patching & Walking Mat

Includes allowance for flashing and waterproofing 1 each new/raised curb for ladder access, 2 each roof penetrations for Tenant wire chases (1 each 4" and 1 each 2"), and 1 each penetration for electrical conduit/sleeve.

1,028.50

Includes approx. 20' of rolled comp for walking pad to access equipment from ladder access.

Electrical

- Provide Dedicated Circuits & Outlets

Supply material and labor necessary to install 2 each new 20 amp dedicated circuit breakers at house panel fed to 2 each 110 volt main room outlets, and 2 each new 20 amp dedicated circuit breakers at house panel fed to 2 each 110 volt weatherproof GFI outlets at roof.

1,210.00

Outlets in main room assumed to be 1 each on North wall and 1 each on South wall. Roof top outlets to be placed together on West Parapet wall.

Bid Item Totals:	<u>11,682.55</u>
Phase Totals:	<u>11,682.55</u>
Job Totals:	<u>11,682.55</u>
Grand Totals:	<u>11,682.55</u>



The following terms and conditions are hereby incorporated in and made a part of the Residential Lease

[X] other Commercial Lease ("Lease"),

dated September 27, 2013, on property known as 103 Morris Street Suite T

Sebastopol, CA 95472 ("Premises"),

in which Bay Area Air Quality Management District is referred to as ("Tenant")

and Anthony Koblenz by Tombe Realty is referred to as ("Landlord").

Note to Landlord: If the Premises are subject to any rent increase cap under any state or local law, Landlord is strongly advised to seek counsel from a qualified California real estate lawyer, who is familiar with the law where the property is located, prior to using this form to modify any of the existing terms of the Lease.

The terms of the tenancy are changed as follows. Unless otherwise provided, the change shall take effect on the date the Lease was scheduled to terminate.

- 1. EXTENSION OF TERM: The scheduled termination date is extended to November 30, 2028 (Date).
2. Rent shall be \$ \$1797.97 per month.
3. Security deposit shall be increased by \$
4. Rent Cap and Just Cause Addendum (C.A.R. Form RCJC) is attached and incorporated into the Lease.
5. ADDITIONAL TERMS: Additional monthly charges: Electrical Surcharge \$300.00 & HVAC Surcharge \$325.00 beginning December 1, 2023. *Consumer Price Index for All Urban Consumers (1982-84=100) Oakland, San Francisco, San Jose. Rent will increase by CPI December 1, 2023 and annually thereafter. All other terms and conditions remain the same.

By signing below, Lessee and Lessor Tenant and Landlord acknowledge that each has read, understands, and received a copy of and agrees to the terms of this Extension of Lease.

Tenant Date
Lessee Bay Area Air Quality Management District
Tenant Date
Landlord Date
Lessor Anthony Koblenz by Tombe Realty
Landlord Date

© 2019, California Association of REALTORS®, Inc. United States copyright law (Title 17 U.S. Code) forbids the unauthorized distribution, display and reproduction of this form, or any portion thereof, by photocopy machine or any other means, including facsimile or computerized formats. THIS FORM HAS BEEN APPROVED BY THE CALIFORNIA ASSOCIATION OF REALTORS®. NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ACCURACY OF ANY PROVISION IN ANY SPECIFIC TRANSACTION. A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL. This form is made available to real estate professionals through an agreement with or purchase from the California Association of REALTORS®. It is not intended to identify the user as a REALTOR®. REALTOR® is a registered collective membership mark which may be used only by members of the NATIONAL ASSOCIATION OF REALTORS® who subscribe to its Code of Ethics.

Published and Distributed by: REAL ESTATE BUSINESS SERVICES, LLC. a subsidiary of the CALIFORNIA ASSOCIATION OF REALTORS® 525 South Virgil Avenue, Los Angeles, California 90020

Reviewed by Date



BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairperson John J. Bauters and Members
of the Board of Directors

From: Philip M. Fine
Executive Officer/APCO

Date: September 20, 2023

Re: Authorization to Execute Purchases for Meteorology and Measurement Division
Operations

RECOMMENDED ACTION

Recommend the Board of Directors authorize the Executive Officer/APCO to execute purchases listed in Attachment 1 for a total amount not to exceed \$676,840 for supplies and services required for Meteorology and Measurement Division operations.

BACKGROUND

The Meteorology and Measurement (M&M) Division provides emissions, air quality, and meteorological data; chemical analysis; forecasting; and data analysis. The data is used to determine if the Air District is in attainment with state and federal standards, determine if facilities are in compliance with Air District regulations, provide a scientific basis for Air District programmatic decisions, and to communicate about air quality with the public. The data and analyses from the Meteorology and Measurement Division also support the activities of the Compliance & Enforcement, Engineering, Planning, Legal, Rules, Assessment, Inventory & Modeling, Communications, and Community Engagement Divisions. To comply with regulations and to have comparable data over time and from year-to-year, many of the activities of the Meteorology and Measurement Division are routine and repeated. To accomplish many of these activities, instruments, warranty services and supplies of a very specific and technical nature are regularly required.

Because of the highly technical and specific requirements that are involved with M&M Division's air quality work, many of the instruments, supplies, and equipment warranty services that are needed to continue routine operations, comply with regulations, avoid data gaps, maintain instruments, and allow for safe operations are only available from single vendors. In these cases, the Air District's Administrative Code Division II Section 4.6(c)(4) allows for sole source procurements from single vendors without a competitive bidding process.

DISCUSSION

Staff are recommending the Board of Directors authorize the Executive Officer/APCO to execute the purchases described and justified in Attachment 1. Most of these procurements are not more than \$100,000 on their own. However, the accumulated spending is more than \$100,000 for similar items with each of the listed vendors over multiple years of Air District operations, so these procurements are being presented for Board approval.

There is one larger purchase that is proposed with ThermoFisher Scientific for \$326,576. Because this single purchase is larger than \$100,000, additional information beyond Attachment 1 is being provided for the Board to review. Several instruments within the monitoring network are reaching the end of their operational lifespan, increasing the likelihood of instruments malfunctioning. To ensure uninterrupted operations, the Air District needs to replenish the stock of backup instruments. Additionally, the Air Monitoring - Operations team is in the process of establishing new monitoring stations, further necessitating the procurement.

These instruments in Table 1 are being recommended as sole source purchases with ThermoFisher Scientific because these instrument models are:

- Qualified to be used in accordance with US EPA requirements,
- Only available from this vendor at the levels of reliability, service, cost-effectiveness, and user-friendliness that meet Air District requirements, and
- Already used by the Air District for an extended period of time and future procurement of the same instrument ensures uninterrupted operations.

Table 1: List of instruments to be purchased from ThermoFisher Scientific

Model	Functionality	Unit	Price per Unit (Tax included)	Price
49iQ	O ₃ Analyzer	4	\$14,370	\$57,480
49iQ-PS	O ₃ Primary standard	3	\$20,649	\$61,947
42iQ	NO _x (NO and NO ₂) Analyzer	4	\$20,109	\$80,436
43iQ	SO ₂ Analyzer	2	\$18,799	\$37,598
146iQ	Multi-Gas Calibrator	3	\$29,705	\$89,115

The total amount requested for all of the proposed procurements listed in Attachment 1 is \$676,840.

BUDGET CONSIDERATION/FINANCIAL IMPACT

The requested authorization of \$676,840 for these expenditures is included in the Board-approved FYE 2024 budget (Program Code 802).

Respectfully submitted,

Philip M. Fine
Executive Officer/APCO

Prepared by: Jun Liu
Reviewed by: Ranyee Chiang

ATTACHMENTS:

- 1. Attachment 1: Recommended purchases

Attachment 1: Requested Purchase Authorizations

Section Name	Vendor	Amount	Description	Purchasing Unit	Purchasing Category	Monopoly/Single Source Justification
Air Monitoring Operations (AMO)	ThermoFisher Scientific	\$326,576	Air monitoring instrumentation and supplies for ozone, CO, NO _x , and SO ₂ measurements in air monitoring stations within the Bay Area	16	Sole Source	Previous analyzers and calibrators have been sourced from this vendor. Future procurement should be with the same vendor to ensure uninterrupted operations. No other vendor provides these products that suit our specific needs.
AMO	Agilaire	\$99,964	Air monitoring instrumentation and supplies for data loggers in air monitoring stations within the Bay Area	10	Sole Source	Previous data loggers have been sourced from this vendor. Future procurement should be with the same vendor to ensure uninterrupted operations. No other vendor provides data logging products that suit our specific needs.
AMO	Teledyne	\$62,880	Air monitoring instrumentation and supplies for zero-air generators in air monitoring stations within the Bay Area	5	Sole Source	Previous zero-air generators in the Air District have been sourced from the vendor. Future procurement should be with the same vendor to ensure uninterrupted operations.
AMO	Met One	\$56,831	Air monitoring instrumentation and supplies for FEM PM _{2.5} measurements in air monitoring	2	Sole Source	Previous analyzers have been sourced from this vendor. Future procurement should be with the same vendor to ensure uninterrupted operations. No other vendor manufactures the analyzers to the specification that we needed.

			stations within the Bay Area			
AMO	TSI	\$74,219	Air monitoring instrumentation and supplies for ultrafine particle measurements in air monitoring stations within the Bay Area	2	Sole Source	Previous analyzers have been sourced from this vendor. Future procurement should be with the same vendor to ensure uninterrupted operations. No other vendor provides same ultrafine particle measurements that meet our requirements for operations, field-friendly user-serviceable parts, and reliability.
AMO	Magee and Sonoma Tech	\$56,370	Air monitoring instrumentation and supplies for multi-wavelength black carbon measurements in air monitoring stations within the Bay Area	2	Sole Source	Previous analyzers have been sourced from this vendor. Future procurement should be with the same vendor to ensure uninterrupted operations. No other vendor provides same level of multiple wavelength black carbon measurements

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairperson John J. Bauters and Members
of the Board of Directors

From: Philip M. Fine
Executive Officer/APCO

Date: September 20, 2023

Re: Authorization to Accept Grant Program Revenues from the U.S. Environmental
Protection Agency for Clean Air Act Section 105 Activities

RECOMMENDED ACTION

Recommend Board of Directors:

1. Adopt a resolution (Attachment 1) authorizing the Executive Officer/APCO to accept, obligate, and expend up to \$2,496,021 from the United States Environmental Protection Agency (US EPA) for activities to related to Section 105 of the Clean Air Act (CAA) from October 1, 2023 to September 30, 2024.
2. Authorize the Executive Officer/APCO to expend up to \$622,542 of this funding by signing a memorandum of understanding with the California Air Pollution Control Officers Association (CAPCOA).

BACKGROUND

The US Congress enacted the Clean Air Act in 1963 to protect and enhance the quality of the Nation's air to promote public health and welfare. Section 105 of the Clean Air Act authorizes the US EPA to make grants for implementing programs for prevention and control of air pollution or implementation of national primary and secondary ambient air quality standards. Implementation includes any activity related to planning, developing, establishing, or maintaining such programs. Section 105 grants have been available from the US EPA since 1963. Current staff are aware that the Air District has been accepting this funding since before 1992.

DISCUSSION

On May 2, 2023 US EPA invited the Air District to apply for \$2,496,021 of Clean Air Act Section 105 grant funds for Federal Fiscal Year 2024 (FY24), to be awarded as a new grant starting on October 1, 2023, and ending on September 30, 2024 (Attachment 2). Of this amount, \$622,542 is funding to pass-through to CAPCOA to continue the Region 9 Pilot Project for another year. EPA also designated \$282,121 as funding to pass-through to CAPCOA for administration. This amount for administration is not included in this Board memo or MOU

because a Board-approved MOU was signed in 2021 that outlines how EPA 105 administrative funds are passed through based on qualified invoices (Attachment 3). This MOU signed in 2021 continues until terminated by either the Air District or CAPCOA. The remainder of the US EPA funds, \$1,575,094, is the estimated FY24 CAA 105 base funding amount and will include funding for National Association of Clean Air Agencies (NACAA) and the Photochemical Assessment Monitoring Stations (PAMS) program. US EPA has notified the Air District that his target amount is only an estimate, based on the level of funding passed by Congress for FY23. The final FY24 amount will be determined by the appropriations bill ultimately enacted by Congress and will be issued through grant awards from US EPA. If the final level and distribution of FY24 grant funds are lower than this estimate, we will be asked to submit revised budget spreadsheets reflecting the final enacted amount of funding. Air District work activities and tasks supported by this grant are specified in Attachment 4, which is the FY24 work plan. There are no requirements for match.

Air District staff are also requesting authorization to sign a Memorandum of Understanding (MOU) (Attachment 5) to meet EPA's requirement to pass-through funding to CAPCOA, including \$622,542 for CAPCOA to continue the Region 9 Pilot Project.

BUDGET CONSIDERATION/FINANCIAL IMPACT

The \$2,496,021 in revenue from this grant was listed as revenue in the Board-approved FYE 2024 budget.

Respectfully submitted,

Philip M. Fine
Executive Officer/APCO

Prepared by: Barry Young
Reviewed by: Ranyee Chiang, Pam Leung

ATTACHMENTS:

1. Attachment 1: Draft Board Resolution Accepting Clean Air Act Section 105 Grant Funds from the US EPA
2. Attachment 2: Please Apply Letter from US EPA for Section 105 Grant for FY24
3. Attachment 3: Memorandum of Understanding with CAPCOA for 105 Grant Administration Funds
4. Attachment 4: BAAQMD Section 105 Grant Work Plan for FY24
5. Attachment 5: Draft Memorandum of Understanding with CAPCOA for the Region 9 Pilot Project

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

RESOLUTION NO. 2023-_____

A Resolution Accepting Clean Air Act Section 105 Grant Funds from the United States Environmental Protection Agency

WHEREAS, the purpose of this Resolution is to authorize the Bay Area Air Quality Management District (Air District) to accept, obligate, and expend a grant up to \$2,496,021 in additional funding from the United States Environmental Protection Agency (US EPA) to be awarded as a new grant starting on October 1, 2023, and ending on September 30, 2024, for the prevention and control of air pollution or implementation of national ambient air quality standards (hereinafter referred to as the “Grant”). Of this amount, \$622,542 is funding to pass-through to the California Air Pollution Control Officers Association (CAPCOA) to continue the Region 9 Pilot Project for another year, and \$282,121 is funding to pass-through to CAPCOA for administration;

WHEREAS, the purpose of this Resolution is also to authorize the Executive Officer/Air Pollution Control Officer to execute all necessary agreements, required documents, and amendments required to expend this funding;

WHEREAS, on May 2, 2023, the US EPA announced the availability of funds and solicited applications from eligible entities pursuant to the Grant to protect and enhance the quality of the nation's air so as to promote public health and welfare. The Clean Air Act recognizes that state and local governments are primarily responsible for air pollution prevention and control, and it provides financial assistance to help carry out that responsibility. Section 105 of the Clean Air Act authorizes the US EPA to award grants to state and local air pollution control agencies (grantees) to develop plans and implement programs to control or prevent air pollution or to address national air quality standards that US EPA has established to rid the air of excessive concentrations of harmful pollutants. The grant funds, together with state and local funds, are used primarily to pay for personnel and related administrative costs associated with planning and operating the various air pollution control programs. Personnel activities under these programs include issuing permits to new air pollution emission sources, inspecting the sources for permit compliance, and monitoring the air quality within designated areas to determine whether national standards are being met or maintained. Funds are also used to purchase equipment such as air monitors and vehicles needed to operate the air pollution control programs. ;

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors hereby approves the Air District’s acceptance of the Grant and the associated funds, and commits the Air District to comply with the terms of the US EPA Grant Agreement.

BE IT FURTHER RESOLVED that the Board of Directors hereby authorizes the Executive Officer/Air Pollution Control Officer to accept, obligate, and execute all agreements, required documents, and any amendments thereto to implement and carry out the purposes of this resolution.

The foregoing resolution was duly and regularly introduced, passed and adopted at a regular meeting of the Board of Directors of the Bay Area Air Quality Management District on the Motion of Director _____, seconded by Director _____, on the ____ day of _____, 2023 by the following vote of the Board:

AYES:

NOES:

ABSTAIN:

ABSENT:

John J. Bauters
Chair of the Board of Directors

ATTEST:

Lynda Hopkins
Secretary of the Board of Directors



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

Mr. Philip P. Fine
Air Pollution Control Officer
Bay Area Air Quality Management District
939 Ellis Street
San Francisco, California 94109

Dear Mr. Philip M. Fine:

The U.S. Environmental Protection Agency (EPA) invites you to apply for **\$2,496,021** of Clean Air Act (CAA) Section 105 grant funds for Federal Fiscal Year 2024 (FY24), to be awarded as a new grant starting on October 1, 2023, and ending on September 30, 2024. Of this amount, \$622,542 is funding to pass-through to CAPCOA to continue the Region 9 Pilot Project for another year, and \$282,121 is funding to pass-through to CAPCOA for administration. The remainder, \$1,575,094, is your estimated FY24 CAA 105 base funding amount and will include funding for National Association of Clean Air Agencies (NACAA) and the Photochemical Assessment Monitoring Stations (PAMS) program. Please be advised that this target amount is only an estimate, based on the level of funding passed by Congress for FY23. Your final FY24 amount will be determined by the appropriations bill ultimately enacted by Congress. If the final level and distribution of FY24 grant funds are lower than this estimate, you will be asked to submit revised budget spreadsheets reflecting the final enacted amount of funding.

When preparing your FY24 work plan, you must clearly identify the activities and tasks supported by this grant (remember, title V activities are not allowable). Please continue to give careful attention to your proposed expenditure of non-Federal funds, since the maintenance of effort (MOE) level must be maintained. A decrease in your proposed expenditures could jeopardize EPA financial assistance. Please be sure to provide full budget detail as described in the application instructions for each budget category and notify EPA immediately if the non-Federal contribution to the grant will decrease in your SFY24 application.

Also, please remember all grants must comply with Grants Policy Issuance 11-03: *State Grant Workplans and Progress Reports* (GPI 11-03). Although this policy does not prescribe a standardized, one-size fits all work plan format, it ensures that negotiated work plans and associated grant progress reports prominently display the following three Essential Elements: 1) Strategic Plan Goal, 2) Strategic Plan Objective, and 3) Workplan Commitments plus time frame. The **Strategic Plan Goal** for this grant is Goal 4: Ensure Clean and Healthy Air for all Communities. The **Strategic Plan Objective** is Objective 4.1: Improve Air Quality and Reduce Localized Pollution and Health Impacts. Please contact your EPA Project Officer for a copy of this policy or the FY2022-2026 U.S. EPA Strategic Plan.

Finally, please be aware that CAA 105 work plans should include green tasks and activities. For example, grantees will be expected, to the fullest extent possible, to purchase green supplies and equipment. In making such purchases, grantees should consider the full life cycle cost and sustainability of products and equipment. The U.S. General Services Administration (GSA) <https://www.gsaadvantage.gov/> has a useful page for environmental programs. Grantees should also employ energy conservation practices/materials management, such as waste prevention and recycling.

Waste prevention and recycling reduce methane emissions from landfills, save energy, and protect forest carbon sequestration. Grantees are encouraged to work with their project officers to discuss other green practices which could be incorporated into their work plans.

Please apply for **\$2,496,021** to be awarded under Section 105 of the Clean Air Act through **Grants.gov**. Search for application packages using Funding Opportunity Number (FON) **EPA-CEP-01**. The Assistance Listing Number for this grant is **66.001**. Your final application, including an approved work plan, is due by COB **June 22, 2023**.

Please review the attached [EPA Region 9 Grants Handbook \(Revised March 20, 2023\)](#), *R9 Application Guide (Revised February, 2023)*, and Air MOE Checklist for more information on completing your application. Federal Regulations, new EPA requirements, and other additional resources are located at <http://www.epa.gov/grants>. We suggest you forward these materials to your Project Manager, Financial Officer, and any other personnel in your organization requiring this information.

The Grants.gov registration process can take up to 30 days to complete. Therefore, it is highly recommended that EPA applicants complete their registration on Grants.gov now. Your organization must register and be active in SAM.gov using a DUNS number before utilizing Grants.gov. If it appears that the grants.gov registration process may prevent you from submitting your application by the due date, then please contact Support@grants.gov or call 1-800-518-4726. You should also notify your Project Officer before the application due date to request an extension.

Please note that consideration for any new or additional federal funding is contingent on meeting all terms and conditions for existing EPA grants or cooperative agreements. This includes, but is not limited to, timely reporting; responding to audits/desk review reports; meeting audit/non-compliance corrective action plan milestones, and/or submitting final closeout reports within 120 days from the date a grant or cooperative agreement expires.

Questions regarding administrative or fiscal matters should be referred to your EPA Grants Management Specialist, Veronica Adams, at Adams.Veronica@epa.gov or (415) 972-3677. Please contact me, your EPA Project Officer, Asia Yeary, at Yeary.Asia@epa.gov or (808) 342-5675 with programmatic questions.

Sincerely,

ASIA YEARY Digitally signed by ASIA
YEARY
Date: 2023.05.02
11:18:11 -10'00'

Asia Yeary
U.S. EPA Region 9
Grants Project Officer

cc: Barry Young, BAAQMD
Ranyee Chiang, BAAQMD
Pamela Leong, BAAQMD
Ila Perkins, BAAQMD
Jun Pan, BAAQMD
Veronica Adams, USEPA Region 9

Attachments: [EPA Region 9 Grants Handbook \(Revised March 20, 2023\)](#), *R9 Application Guide (Revised February, 2023)*, and Air MOE Checklist

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
CALIFORNIA AIR POLLUTION CONTROL OFFICERS ASSOCIATION
AND THE BAY AREA AIR QUALITY MANAGEMENT DISTRICT
FOR EPA GRANT PASSTHROUGH ADMINISTRATIVE FUNDS

This Memorandum of Understanding (MOU) is between the **Bay Area Air Quality Management District** (District), a California local public agency, and the **California Air Pollution Control Officers Association** (CAPCOA).

1.0 Recitals

- 1.1** The United State Environmental Protection Agency (EPA) annually invites agencies to apply for Clean Air Act Section 105 grant funds. Historically, EPA 105 grant funds, representing contributions from California Air Districts, have been awarded annually by EPA to support CAPCOA operations.
- 1.2** CAPCOA is not eligible to receive the funding directly from EPA and requires an approved agency to receive the monies from EPA, under an active grant, and administer the disbursement of the funds as a pass-through to CAPCOA.
- 1.3** The District is an approved agency and agrees to provide the grant administrative function for CAPCOA in order to support CAPCOA.
- 1.4** On September 1, 2021, the District Board of Directors passed a motion to authorize the Executive Director/Air Pollution Control Officer (APCO) to execute an MOU with CAPCOA related to the administration of pass-through EPA 105 grant funds designated for CAPCOA.

NOW, THEREFORE, in consideration of the mutual promises hereafter set forth, District and CAPCOA agree as follows:

2.0 Terms and Conditions

2.1 Purpose of MOU

The purpose of this MOU is to set forth the expectations of CAPCOA and the District regarding the District's role of fiscal agent for federal funds passed through to CAPCOA under the EPA 105 grant. A description of the Scope of Services for each party under this MOU is set forth in Exhibit A, attached and incorporated herein.

2.2 Term of MOU

The term of this MOU will commence upon full execution and will continue until terminated by either party as provided in section 2.4.

2.3 Indemnification

- A. District will indemnify and defend CAPCOA, its officers, agents and employees from and against all claims, demands, losses, damages, liability, costs, and expenses of whatever nature including court costs and attorney fees, whether for damages or loss of property, injury to or death of person, or economic or consequential loss arising

from or related to or claimed or alleged to have arisen from or been related to the negligence of District in the performance of its obligations under this MOU.

- B. CAPCOA will indemnify and defend District, its officers, agents and employees from and against all claims, demands, losses, damages, liability, costs, and expenses of whatever nature including court costs and attorney fees, whether for damages or loss of property, injury to or death of person, or economic or consequential loss arising from or related to or claimed or alleged to have arisen from or been related to the negligence of CAPCOA in the performance of its obligations under this MOU.

2.4 Termination

Either party may terminate this MOU for any reason by giving the other party 30-day written notice.

2.5 Communication

Any communication between the parties that is required under the provisions of this MOU must be in writing, and be either: (i) personally delivered, (ii) sent by prepaid, certified first class mail, return receipt requested, or (iii) sent by electronic mail (provided confirmation of delivery is confirmed via read receipt). Communications must be addressed to the parties as follows:

To CAPCOA	To District
Tung T. Le Executive Director California Air Pollution Control Officers Association 1107 Ninth Street, Suite 801 Sacramento, CA 95814 Phone: (916) 441-5700 Email: tung@capcoa.org	Jeff McKay Chief Financial Officer Bay Area Air Quality Management District 375 Beale Street, Suite 600 San Francisco, CA 94105 Phone (415) 749-4629 Email: jmckay@baaqmd.gov

- A. **Change of Mailing and/or Email Addresses:** Either party may change the mailing and/or email addresses for service by giving 15 days advance written notice to the other party.
- B. **Effective Date:** All notices will be effective upon receipt and will be deemed received (i) upon delivery, if personally delivered, (ii) on the 5th day following deposit in the mail, if sent by certified mail, or (iii) upon the date stated in the facsimile and/or email delivery confirmation, if sent by email.

2.6 Audit of Records

With regard to this MOU, both parties will maintain appropriate financial records and each party may demand access to these financial records to perform an audit. Both parties must make these records available to the requesting party within thirty (30) days of receiving the request for the records. Both parties must maintain records for five (5) years after the termination of the MOU.

2.7 Severability

If any provision of this MOU is held invalid or unenforceable, its invalidity or

unenforceability will not affect any other provisions of this MOU, and this MOU will be construed and enforced as if such provision had not been included.

2.8 Payments that Contravene the Law

District has no liability for payments that are found to contravene law. CAPCOA will reimburse District for any payments made by District to CAPCOA and later determined to contravene federal, state or local laws and regulations.

2.9 Waiver of MOU Provisions

No waiver or modification of this Contract will be binding upon either party unless made in writing and signed by a duly authorized representative of that party and no failure or delay in enforcing any right will be deemed a waiver. A waiver of a particular breach, or default, will not be deemed to be a waiver of any other subsequent breach or default.

2.10 Alteration

No alteration or variation of the terms of this MOU is valid unless made in writing and signed by both parties.

2.11 Counterparts

This MOU may be executed in multiple counterparts, each of which will constitute an original, and all of which taken together will constitute one and the same instrument. Signatures transmitted via facsimile or portable document format (pdf) to other parties to this MOU will be deemed equivalent to original signatures on counterparts.

2.12 Successors

This MOU will bind the successors of District and CAPCOA in the same manner as if they were expressly named.

2.13 Entire Agreement

This MOU constitutes the entire agreement between District and CAPCOA. Both parties revoke all prior or contemporaneous oral or written agreements between them that are inconsistent with this Contract. In the event of a dispute between the parties regarding the MOU, this MOU will be deemed to have been drafted by the parties in equal parts so that no presumptions or inferences concerning its terms or interpretation may be construed against any party to this MOU. This MOU includes the following documents, which are incorporated as though fully set forth herein:

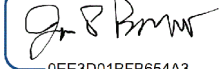
- A. Exhibit A – Scope of Services

2.14 Authority to Bind

The persons signing on behalf of the parties to this MOU warrant that they have the legal authority to execute this MOU.

Executed by:


**Bay Area Air Quality Management
District**

DocuSigned by:

0EE3D01BFB654A3...

Jack P. Broadbent
Executive Officer/APCO

Date: 9/21/2021

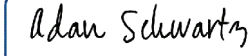
**California Air Pollution Control
Officers Association**



Tung T. Le
Executive Director

Date: 9/23/2021

Reviewed by:

DocuSigned by:

150A910F987E4D3...

BAAQMD District Counsel

Date: 9/14/2021

EXHIBIT A: SCOPE OF SERVICES

The scope of work for each party is described as follows:

District's Responsibilities

1. **Fiscal Agent:** The District is the fiscal agent for each EPA grant term; the EPA grant term is a Federal Fiscal Year from October 1 to September 30.
2. **Award Amount:** District to provide EPA Invitation to Apply letter (estimate of award) and Final Award letter (approved award) to CAPCOA within 30 days after the District confirms the award amount. No expenses will be reimbursed to CAPCOA until after the Final Award letter is received by the District.
3. **Invoicing:**
 - A. Invoice Review – District will review and approve all qualified CAPCOA invoices within 30 days of the submission of a complete invoice package. A complete invoice package includes the CAPCOA invoice and all receipts to support the invoiced amounts. District will approve for payment all reasonable and supported expenses. Any items not resolved or supported in a given invoice will not be paid at that time. Once resolved these items may be included in future invoices.
 - B. Invoice Payment – District will pay approved CAPCOA invoices within 30 days of approval. Payments will be made to CAPCOA once the Final Award letter is received by the District.
 - C. Allowable Costs – District will follow 2 CFR 200 Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Award costs. Under this guidance, costs must be necessary and reasonable for the performance of the award and be allocable. Only allowable costs will be approved for reimbursement.
4. **Reporting:**
 - A. EPA Reporting – District will provide to EPA all reports required by EPA for the EPA 105 grant reports.
 - B. Schedule of Expenditures of Federal Awards (SEFA) Reporting – District to assist CAPCOA with SEFA reporting as required by the EPA and external Certified Public Accountants (CPA).

CAPCOA's Responsibilities

1. **Invoicing:**
 - A. Basis of Invoiced Expenses - Amounts will be invoiced on a reimbursement basis (i.e., expenditures made prior to request for reimbursement).
 - B. Invoice Submission– CAPCOA to submit grant invoices with all required supporting documentation for eligible expenses within 20 days of the end of each month for which reimbursement of expenses is being sought. The CAPCOA invoice will include complete supporting documentation.

- C. Invoice Format – The CAPCOA invoice package may be submitted either electronically to the District’s SharePoint link or in hard copy. CAPCOA will e-mail District designated Finance staff notifying them when an invoice is submitted/sent.
 - D. Invoice Information Requests – CAPCOA will respond to District requests for information to support monthly invoices on a timely basis, not to exceed 10 business days.
 - E. Invoice Award Limit – Invoices will be submitted in a total amount not to exceed the annual EPA grant award identified in the Formal EPA Award letter.
 - F. Timing of Expenses - Expenditures submitted for reimbursement must occur within the term of the applicable annual federal fiscal year (FFY).
 - G. Allowable Costs – CAPCOA will follow 2 CFR 200 Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Award costs. Under this guidance costs must be necessary and reasonable for the performance of the award and be allocable. CAPCOA will only submit allowable costs for reimbursement.
2. **Audited financial statements:** CAPCOA to provide to the District the audited annual financial statements 60 days after financial statements are issued by the external CPA.
 3. **Annual Budget:** CAPCOA to provide to the District the annual budget for the CAPCOA EPA 105 funding within 60 days after Board approval.
 4. **Response to Audit Requests:** CAPCOA to provide timely response in not more than 10 business days to requests from the District for documents to support audit requests for documents not previously provided (i.e., EPA audits, external CPA audits, etc.).
 5. **SEFA Reporting:** CAPCOA to assist the District with SEFA reporting as required by the EPA and external CPAs.

EPA Grant No.

**CLEAN AIR ACT §105 GRANT COOPERATIVE
AGREEMENT/WORKPLAN**

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

**U.S ENVIRONMENTAL PROTECTION AGENCY
REGION IX**

EPA Fiscal Year 2024

This Work Plan is designed to meet the requirements of the Strategic Plan Goal (*Goal 1 - A Cleaner, Healthier Environment*) and the Strategic Plan Objective (*Objective 1.1 – Improve Air Quality*).

The Bay Area Air Quality Management District (Air District), the state's first regional agency dealing with air pollution, was created by the California Legislature in 1955. The Air District's jurisdiction encompasses all of seven counties -- Alameda, Contra Costa, Marin, San Francisco, San Mateo, Santa Clara and Napa, as well as the southwestern portion of Solano County and the southern portion of Sonoma County. The Air District is governed by a 24-member Board of Directors, made up of publicly elected officials apportioned according to the population of the represented counties. The Board has the authority to develop and enforce regulations for the control of air pollution within its jurisdiction.

The Air District projects a workforce of 465 full-time-equivalent positions for FYE 2024 and a projected General Fund revenue of \$137.8 million. The largest portion of Air District revenue is derived from permit fees and county property taxes. Penalties, state subvention monies, general fund interest, and other miscellaneous fees, subscriptions and revenues generate the remaining funds. The Air District has 20 operating entities: (1) Executive Division; (2) Diversity, Equity and Inclusion Division; (3) Finance Office; (4) Human Resources Office; (5) Administrative Resources Division; (6) Legislative Office; (7) Legal Services Division; (8) Communications Office; (9) Technology Implementation Office; (10) Strategic Incentives Division; (11) Compliance & Enforcement Division; (12) Engineering Division; (13) Assessment, Inventory & Model Division; (14) Planning & Climate Protection Division; (15) Rules Division; (16) Community Engagement Division; (17) Information Services Division; (19) My Air Online Office; and (20) Meteorology & Measurement Division.

EXECUTIVE DIVISION

Despite the continuing challenges of the pandemic, the Air District furthered our vision of providing a healthy breathing environment for all Bay Area residents. We continued to address disparities in air quality and health protections by expanding partnerships in historically disadvantaged communities. At the same time, our climate protection work progressed to accelerate electrification and incentivize greenhouse gas reductions by funding cutting-edge

technologies.

Under the leadership and direction of the Executive Officer/APCO and the Board of Directors, the Executive Office guides the Bay Area Air Quality Management District (Air District) in meeting its mission of protecting and improving public health, air quality, and the global climate. To fulfill this mission, the Air District builds its programs and policies on sound science, develops them with technical expertise and rigor, and executes them with quality. Air District programs and policies include both traditional air quality management approaches and new strategies for achieving clean air.

In FYE 2024, the Air District will continue to implement State and Federal regulations and directives, and will also continue to implement and develop the following key initiatives:

- Clean Air Plan Implementation
- Climate Action Work Program
- Assembly Bill (AB) 617 Implementation
- Wildfire Air Quality Response Program
- Diesel Free by '33 Campaign
- Technology Implementation Office
- Wood Smoke Program and Rule Amendments
- My Air Online Program
- Clean Air Foundation
- Spare the Air Everyday Campaign
- Public Participation Plan Implementation
- Diversity, Equity, and Inclusion Office

The Executive Office is responsible for developing and maintaining strategic partnerships to achieve clean air. These partnerships include but are not limited to collaboration with: community groups, non-profits, peer regional agencies (Metropolitan Transportation Commission, Association of Bay Area Governments & Bay Conservation and Development Commission), regulatory agencies (U.S. Environmental Protection Agency and California Air Resources Board), and associations (California Air Pollution Control Officers Association, Air and Waste Management Association & National Association of Clean Air Agencies), as well as the State Legislature. In FYE 2024, these key partnerships will also address regional coordination of climate protection activities, and implementation of State initiatives at the regional level.

DIVERSITY, EQUITY AND INCLUSION DIVISION

The Air District's Office of Diversity, Equity & Inclusion (Office) is responsible for ensuring an equity lens is applied to all programs, policies, practices, and procedures across the agency. Examples of specific Office responsibilities include supporting the Community Equity, Health, and Justice Committee and the Community Advisory Council, providing staff equity related trainings, creating and executing cultural awareness events and activities, guiding employee resource groups, developing and implementing equitable recruitment and retention strategies, and working on projects and initiatives as related to language access, procurement, contracting, grants, community engagement, communications, rule development, planning, climate and protection, and technology implementation, whereby ensuring equity is included into decision making and accountability, where applicable. The Office will continue to ensure the contributions of all employees and

community members are valued and respected with a goal to achieve equitable outcomes.

FINANCE OFFICE

The Finance Office provides services to internal and external customers and stakeholders, including fee payers, internal divisions, employees, the Clean Air Foundation, and the Richmond Hilltop Commercial Condominium Association.

The Finance Office is responsible for accounting, financial reporting, accounts payable, revenue posting, cost recovery analysis, budget development, budgetary reporting, and asset management.

HUMAN RESOURCES OFFICE

The Human Resources Office is responsible for personnel matters including payroll and benefits, labor and employee relations, recruitment and testing, employee engagement, processing personnel actions, employee performance appraisal and recognition programs, organizational development and training, health and safety compliance, workers compensation and special events coordination.

Vision: A work environment in which honesty, integrity, and trust enriches the employee experience.

Mission: Through strategic partnership and collaboration, we attract, retain, support and develop a diverse and inclusive workforce while fostering a fair, healthy and respectful work environment.

ADMINISTRATIVE RESOURCES DIVISION

The Administrative Resources Division provides administrative and operational support functions for the Air District, and is comprised of the Executive Operations Office, Business Office, Fleet and Facilities Office, Finance Office and the Human Resources Office. The Executive Operations Office is responsible for providing overall administration and direction to Air District staff. Through this office, the Executive Officer/APCO interprets and oversees implementation of Board directives and policies and administers the business of the Air District.

The Business Office is responsible for contracts, purchasing, non-workers compensation risk management, mailroom services, and office support services.

The Fleet Office is responsible for the acquisition and maintenance of Air District pool vehicles and fleet, management of vehicle accidents and procurement of new vehicles. The facilities office is responsible for the planning, maintenance, construction oversight and operations of all Air District facilities, and manage security and safety measures.

The Human Resources Office is responsible for personnel matters including payroll and benefits,

labor and employee relations, recruitment and testing, processing personnel actions, employee performance appraisal and recognition programs, organizational development and training, health and safety compliance, workers compensation and special events coordination.

LEGISLATIVE OFFICE

The Legislative Office mission is to advocate for Air District policy and budget priorities at both the state and federal levels. The Legislative Office is responsible for tracking and developing positions on state and federal legislation and budget proposals, meeting with legislators and legislative staff about policy proposals and updating them on Air District activities, representing the Air District at legislative hearings, and interacting with stakeholder groups, state and local agencies, and members of the public. The Legislative Office works closely with other divisions within the Air District to help achieve the Air District's commitment to reducing air pollution in California and the Bay Area region by sharing information on current legislative policy and budget proposals that affect Air District programs and policies.

LEGAL SERVICES DIVISION

The District Counsel provides legal advice, counseling and representation to the Board of Directors and its Committees, the Executive Officer/APCO, District staff, and the Advisory Council and Community Advisory Council in the execution of their respective statutory mandates and responsibilities. The District Counsel also represents the District, or manages outside counsel representing the District, in all litigation involving the District and in matters before the District's Hearing Board. The District Counsel primarily practices in the areas of general civil law, Federal, State and local air pollution control law, administrative law, Federal and State civil litigation, government law, and the California Environmental Quality Act.

This fiscal year, the District Counsel will continue to prosecute enforcement cases referred to it by the Compliance and Enforcement Division. These enforcement cases will include civil penalty prosecutions, which most often result in a settlement where the violator agrees to pay an appropriate civil penalty but can also proceed to litigation if a violator will not agree to an appropriate penalty. They will also include abatement order cases before the Air District's Hearing Board in situations where there is ongoing non-compliance that needs to be addressed, and may include court cases as well to the extent that Hearing Board action is insufficient or otherwise inappropriate. These enforcement efforts to be undertaken this fiscal year are once again designed to provide an appropriate enforcement response to violations of District regulations to ensure compliance, deter future violations, impose civil penalties commensurate with the nature of the air quality violation involved, remove the economic benefit of violations, promote equity, and encourage proactive measures to maintain compliance by the regulated community. This fiscal year, the District Counsel will also continue to implement the Mutual Settlement Program, which prosecutes violations by small businesses and similar entities through small claims court, which is a more efficient and effective way to address violations for which a large penalty would not be appropriate. The District Counsel will also continue to coordinate with, and provide training for, Compliance and Enforcement Division staff regarding case development. These efforts will ensure that effective enforcement cases are built from the

beginning of investigations and will result in more effective settlements and prosecutions. The District Counsel's attorneys will continue their focus on civil penalty enforcement investigations and actions, including civil litigation and, where appropriate, Hearing Board enforcement proceedings.

The District Counsel's attorneys will continue to advise District staff on rulemaking, permitting and air quality planning activities. In this regard, the District Counsel's office will continue its efforts to coordinate closely with the District's staff on these issues to minimize challenges to District decision-making. The District Counsel will also continue to represent the Executive Officer/APCO before the Hearing Board, counsel the Board of Directors and its Committees as to their legal authority and duties, and interact with EPA, CARB, other Air Districts and private attorneys on various matters. The District Counsel will continue to use outside labor/employment law firms to handle the specialized practice of labor and employment law counseling, negotiations and litigation. In addition to continuing to provide pre-litigation counseling, and to handle litigation matters internally, the District Counsel will continue to manage the efforts of outside counsel as appropriate in litigation, employment, and specialized counseling matters. This work will include several major items of litigation that are currently pending in Superior Court, as well as any additional litigation that may arise.

The District Counsel will also continue to advise the Community Advisory Council and Air District staff regarding the District's enhanced focus on environmental justice, equitable outcomes, and addressing disparate air pollution and public health impacts in overburdened communities. This work will include an assigned attorney to support the Community Advisory Council, as well as support for the AB 617 program and the Community Steering Committees developing Community Emission Reduction Plans under that program. It will also include supporting Community Engagement staff and other staff within the agency as they develop these programs.

Finally, in FYE 2024 the District Counsel will embark on a capacity building and development effort after a period of transition in the Legal Division. The District Counsel will develop new, more robust and formal policies and procedures to govern the Division's work and, with the help of an outside consultant, will develop and implement new, more formal management practices. The District Counsel will also oversee the training and development of new attorneys in all aspects of the Air District's work. The District Counsel will also formalize its relationships with outside counsel, including retaining outside counsel to provide additional litigation firepower where needed and to provide specialized expertise in niche subject areas.

COMMUNICATION DIVISION

The Communications Office coordinates all agency media outreach, Air District messaging, crisis communications, media relations as well as print, digital and social media outreach for the Air District. The Office provides media and public outreach about the Air District's programs, operations and emergency response.

The Office manages advertising and outreach for Spare the Air, the Employer Program, and the Commuter Benefits Program. The Office oversees the Air District and Spare the Air social media sites, strategies and programs. The Office maintains the Spare the Air website and related sites and

the Spare the Air mobile apps. The Office represents the Air District at community events for Spare the Air throughout the region.

Office functions include production of publications and digital collateral for the general public and target audiences. This includes publishing newsletters, the annual report, videos and collateral materials. The Office also provides and oversees graphic design services, social media content creation, translation services and videography. The Office also provides Air District presentations and tours for international delegations, organizations and school groups.

TECHNOLOGY IMPLEMENTATION OFFICE

The Technology Implementation Office (TIO) mission is to advance emerging, cost-effective solutions to achieve greenhouse gas emissions reductions for the transportation and industrial source sectors. TIO will connect climate technologies and customers by providing financial incentives (through grants and loans) as well as technical and matchmaking support. Climate technology areas include zero emissions vehicles and infrastructure, zero emissions energy storage and backup systems, composting, and waste-to-energy projects (co-digestion, waste treatment, anaerobic digestion, combined heat and power). By supporting the scale-up of climate technologies, TIO can help achieve state and regional greenhouse gas emissions targets, reduce emissions in impacted communities, while also making technologies cost-effective even in regions without strong climate policies.

STRATEGIC INCENTIVES DIVISION

The Strategic Incentives Division mainly administers Special Revenue funds that are used to accelerate voluntary emissions reductions by incentivizing the replacement of older dirtier equipment that primarily targets mobile sources that total approximately \$100 million for project funds and \$8 million for Air District administrative costs. Strategic Incentives staff conducts outreach and solicits grant applications, evaluates grant applications according to established criteria, recommends allocation of the funding, prepares contracts with grantees, monitors progress in implementing funded projects, and reports on the use of funds.

In addition to this work, the Division also oversees programs and activities that are paid for at least in part by the General Fund (historically approximately \$570,000 annually) as match and to pay for projects and activities performed by staff that cannot be fully reimbursed by Special Revenue sources, such as development of applications for new sources of funding (i.e., federal or state), oversight of air district sponsored projects that are not eligible for funding from other sources, and activities that are also not eligible for reimbursement by other sources. Additional information on Strategic Incentive Division Budget can be found in the Special Revenue Fund section of the budget.

COMPLIANCE & ENFORCEMENT DIVISION

The Compliance & Enforcement Division ensures the Air District will realize the emission reductions achieved by the air quality regulations adopted by the Board of Directors, and permit

conditions issued by the Executive Officer/APCO. Compliance with Air District, state, and federal regulations is achieved through a robust Compliance Assurance and Enforcement Program that includes comprehensive inspections and investigations and a complementary Compliance Assistance Program that supports compliance objectives of the Division by maintaining operations and assisting industry with air quality regulations and requirements. The Division works closely with local and state regulatory agencies, regulated industry and members of the community to provide the highest level of service to protect air quality and public health. The Division implements Air District strategies and enforces regulations that pertain to stationary sources, and has some mobile source enforcement authority in collaboration with the California Air Resources Board. Division priorities include conducting Title V and Synthetic Minor facility inspections, locating unpermitted sources of operations, resolving violations at facilities with ongoing non-compliance and responding to and investigating air quality complaints. Staff work collaboratively across Divisions to achieve the Air District's mission and apply the appropriate level of enforcement proportional to the level of non-compliance. The Division vigorously pursues violators who show a disregard for the law and well-being of the public and ensures corrective actions and measures to resolve violations are taken.

The Compliance and Enforcement Division continues to focus on activities that support the Air District's commitment to achieve clean air to protect public health and the environment as follows:

The Compliance Assurance and Enforcement Programs focus on announced and unannounced inspections of air pollution sources to ensure compliance. Targeted strategies are used to guide inspections to identify non-compliance and reduce excess emissions. Sources include: Title V and Synthetic Minors facilities, petroleum refineries, chemical plants, dry cleaners, gasoline dispensing facilities, autobody shops, asbestos renovations and demolitions, agricultural and prescribed burning, and other permitted sources. Other facets of the program requiring Division resources include investigations of Title V deviation reporting, Reportable Compliance Activities, and other inspections pertaining to the Portable Equipment Registration Program (PERP), Asbestos projects (renovations, demolitions and naturally occurring asbestos – NOA), compliance determinations for State Air Toxics Control Measures (ATCMs) and Federal Maximum Available Control Technology (MACTs) for air toxics. Air pollution complaints and incident response and investigations are a high priority in the Division that aim to address and resolve air quality concerns of local communities.

The Compliance Assistance Program develops outreach materials, advisories, policies and procedures and guidance information and implements compliance strategies that complement a wide range of enforcement efforts. The program aims to enhance industry and public understanding of compliance and enforcement programs and regulatory requirements, address compliance concerns and assist in resolving air quality violations. Key programs and projects in Compliance Assistance and Operations include the Air District's Wood Smoke Reduction Program, Air Quality Complaint Program, AB617 Community Health Protection Program in West Oakland and Richmond/San Pablo, Wildfire Air Quality Response Program, Commuter Benefits, Title V, Open Burning, Flare Monitoring, Naturally Occurring Asbestos, Inspector Training, Green Business Certifications, Variance and Hearing Board Activities, and many others involving state, federal and Air District regulations and requirements. The program also maintains online web information, the dispatch operating system and the compliance assistance and complaint phone lines which are all integral interfaces with the public.

ENGINEERING DIVISION

Engineering Division (Division) gives high priority to the timely review of permit applications and permit renewals. The typical application evaluation includes analyzing emissions impacts and determining compliance with applicable air quality requirements, including Best Available Control Technology (BACT), 'No Net Increase' emission offset requirements, New Source Review (NSR) of Toxic Air Contaminants (TAC) and California Environmental Quality Act (CEQA). There are about 10,000 facilities with about 26,000 devices and operations that have Air District permits. The Division processes, reviews, issues, and renews Title V (Major Facility Review) permits for about 79 facilities.

The Division is working on projects associated with the petroleum refineries, including developing improved emission factors for fugitive emission leaks from heavy liquid service components and implementing Regulation 12, Rule 15.

The Division implements Regulation 11, Rule 18, Reduction of Risk from Air Toxic Emissions at Existing Facilities. The Division expects to refine TAC emissions and prioritization scores for approximately 290 facilities and expects to conduct refined site-wide health risk assessments (HRAs) for about 200 facilities. HRA results will determine if the facilities are subject to the risk reduction requirements of this rule. Risk reduction plans will be reviewed, approved, and tracked. The toxics programs also support Community Health Protection Program goals to eliminate health disparities in overburdened communities.

The Division implements the State Air Toxics "Hot Spots" Program, which applies to existing facilities that emit TACs. Based on the annual TAC emissions inventory, the Division calculates prioritization scores for facilities, conducts HRAs for high priority facilities, and reports HRA results to CARB.

The Division is implementing the permit reforms adopted on December 15, 2021. Regulations 2-1 and 2-5 were amended to increase health protections in overburdened communities by: (1) defining overburdened communities, (2) establishing a more stringent cancer risk limit in overburdened communities, (3) enhancing public notifications in the overburdened communities, (4) updating gasoline station health risk screening guidelines, and (5) amending permit review timelines. The Division continues to implement the Criteria Air Pollutants and Toxic Air Contaminants Reporting (CTR) Regulation, a state regulation establishing a uniform system of annual reporting of emissions of criteria air pollutants and TACs for permitted facilities. The Division has been actively working with other agencies and CAPCOA in the development of uniform emissions inventory guidelines for different source categories.

Due to power outages and PG&E Public Safety Power Shutoffs (PSPS), there continues to be a large number of applications for backup generators.

The Division is participating in the Air District's Assembly Bill 617 (AB 617) implementation, which includes a Community Health Protection Program to benefit communities most directly affected by air pollution. The Division participates in the workgroups for the CARB BARCT/BACT Technology Clearinghouse, CARB Permitting FAQs for environmental justice workgroup, Technical Assessment Coordination, Emissions Inventory with CARB and other air districts, and the community workgroups.

The Division continues to help develop and to transition to the Production System, which includes an online system for the regulated community. These tools will increase consistency, efficiency, and accuracy by allowing customers to submit applications, report data for the emissions inventory, pay invoices and renew permits through an online interface.

The Division provides technical support to other divisions, agencies, and programs, including rule development, emissions inventory, compliance and enforcement, planning, monitoring and measurement, the Technology Implementation Office, and the Air District's Regional Climate Action Plan. Key rule development efforts include amendments to Regulation 3 (Fees), and amendments to rules to implement Expedited Best Available Retrofit Control Technology for AB 617.

ASSESSMENT, INVENTORY, AND MODEL DIVISION

The Assessment, Inventory, and Modeling (AIM) Division prepares comprehensive source emission inventories for the Bay Area and conducts air quality modeling at both regional and community scales. AIM prepares technical assessments that evaluate equity in air pollution exposures and health impacts in support of District programs. AIM coordinates and implements programs to improve and report estimates of emissions of criteria pollutants, toxic air contaminants, and climate forcing pollutants. AIM assesses emissions, concentrations, and exposures of toxic air contaminants, particulate matter, ozone and their precursors, to support targeted strategies that reduce impacts of air pollution both regionally and within communities, especially where Assembly Bill (AB) 617 community action plans are being developed. AIM reviews and provides guidance on environmental health risk assessments within environmental review documents prepared pursuant to California Environmental Quality Act (CEQA).

In FYE 2024, AIM will continue to implement the multi-pollutant Bay Area 2017 Clean Air Plan (2017 Plan), which addresses ozone, particulate matter, toxic air contaminants and greenhouse gases (GHGs). The 2017 Plan includes goals to attain all ambient air quality standards, eliminate disparities in health risk from air pollution, and reduce regional GHG emissions 40% below 1990 levels by 2030 and 80% below 1990 levels by 2050. To meet the requirements of AB 617, AIM will work to produce technical assessments to support community air quality action plans, including: identifying and prioritizing impacted communities, coordinating with community co-leads Steering Committees to reduce emissions and exposures, and providing tools and products that inform local strategies.

In FYE 2024, in partnership with other Divisions, AIM will analyze aerometric data, conduct regional modeling, and apply statistical analyses to support the District's grant programs, rule development, permitting, climate protection, and planning activities. AIM will conduct source apportionment analyses and hybrid photochemical and dispersion modeling, characterize emissions and air quality, and assess air quality health impacts to support AB 617. AIM will conduct equity assessments in support of AB 617 and rule develop activities. AIM will continue to work with CARB, U.S. EPA, NOAA, NASA, Northern California air districts, and other stakeholders on the regional modeling, focused mainly on ozone, air toxics and PM. These studies emissions inventory development, modeling, and analysis of air quality and pollutant transport in North Central California. AIM will further improve modeling emissions estimates and continue conducting data analysis and modeling to better understand formation of fine PM, ozone and air toxics, and their health impacts in the Bay Area. AIM will investigate transport of pollutants between the Bay Area and neighboring regions and intercontinental transport of pollutants.

In FYE 2024, AIM will continue work with other Divisions on the technical analysis, outreach, and risk reduction components of the CARE Program. AB 617 will require an expansion of the CARE program's technical work, including: updates to regional-scale air toxics emissions estimates and modeling; an expanded program focused on local-scale emissions inventory development and modeling of air toxics and fine particulate matter; assessment via measurements and analyses in impacted communities of fine particulate matter and air toxic emissions and modeling; identifying impacted communities; and working with State agencies, cities, counties, local stakeholders and others to develop and implement community action plans. AIM supports the work of other Divisions in reviewing health risk assessments within CEQA documents to provide comments where assessments are inconsistent with Air District guidance.

Many District programs are supported by updating and reporting inventories of air pollutant emissions. In FYE 2024, AIM will work with other Divisions to review emissions inventory products and develop a quality assurance plan for them. Updated emissions methods and databases are needed for assessing impacts of pollution sources and to meet reporting and rule development requirements of the District. New requirements from CARB, posed by AB 617 and the Criteria and Toxic Report Rule, require annual emissions reports for toxics and criteria pollutants for major emitters and improved consistency in methods for estimating emissions across California's air districts. In FYE 2024, AIM will conduct modeling studies to evaluate the impacts of sources of fine particulate matter on air quality and health.

PLANNING AND CLIMATE PROTECTION DIVISION

The Planning and Climate Protection Division develops and implements local community emissions reduction plans per AB 617, prepares plans to meet State and Federal air quality standards, and coordinates and implements climate protection activities. Staff partner with other Divisions to analyze ambient conditions and local and regional toxic air contaminants, particulate matter, ozone and their precursors, and greenhouse gas emissions to develop and implement programs to reduce impacts on people and the planet. Division staff works with cities, counties, and other agencies to encourage transportation and land use plan and policy decisions and infrastructure investments that improve air quality and protect the climate, including guidance and activities related to the California Environmental Quality Act (CEQA).

In FYE 2024, staff will continue to implement the Bay Area 2017 Clean Air Plan (2017 Plan), which addresses ozone, particulate matter, toxic air contaminants and greenhouse gases (GHGs). To meet the requirements of AB 617, staff will work closely with community partners and steering committees in West Oakland, Richmond-North Richmond-San Pablo, East Oakland and Bayview Hunter's Point to identify and prioritize pollution and exposure reduction strategies, implement measures to reduce emissions and exposure, and provide land use guidance. Staff will continue supporting local lead agencies, regional agencies, and others in applying the CEQA Thresholds and Guidelines to ensure plans and projects are protective of local health and reduce climate impacts. Staff will provide technical assistance to cities and counties on improving local plans to address air quality, climate protection, health and environmental justice through general plan updates (per SB 1000), climate action plans and other plan and policy actions. Staff will actively track the development of new national ambient air quality standards (NAAQS) for particulate matter and will coordinate District-wide activities to respond to a new NAAQS, including attainment designations and State Implementation Plan (SIP) development, as needed. Staff will track and serve as an internal resource on California Air Resources Board (CARB) mobile source plans and

rulemaking, and transportation policies and programs developed by other State agencies. Staff will provide technical and policy support to other Air District staff regarding emissions reduction strategies at Bay Area seaports, work with Federal, State, regional and local agencies to reduce emissions associated with ports and goods movement and implement other mobile source programs, including the Protecting Blue Whales and Blue Skies program and related sustainable shipping efforts.

In FYE 2024, staff will implement GHG emission reduction measures identified in the 2017 Plan, including: implement the Bay Area Healthy Home Initiative in Contra Costa and Alameda counties and explore opportunities for expansion to additional counties; continue to lead and expand a regional Building Decarbonization Program; coordinate the Implementation Working Group in support of implementing the Indoor Appliance Rules; focus the Diesel Free initiative on AB617 communities and their Community Emission Reduction Plans (CERPs); promote and support the use of the updated CEQA Climate Impact Thresholds; support the development of rules and rule amendments to reduce GHGs, including improving the GHG emissions inventory; work with CARB to implement the 2022 Scoping Plan, including participating in CARB-led working groups; assist local governments with the development and implementation of local GHG reduction strategies, including integrating equity into community-wide strategies; develop model ordinances and best practices to accelerate local policy adoption for reducing GHGs; provide technical and policy expertise on transportation, goods movement, and other mobile source strategies in support of Air District programs such as AB 617, CEQA, Air Quality Plans, SB1000; collaborate with regional agency partners to implement Plan Bay Area 2050; work with partner agencies to implement regional GHG reduction strategies through the Bay Area Regional Collaborative.

RULES DIVISION

The Rules Division is responsible for the development of regulations to implement Air District plans to attain federal and State air quality standards, and to protect public health. In addition to development of rules derived from planning documents, staff assists with the preparation of air quality plans. Other measures are developed under the direction of the Board of Directors to further protect public health and safety and reduce emissions of greenhouse gases. In addition, staff reviews existing regulations and develops revisions to improve clarity, efficiency and effectiveness. For each control measure, staff assesses potential emission reductions, technological feasibility, socioeconomic impacts, cost-effectiveness, and environmental impacts under CEQA. Staff conducts public workshops and other public involvement processes, prepares staff reports, and makes presentations and recommendations to the Board of Directors at public hearings and committee meetings. Staff also manages and coordinates the rule development process for other Divisions.

COMMUNITY ENGAGEMENT AND POLICY DIVISION

The Community Engagement Division supports the agency's mission by collaborating with impacted communities and other partners in the Bay Area to advance public health, equity, and environmental justice. The Division works with community members and other partners to increase community awareness and transparency of air quality issues, build capacity, increase opportunities for impacted communities to participate in Air District decision-making, and support implementation of community-identified solutions. Key program areas to support these efforts are the AB 617 community partnerships program, the Community Advisory Council, the development

of the agency Environmental Justice Policy, the James Cary Smith Community Grant Program, and implementation of state and federal civil rights laws.

INFORMATION SERVICES DIVISION

The Information Services Division focuses on Information technology operations, engineering, user support and the management of District records.

Under this Division, Engineering and Operations Program staff provide design, implementation, security and maintenance of all computer server infrastructures including but not limited to email, telecommunications, network, file storage, business continuity/disaster recovery, and remote connectivity. The support team in this program provides user support to District staff for all technologies and user support to outside members of the regulated community that utilize on-line District technologies.

Records Management Program Staff (RM) are responsible for storing, maintaining, securing, and providing copies of Air District official documents. These documents are made available for public, regulated community and internal request in accordance with Policy and Procedures.

The RM program procured Hyland OnBase software and is working to implement and deploy the system to meet the needs and requirements of the District. RM provides assistance for staff from each Division individually as official records are migrated to OnBase. RM digitizes paper documents as needed for all Divisions.

MY AIR ONLINE OFFICE

The Office of My Air Online supports the Air District's enterprise systems via three key objectives. First, modernization and operations of the Online Permit Billing System. Second, operations and maintenance of the Air District's public web presence. Third, operations and maintenance of the online digital payment process.

METEOROLOGY AND MEASUREMENT DIVISION

The Meteorology and Measurement Division (M&M) provides emissions, air quality, and meteorological data; chemical analysis; and forecasting to support the activities of the Compliance & Enforcement, Engineering, Planning, Legal, Rules, Assessment, Inventory & Modeling, Communications, and Community Engagement Divisions. In addition to operating monitoring instruments and conducting testing and analysis, the M&M Division staff develop rigorous monitoring and testing plans, develop and maintain instruments and systems, conduct quality assurance and quality control, and analyze and communicate data. The resulting data is used to:

- determine if the Bay Area is in attainment with state and federal standards, in accordance with the Clean Air Act,
- determine if facilities are in compliance with Air District regulations,
- provide a scientific basis for Air District rule-making and programmatic decisions,
- identify areas with higher levels of pollutants of concern and community-level disparities in

- air pollution, and
- communicate about air quality with the public, including through air quality advisories and Spare the Air alerts.

AIR DISTRICT WORK PLAN GOALS

The Bay Area Air Quality Management District is committed to protect and improve public health, air quality, and the global climate. Toward this end, the Air District has established the following core goals:

- Air District programs and policies are founded on science, developed with technical expertise, and executed with quality.
- The Air District will be at the forefront of air quality improvement and will pioneer new strategies to achieve healthy air and protect the climate.
- Involving, listening, and engaging all stakeholders, including partner agencies, to create broad acceptance for healthy air solutions.
- Committed staff that live and believe the Air District's mission.
- All Bay Area residents have the right to breathe clean air.

With these goals in mind and in consultation with EPA Region IX, the Air District has formulated this Cooperative Agreement consisting of the following objectives as part of the 105- Grant Program for Federal FY 2024.

NON-RECURRENT ACTIVITY: CAPCOA and NACAA

As requested by the California Air Pollution Control Officers Association (CAPCOA) and approved by EPA Region 9, the Bay Area Air Quality Management District will pass-through \$622,542 to CAPCOA to continue the Region 9 Pilot Grant Recipients Project for another year and \$282,121 is for CAPCOA administration. In addition, the Air District requested that EPA deduct approximately \$27,293 regionally for CAPCOA's annual funding for the Bay Area Air Quality Management District and \$16,264 will be sent directly by the Air District to the National Association of Clean Air Agencies for FY24.

Program Name	No.	Description of Output	Due Date	Contact
State Implementation Plan	1	Air Emissions Reporting: The Air District will provide updated emissions data for criteria and toxic pollutants to the California Air Resources Board to meet State reporting requirements as specified under federal regulation 40 CFR Part 51, Subpart A - Air Emissions Reporting Requirements	9/30/24	Song Bai (415/749-5179)

New Source Review	1	<p>Authorities to Construct: At least 30 days prior to issuance, the Air District will submit to EPA all proposed Authorities to Construct or permit modifications for major facilities whose emission increases are equal to or greater than the following emission rates or that are located within 10km of a Class I area.</p> <table border="0"> <thead> <tr> <th><u>Criteria Pollutant</u></th> <th><u>TPY</u></th> </tr> </thead> <tbody> <tr> <td>HC:</td> <td>25</td> </tr> <tr> <td>NO_x:</td> <td>25</td> </tr> <tr> <td>SO_x:</td> <td>25</td> </tr> <tr> <td>PM₁₀:</td> <td>15</td> </tr> <tr> <td>CO:</td> <td>100</td> </tr> </tbody> </table> <p>BAAQMD will include accompanying public notices (if applicable) and supporting technical/engineering evaluations.</p>	<u>Criteria Pollutant</u>	<u>TPY</u>	HC:	25	NO _x :	25	SO _x :	25	PM ₁₀ :	15	CO:	100	Concurrent with release of 30-day public notice	Pamela Leong (415/749-5186)
<u>Criteria Pollutant</u>	<u>TPY</u>															
HC:	25															
NO _x :	25															
SO _x :	25															
PM ₁₀ :	15															
CO:	100															
New Source Review	2	<p>Authorities to Construct: The Air District will submit all draft Authorities to Construct or permit amendments for new/modified stationary sources that propose to use on site emission reductions to net out of review from federal NSR/PSD.</p>	Concurrent with release of 30-day public notice	Pamela Leong (415/749-5186)												
New Source Review	3	<p>Authorities to Construct: The Air District will submit all final Authorities to Construct issued under NSR Outputs 1 and 2 above, along with responses to EPA comments (if provided).</p>	Concurrent with release of 30-day public notice	Pamela Leong (415/749-5186)												
New Source Review	4	<p>Authorities to Construct: The Air District will submit all draft banking credit certifications that trigger public notices and supporting technical/engineering evaluations.</p>	Concurrent with release of 30-day public notice	Pamela Leong (415/749-5186)												

Program Name	No.	Description of Output	Due Date	Contact
New Source Review	5	Authorities to Construct: Prior to deeming a permit application complete, the Air District will notify EPA of all new major stationary sources and major modifications that may be subject to the following portion of the federal PSD regulation 40 CFR 52.21: Sources with stack heights over 65 meters	Within 30 days of receipt of application	Pamela Leong (415/749-5186)
New Source Review	6	Notification of Federal Land Manager and Fish and Wildlife Service: The Air District will notify the Air Quality Division of the National Park Service, the USDA Regional Forester and the Fish and Wildlife Service of any new major stationary source or major modification. In addition, the appropriate federal land manager must be notified when any minor modification of a major source occurs within 10 km of a Federal Class I area. The Air District will submit to EPA a copy of the notification.	Within 30 days of receipt of application	Pamela Leong (415/749-5186)
New Source Review	7	Authorities to Construct: The Air District will report updated RACT/BACT/LAER determinations to the RACT/BACT/LAER Clearinghouse as required by the 1990 CAA. CARB will compile the California submittal. Submit to CARB on the appropriate forms, a summary of all RACT/BACT/LAER determinations for new and modified sources.	Within 60 days of the change	Pamela Leong (415/749-5186)

Program Name	No.	Description of Output	Due Date	Contact
New Source Review	8	Reporting Requirements: The Air District will include the following information in the semi-annual reports submitted to Air Grants Contact: <ul style="list-style-type: none"> a. A list of all authorities to construct/modify issued. The list will identify the stationary source name, the application number and the process equipment subject to the permit. b. A list of all banking credits/EERCs issued identifying stationary source name, pollutant and emissions certified. c. Any outstanding or interesting NSR issues that BAAQMD would like to bring to EPA's attention. 	Semi-Annually	Pamela Leong (415/749-5186)
Ambient Air Monitoring	1	The Air District will submit an annual network report as required by 40 CFR 58.10 and obtain written EPA approval for adding, relocating, or discontinuing any SLAMS.	7/1/24	Ila Perkins (415/749-8448)
Ambient Air Monitoring	2	The Air District will update site information following additions, relocations, and major modifications impacting site status using electronic site information spreadsheets.	Within 90 days of change	Ila Perkins (415/749-8448)
Ambient Air Monitoring	3	The Air District will notify EPA if any SLAMS sites are not operating for more than 14 calendar days.	As required	Ila Perkins (415/749-8448)
Ambient Air Monitoring	4	The Air District will submit quarterly SLAMS ambient air quality data, and precision and accuracy data to the EPA AQS database.	Within 90 days of quarter ending	Ila Perkins (415/749-8448)
Ambient Air Monitoring	5	If data for any site are less than 75% complete for a quarter, the Air District will submit written explanation to EPA Region IX AQS contact at the time of data submittal.	As required	Ila Perkins (415/749-8448)
Ambient Air Monitoring	6	The Air District will submit annual SLAMS data certification letter for calendar year 2023 to EPA Region IX	5/1/24	Ila Perkins (415/749-8448)
Ambient Air Monitoring	7	The Air District will participate in EPA system audits, and performance audits, including the NPAP and PEP audits required by 40 CFR 58 Appendix A.	As required	Ila Perkins (415/749-8448)

Program Name	No.	Description of Output	Due Date	Contact
Ambient Air Monitoring	8	The Air District will report all air pollution episode occurrences during FYE 2024 to EPA.	Within 60 days of the end of quarter	Ila Perkins (415/749-8448)
Ambient Air Monitoring	9	If no episodes occur during FYE 2024, report no episodes occurred in the Annual SLAMS Network Review for that year.	As required	Ila Perkins (415/749-8448)
Stationary Source Rulemaking	1	Schedule: Rulemaking activity will be posted on the Air District's web site and updated regularly.	Ongoing	Victor Douglas (415/749-4752)
Stationary Source Rulemaking	2	Notice Requirements: The Air District will submit drafts of all federally required rules, workshop notices, and public hearing notices 30 days in advance of any workshop or public hearing.	30 days prior to event	Victor Douglas (415/749-4752)
Stationary Source Rulemaking	3	Revisions: When submitting rules as a formal revision to a rule previously approved by EPA as a part of the Air District's Attainment and Maintenance Plan, the Air District will ensure that the rule will adhere to any applicable EPA criteria for approval	30 days following Board approval	Victor Douglas (415/749-4752)
Stationary Source Rulemaking	4	The rule development staff will be available to facilitate and respond to any inquiry or concern brought by EPA regarding the rulemaking as it relates to the obligations of the Air District pursuant to the 1990 Clean Air Act Amendments.	As requested	Victor Douglas (415/749-4752)
Stationary Source Rulemaking	5	Area Source Rules & Standards: The Air District will submit a list of area source rules and standards, if any, for which the Air District intends to seek approval under Section 112(l) of the CAA for adopted NESHAPs.	9/30/2023	Carol Allen (415/749-4702)
Stationary Source Rulemaking	6	Air Toxics: If the Air District intends to submit any air toxics rule as equivalent to the federal standard, submit draft equivalency demonstrations for review and comment at least 60 days before submittal of a Section 112(l) application.	60 days prior to submittal	Carol Allen (415/749-4702)
Air Toxics Reporting	1	Emission Inventory and Monitoring: Provide EPA with the air toxics emission inventory for calendar year 2021.	1/30/24	Carol Allen (415/749-4702)

Program Name	No.	Description of Output	Due Date	Contact
Air Toxics Reporting	2	Air Toxics: Submit any initial notifications and/or compliance certifications for area sources within 30 days after initial notification and/or compliance certification deadline provided for in each individual Section 112 standard.	Within 30 days following initial notification	Carol Allen (415/749-4702)
Mobile Sources	1	Conformity/Transportation: The Air District will work in partnership with MTC and ABAG on any revisions to the SIP that will be necessary to address transportation conformity regulatory activity by EPA. Coordinate work with Caltrans and ARB as needed.	As mandated in regulation	Andrea Gordon (415/749-4940)
Mobile Sources	2	Conformity/Transportation and General: The Air District will provide consultation to federal agencies regarding general conformity determinations, and to transportation agencies regarding transportation conformity determinations.	Ongoing	Andrea Gordon (415/749-4940)
Mobile Sources	3	Transportation/Air Quality Coordination: The Air District will review and, if necessary, comment on the Regional Transportation Plan, MPO Overall Work Program, and Transportation Improvement Program.	Within 30 days of receipt	Andrea Gordon (415/749-4940)
Stationary Source Inspections	1	Major Source Inspections: The results from all Title V inspections will be reported to ICIS-Air in accordance with the Air District's CMS Plan with EPA.	Ongoing	Tracy Lee (415/749-4699)
Stationary Source Inspections	2	Minor Source Inspections: The compliance status pertaining to minor source inspections will be stored in the Air District's data bank.	Ongoing	Tracy Lee (415/749-4699)
Stationary Source Inspections	3	Inspection Health and Safety Equipment: The Air District will continue to require the proper health and safety equipment for inspectors to conduct compliance inspections at any stationary source within the Air District's jurisdiction.	Ongoing	Tracy Lee (415/749-4699)

Program Name	No.	Description of Output	Due Date	Contact
Acid Rain Continuous Emissions Monitoring	1	Relative Accuracy Testing Audits: Affected facilities are required to conduct relative accuracy testing audits (RATA) for Acid Rain and submit an RAT report for review and approval. When a RATA is required, an outside contractor is hired to do the testing. The Air District will review all outside contractor tests submitted and recommend acceptability of such.	Within 60 days of test	Jeff Aaseth (415/749-4968)
Acid Rain Continuous Emissions Monitoring	2	Training: The Air District will participate in EPA sponsored training with other agencies and affected facilities in the Air District.	As scheduled by EPA	Jeff Aaseth (415/749-4968)
Continuous Emissions Monitoring Systems - Excess Emissions Reporting	1	Continuous Emission Monitors: The Meteorology, Measurement & Rules Division will provide EPA with a list of all federally required EER and CEMS sources if requested by EPA.	Within 10 days of request	Jeff Aaseth (415/749-4968)
Asbestos Inspection	1	Record Request: The Air District will supply all enforcement and notification support documentation for a particular case if requested by EPA.	Within 30 days of request	Tom O'Halleran (415/749-5071)
Asbestos Inspection	2	Ongoing Inspection: The Air District will continue to implement the targeted inspection strategy negotiated between the Air District and EPA until a new strategy is negotiated.	Ongoing	Tom O'Halleran (415/749-5071)
Asbestos Inspection	3	Ongoing Inspection: The Air District will meet all Cal-OSHA requirements for asbestos inspections, including respiratory and health and safety requirements.	Ongoing	Tom O'Halleran (415/749-5071)
Asbestos Enforcement	1	Asbestos NESHAP Enforcement: The Air District's Asbestos NESHAP Coordinator will attend the Asbestos NESHAP Workgroup meetings. These meeting will be held in the state and there will be not more than two per year.	As scheduled	Tom O'Halleran (415/749-5071)
Asbestos Enforcement	2	Asbestos NESHAP Enforcement: The Air District will initiate timely and appropriate enforcement actions against violators.	Ongoing	Tom O'Halleran (415/749-5071)

Program Name	No.	Description of Output	Due Date	Contact
Compliance and Enforcement	1	Compliance Assistance: These activities will be reported to EPA quarterly via the Air District's web site and Board of Director's Report.	12/31/23, 3/31/24, 6/30/24, 9/30/24	Tracy Lee (415/749-4699)
Compliance and Enforcement	2	Training: Enforcement Division training records will be maintained at the Air District offices.	Ongoing	Tracy Lee (415/749-4699)
Compliance and Enforcement	3	A staff member will attend the monthly ICIS-Air conference calls/webinars.	Ongoing	Tracy Lee (415/749-4699)
District Counsel & Legal	1	Mutual Settlement Program: Statistics of this program will be maintained at the Air District.	Ongoing	Alexander Crockett (415/749-4920)
District Counsel & Legal	2	The Air District will report monthly to ICIS-Air all Notices of Violations issued to Title V and Synthetic Minor facilities in accordance with the Air District's CMS Plan with EPA.	Within 15 days following end of the month	Alexander Crockett (415/749-4920)
Hearing Board	1	Reports: Hearing Board decision reports will be updated and sent to ARB monthly.	Within 30 days of decision	Marcy Hiratzka (415/749-5073)
Record-keeping	1	The Air District will maintain the following records: Compliance and Enforcement - source inspections, NOV's and other reportable compliance activities. Engineering - Permit application and source listings. Legal – Variances, accusations, permit appeals. These files will be made available to EPA upon request.	Ongoing	Tracy Lee (415/749-4699) Pamela Leong (415/749-5186) Alexander Crockett (415/749-4920)
Strategic Facilities: Green Tasks and Activities	1	The Air District will, to the fullest extent possible, purchase green environmentally friendly products, supplies and equipment. The Air District will also, to the fullest extent possible, employ energy conservation practices/materials management such as cooling tower water management and low impact landscaping, waste prevention and recycling.	Ongoing	Satnam Hundel (415/749-5114)

Program Name	No.	Description of Output	Due Date	Contact
Title VI of the Civil Rights Act of 1964	1	We are in the process of making commitments to U.S. EPA to improve public participation, language access, grievance procedures for claims of discrimination, language access and access to persons with disabilities.	Subject to ongoing discussions	Suma Peesapati (415/749-4967)
Program Evaluation	1	On-site Evaluations: The Air District will participate in on-site evaluations conducted by EPA by providing requested information and scheduling interviews with key staff as requested.	As requested	Barry Young (415/749-4721)
Program Evaluation	2	Corrective Action Plan: The Air District will prepare a corrective action plan (CAP) that addresses deficiencies identified in EPA's program evaluation and include a schedule of implementation, if needed.	As requested	Barry Young (415/749-4721)

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
CALIFORNIA AIR POLLUTION CONTROL OFFICERS ASSOCIATION
AND THE BAY AREA AIR QUALITY MANAGEMENT DISTRICT
FOR EPA GRANT PASSTHROUGH PROJECT

The California Air Pollution Control Officers Association (“CAPCOA”) and the Bay Area Air Quality Management District (“BAAQMD”) (hereafter referred to as the “Parties”) hereby enter into this Memorandum of Understanding (“MOU”), which shall be effective as of October 1, 2023 to September 30, 2024.

RECITALS

WHEREAS, CAPCOA has requested and received US Environmental Protection Agency (“EPA”) Region 9 approval for the BAAQMD to pass through \$622,542 to CAPCOA for a pilot air grant reallocation project to assist six to eight small California air districts that do not currently receive Clean Air Act funding to support certain aspects of their air pollution control programs. This also includes funding for reimbursement of designated air districts’ costs of travel to National Emission Standards for Hazardous Air Pollutants (NESHAPS) meetings that will be held by EPA Region 9;

WHEREAS, the BAAQMD has agreed to act in this role as the fiscal agent for the distribution of federal grant funds to other air districts in the State of California;

WHEREAS, CAPCOA has agreed to assume sole responsibility for ensuring that the air districts receiving the grant funding adhere to the requirement of the grants;

NOW, THEREFORE, in consideration of the terms, conditions, and covenants set forth herein, and for other good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. BAAQMD will, upon receipt of grant funds from EPA for a pilot air grant reallocation project in the amount of \$622,542 under this MOU, pass the funds to CAPCOA.
2. CAPCOA will submit comprehensive work plans for pilot grantees, receive and compile invoices from them, process checks to them, and compile information and submit reports to BAAQMD as outlined in the EPA grant.
3. CAPCOA will ensure that the pilot grantee districts will use the pilot funding for air activities such as strategic planning and evaluation, compliance assistance, developing state implementation plans, monitoring air and emissions, rulemaking, operating permits, and other air pollution control program-related activities as outlined in the EPA grant.
4. BAAQMD will not be responsible for any oversight of the work or the work product of the air district pilot grantees.

5. BAAQMD will provide to EPA all reports required by EPA for the project as attachments to BAAQMD's 105 grant reports.
6. The Parties shall mutually indemnify, defend, and save harmless each other, their officers, agents, and employees from and against any and all liability, expenses, claims, and losses whatsoever arising out of or resulting from their respective performances pursuant to this MOU, but only in proportion to and to the extent such liability, expenses, including reasonable attorneys' fees, claims, and losses are caused by or result from the negligent or intentional acts or omissions of the indemnifying party.
7. ASSIGNMENT – No party shall assign, sell, license, or otherwise transfer any rights or obligations under this MOU to a third party without the prior written consent of the other party, and any attempt to do so shall be void upon inception.
8. WAIVER – No waiver of a breach, of failure of any condition, or of any right or remedy contained in or granted by the provisions of this MOU shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy shall be deemed a waiver of any other breach, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies. Further, the failure of a party to enforce performance by the other party of any term, covenant, or condition of this MOU, and the failure of a party to exercise any rights or remedies hereunder, shall not be deemed a waiver or relinquishment by that party to enforce future performance of any such terms, covenants, or conditions, or to exercise any future rights or remedies.
9. ATTORNEYS' FEES – In the event any action is filed in connection with the enforcement or interpretation of this MOU, each party shall bear its own attorneys' fees and costs.
10. SEVERABILITY – If a court of competent jurisdiction holds any provision of this MOU to be illegal, unenforceable or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them will not be affected.
11. HEADINGS – Headings on the sections and paragraphs of this MOU are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this MOU.
12. COUNTERPARTS/FACSIMILES/SCANS – This MOU may be executed and delivered in any number of counterparts, each of which, when executed and delivered, shall be deemed an original, and all of which together shall constitute the same MOU. The parties may rely upon a facsimile copy or scanned copy of any party's signature as an original for all purposes.
13. GOVERNING LAW – Any dispute that arises under or relates to this MOU shall be governed by California law, excluding any laws that direct the application of another

jurisdiction's laws. Venue for resolution of any dispute that arises under or relates to this MOU, including mediation, shall be San Francisco, California.

- 14. MODIFICATION –This MOU may only be amended by mutual agreement of the parties in writing and signed by both parties. No party has been induced to enter into this MOU by, nor is any party relying upon, any representation or warranty outside those expressly set forth herein.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

BAY AREA AIR QUALITY MANAGEMENT
DISTRICT

CALIFORNIA AIR POLLUTION
CONTROL OFFICERS ASSOCIATION

Philip M. Fine, Executive Officer/APCO

Erik White, President

Date

Date

Reviewed by:

BAAQMD District Counsel

Date: _____

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairperson John J. Bauters and Members
of the Board of Directors

From: Philip M. Fine
Executive Officer/APCO

Date: September 20, 2023

Re: Authorization to Execute the Renewal of the Three-Year Microsoft Enterprise Agreement with Dell Marketing LP for the Continued Licensing of all Microsoft Software and Cloud Products.

RECOMMENDED ACTION

Recommend Board of Directors authorize the Executive Officer/APCO to renew a three-year Microsoft Enterprise Software Licensing Agreement, in an amount not to exceed \$2.4M with Dell Marketing LP.

BACKGROUND

The Air District has used Microsoft systems and software for more than 25 years. Every three years, the Air District renews its Microsoft software licenses under a Microsoft government-priced Enterprise Agreement (EA). The licenses include: Windows operating systems for servers and workstations, Microsoft productivity tools, such as MS Word and Excel, and Microsoft online tools, such as Office 365 and Azure cloud-based services. Microsoft prices its government EAs below the price of its commercial licensing agreements. The licenses are sold by Value Added Resellers (VARs) to government entities through a competitive bidding process under terms of Microsoft's County of Riverside Licensing Agreement. The Riverside Agreement currently in place is used by more than 900 government organizations in the State of California to procure Microsoft licenses at the lowest prices.

DISCUSSION

The Air District evaluated pricing from available VARs through a competitive bidding process provided by each VAR under the County of Riverside Government Licensing Agreement. Table 1 summarizes the pricing available from each VAR for the Air District's three-year licensing period in ascending order, starting with the lowest bidder.

Table 1

VAR	Three Year Price	Price Difference
Dell Marketing, LP	\$ 2,208,826	Lowest Price
GovConnection, Inc.	\$ 2,225,613	\$ 16,787
SHI International Corp.	\$ 2,249,027	\$ 23,414
Insight Public Sector, Inc.	\$ 2,277,962	\$ 28,936
Crayon Software Experts, LLC	\$ 2,312,420	\$ 34,458
CDWG	\$ 2,352,400	\$ 39,980
Zones Inc.	\$ 2,408,946	\$ 56,546
PCMG, Inc.	\$ 2,465,492	\$ 56,546
SoftwareONE, Inc.	\$ 2,524,246	\$ 58,755
Softchoice Corporation	\$ 2,613,925	\$ 89,678

The costs listed in Table 1 are based on the current five-year pricing agreement in effect with the County of Riverside and will be locked in for the duration of the 3-year term requested for this agreement at the time of renewal. The price per unit remains constant, and the overall price in Table 1 reflects an increase in the Air District’s current utilization as quoted by the current vendor (Dell Marketing LP) and validated by Microsoft.

Due to expected increases in the number of employees in future years, licensing costs for Microsoft software products are anticipated to grow at a rate of two percent per year, resulting in an estimated additional cost of \$44,200 starting the second annual renewal of the three-year period. This growth cost has been added to the estimate of current expenditures from Table 1 to yield a total expected three-year cost of \$2,300,000 . The increase in service utilization would be accounted for via a true-up at the time of annual renewal within the three-year contract term.

The Air District recommends the Board of Directors select renewal with the lowest bidder, Dell Marketing LP, for the procurement of the Microsoft Licenses.

BUDGET CONSIDERATION/FINANCIAL IMPACT

The funding for the FYE 2024 cost of this contract is included in the program 726 and 125 budgets.

Respectfully submitted,

Philip M. Fine
Executive Officer/APCO

Prepared by: Derek Klein
Reviewed by: John Chiladakis

ATTACHMENTS:

1. 2020 Executed Microsoft Licensing Signature Form - Contract No. 2020.217 - Dell Marketing, LP
2. 2020 Executed Discount Transparency Form - Contract No. 2020.217 - Dell Marketing, LP
3. Bay Area Air Quality Management District - 2023 Executive Agreement Renewal Quote



Program Signature Form

MBA/MBSA number

8084445

000-aaliggit-G-190

Agreement number

8084445

Note: Enter the applicable active numbers associated with the documents below. Microsoft requires the associated active number be indicated here, or listed below as new.

For the purposes of this form, "Customer" can mean the signing entity, Enrolled Affiliate, Government Partner, Institution, or other party entering into a volume licensing program agreement.

This signature form and all contract documents identified in the table below are entered into between the Customer and the Microsoft Affiliate signing, as of the effective date identified below.

Contract Document	Number or Code
<Choose Agreement>	Document Number or Code
<Choose Agreement>	Document Number or Code
<Choose Agreement>	Document Number or Code
<Choose Agreement>	Document Number or Code
<Choose Agreement>	Document Number or Code
Enterprise Enrollment	X20-10635
<Choose Enrollment/Registration>	Document Number or Code
<Choose Enrollment/Registration>	Document Number or Code
<Choose Enrollment/Registration>	Document Number or Code
<Choose Enrollment/Registration>	Document Number or Code
Amendment	M97 (New)
Product Selection Form	1012846.004 (New)
Document Description	Document Number or Code
Document Description	Document Number or Code
Document Description	Document Number or Code

By signing below, Customer and the Microsoft Affiliate agree that both parties (1) have received, read and understand the above contract documents, including any websites or documents incorporated by reference and any amendments and (2) agree to be bound by the terms of all such documents.

Customer

Name of Entity (must be legal entity name)* Bay Area Air Quality Management District

Signature* _____

Printed First and Last Name* Jack P. Broadbent

Printed Title Executive Officer / APCO

Signature Date* 11/5/2020

Tax ID

* indicates required field

Microsoft Affiliate
Microsoft Corporation
Signature _____ Printed First and Last Name Printed Title Signature Date <small>(date Microsoft Affiliate countersigns)</small>
Agreement Effective Date <small>(may be different than Microsoft's signature date)</small>

Optional 2nd Customer signature or Outsourcer signature (if applicable)

Customer
Name of Entity (must be legal entity name)* Signature* _____ Printed First and Last Name* Printed Title Signature Date*

** indicates required field*

Outsourcer
Name of Entity (must be legal entity name)* Signature* _____ Printed First and Last Name* Printed Title Signature Date*

** indicates required field*

If Customer requires additional contacts or is reporting multiple previous Enrollments, include the appropriate form(s) with this signature form.

After this signature form is signed by the Customer, send it and the Contract Documents to Customer's channel partner or Microsoft account manager, who must submit them to the following address. When the signature form is fully executed by Microsoft, Customer will receive a confirmation copy.

Microsoft Corporation
 Dept. 551, Volume Licensing
 6880 Sierra Center Parkway
 Reno, Nevada 89511
 USA

Microsoft | Volume Licensing

Discount Transparency Disclosure Form

Date: 11/2/2020
 Program: Enterprise 6
 Enrollment Number: Renewal
 Quote Number: 1012846.004
 Partner Name: Dell Inc.
 Reseller Address: One Dell Way
 RoundRock, TX, United States, 78682-7000

Discount Details

For this enrollment, Microsoft provided the Customer's Partner an additional discount off of the Partner's Net Price. The Partner is required, by Microsoft, to pass on the additional discount to the Customer by reducing the Microsoft Product resale price by an amount equal to or greater than the discount.

Listed in the table below is the maximum price the partner may charge for the Microsoft Products to be ordered under this enrollment. The Maximum Resale Price (MRP) is calculated by subtracting the additional discount provided to the Partner, from the total estimated resale price for the Microsoft Products.

The requirement to pass through the additional discount, does not mean that Microsoft is setting the Customer's actual price. Partners remain free to set the price charged for Microsoft Products at any point equal to or below MRP. The Customer's actual price will be established by a separate agreement between Customer and its Partner.

Ordered Products

Currency	Maximum Resale Price
US Dollar	1,849,971

Note: The Maximum Resale Price listed in the table above only pertains to the Microsoft Products to be ordered under this Enrollment. The content of this form has no impact on the Customer's price for Non-Microsoft products and services.

In this form, the following definitions apply:

- "Customer" means the entity that may enter or has entered into a Contract with the Partner.
- "Contract" means a binding agreement between the Partner and Affiliate, under which Customer orders Products from Partner.
- "Microsoft" means (1) the entity that has entered into an agreement with Partner under which Partner may place orders for Microsoft Products for use by the Customer and (2) the affiliates of such entity, as appropriate.
- "Maximum Resale Price" means the sum of the Estimated Retail Price for all Microsoft Products ordered under the Customer Contract minus the aggregated discount off of the Partner's Net Price provided by Microsoft listed in the currency in which the Partner or Partner's reseller transacts with Microsoft.
- "Product" means all Microsoft Products identified in the Product Terms, such as all Software, Online Services, and other web-based services, including pre-release or beta version. Microsoft product availability may vary by region.

Partner:

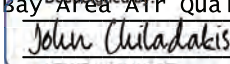
Customer:

Signature of Customer's authorized representative:

Printed name:

Printed title:

Date:

DocuSigned by:
 Bay Area Air Quality Management District

 AF25FBDD039449Z
 Jack P. Broadbent
 Executive Officer/APCO
 11/5/2020



Dell Customer Confidential

Quotation

Sam Andrews
sam.andrews@dell.com
512.720.4469

Customer: Bay Area Air Quality Management District
Contract: Riverside County Master Agreement - PSA-0001524 (8084445)
Microsoft Enterprise Agreement (EA) #: (renewal of 7580509, exp 9/30/23)

Date of Issue: 8/2/2023
Quote Expires: 9/30/2023

Section 1- Licenses and Software Assurance					
Product Description	Mfg#	Quantity	Unit Price	Ext. Price	
SQL CAL ALng SA User CAL	359-00961	150	\$36.92		\$5,538.00
SQL Server Enterprise ALng SA	810-04760	2	\$1,519.72		\$3,039.44
SQL Server Enterprise Core ALng SA 2L	7JQ-00343	4	\$2,431.74		\$9,726.96
SQL Server Standard ALng SA	228-04433	8	\$158.79		\$1,270.32
Visual Studio Ent with GitHub ALng SA	QEJ-00003	3	\$1,054.45		\$3,163.35
Visual Studio Pro with GitHub ALng SA	QEK-00003	5	\$302.06		\$1,510.30
Visual Studio Test Pro MSDN ALng SA	L5D-00162	1	\$303.48		\$303.48
Win Remote Desktop Services CAL ALng SA User CAL	6VC-01254	35	\$23.30		\$815.50
Win Server DC Core ALng SA 2L	9EA-00278	160	\$123.78		\$19,804.80
Win Server Standard Core ALng SA 2L	9EM-00270	64	\$19.00		\$1,216.00

Annual Payment Section 1: \$46,388.15

Section 2- Monthly Subscriptions					
Product Description	Mfg#	Quantity	Months	Unit Price	Ext. Price
Enterprise Online Services Products					
M365 E5 Unified Sub Per User	AAD-33168	470	12	\$50.25	\$283,410.00
Additional Online Services Products					
CDS Database Capacity Sub Add-on	PRX-00002	20	12	\$35.05	\$8,412.00
D365 Customer Service Sub Per User	DDW-00003	16	12	\$83.24	\$15,982.08
Power Apps Plan Sub Per User	SEJ-00002	22	12	\$17.52	\$4,625.28
Power Apps Per App Sub 1 App or Portal	J8Q-00005	1	12	\$4.38	\$52.56
Project P3 From SA Sub Per User	7MK-00002	1	12	\$19.00	\$228.00
Project P3 Sub Per User	7LS-00002	15	12	\$22.34	\$4,021.20
Teams Domestic Calling Plan Sub Per User	TK2-00001	100	12	\$10.51	\$12,612.00
Visio P2 From SA Sub Per User	9K3-00002	16	12	\$9.50	\$1,824.00
Visio P2 Sub Per User	N9U-00002	2	12	\$11.17	\$268.08
Azure Prepayment					
Azure prepayment (commercial cloud) - using placeholder quantity of 300 to get roughly \$30k per month - we can adjust to whatever you wish	6QK-00001	300	12	\$99.57	\$358,452.00

Annual Payment Section 2: \$689,887.20

Notes: Budgetary quote for September 2023 Renewal
Microsoft Enterprise Agreement (EA) Master#: 8084445
Microsoft Enterprise Agreement (EA) Enrollment#: Future/TBD

Total Annual Payment Yr 1	\$736,275.35
Total Annual Payment Yr 2	\$736,275.35
Total Annual Payment Yr 3	\$736,275.35
Total of 3 years of Payments	\$2,208,826.05

Notes:	
1) Customer's purchase is subject to Dell's Terms and Conditions of Sale found at www.dell.com , unless Customer has a separate purchase agreement with Dell.	4) All product descriptions and prices are based on latest information available and are subject to change without notice or obligation.
2) Sales/use tax is based on the "ship to" address on your invoice. Please indicate your taxability status on your purchase order. If exempt, Customer must have an Exemption Certificate on file.	5) All prices are based on Net 30 Terms. If not shown, shipping, handling, taxes, and other fees will be added at the time of order, where applicable.
3) If you have a question re: your tax status, please contact your Dell / ASAP Software Inside sales representative listed above. Shipments to California: for certain products, a State Environmental Fee of up to \$10 per item may be applied to your invoice. Prices do not reflect this fee unless noted. For more	6) Customer understands and acknowledges that all warranties, representations and returns are subject to the manufacturer, publisher or distributor guidelines.

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairperson John J. Bauters and Members
of the Board of Directors

From: Philip M. Fine
Executive Officer/APCO

Date: September 20, 2023

Re: Authorization to Execute a Four-Year Lease Extension for a Compliance & Enforcement Field Office in Novato

RECOMMENDED ACTION

Recommend the Board of Directors (Board) authorize the Executive Officer/APCO to:

- Execute amendment to the Air District's lease agreement with Chabad of Novato for a four-year extension of C&E's Novato Field Office leasing, effective October 1, 2023 through September 30, 2027. This would result in the following costs:

1. \$11,286 Fiscal Year Ending (FYE) 2024
2. \$15,381 FYE 2025
3. \$15,843 FYE 2026
4. \$16,320 FYE 2027
5. \$4,110 FYE 2028

Total Cost: \$62,940

BACKGROUND

The Air District's Compliance & Enforcement (C&E) Division leases five (5) field offices located strategically around the Bay Area to provide its inspection staff with office space to draft reports, print documents, conduct instrument tests, store monitoring, lab, and safety equipment for field use, and have meetings. These field offices save inspection staff time and Air District resources by keeping staff in their assigned areas without the need to drive long distances to and from Air District Headquarters. The current lease agreement of the C&E's Novato field office will be expiring soon and needs to be renewed in order to provide North Bay field staff with the benefits previously described.

DISCUSSION

The current lease agreement with Chabad of Novato will expire on September 30, 2023 (attachments 1, 1a). The Board is requested to authorize the Executive Officer/APCO to execute a four-year lease extension, effective October 1, 2023 through September 30, 2027. Table 1 outlines the monthly costs of the four-year lease extension. Table 2 shows the total costs since inception of the lease agreement, which includes the original lease agreement signed September 2016, the 1st amendment signed October 2020, and the 2nd amendment (attachment 1b) (the subject of this request). Note, the lease agreement states parking and common area maintenance (CAM) fees (described as other) are not applicable (N/A).

The original owner/lessor was De Long Business Center. The building was sold in March 2021 to the current owner, Chabad of Novato.

Table 1: Monthly Costs of lease agreement amendment (2nd amendment)

YEAR	PERIOD	COST
Year 1	Oct 1, 2023 – Sept 30, 2024	\$1,254
Year 2	Oct 1, 2024 - Sept 30, 2025	\$1,291
Year 3	Oct 1, 2025 – Sept 30, 2026	\$1,330
Year 4	Oct 1, 2026 – Sept 30, 2027	\$1,370

Table 2: Lease Costs since Inception

LEASE	PERIOD	COST
Original	Sept 16, 2016 – Sept 30, 2020	\$53,381
1 st Amendment	Oct 1, 2020 – Sept 30, 2023	\$42,540
2 nd Amendment	Oct 1, 2023 – Sept 30, 2027	\$62,940

BUDGET CONSIDERATION/FINANCIAL IMPACT

The leasing costs for FYE 2024 are budgeted in the FYE 2024 budget for Program Code 401 (C&E Enforcement). Leasing costs for the remainder of the lease agreement for C&E’s Novato field office will continue to be included in the proposed budgets for Program Code 401.

Respectfully submitted,

Philip M. Fine
Executive Officer/APCO

Prepared by: John Marvin

Reviewed by: Jeff Gove

ATTACHMENTS:

1. Attachment 1 - Original Lease Agreement
2. Attachment 1a - Lease Amendment 1
3. Attachment 1b - Lease Amendment 2



STANDARD MULTI-TENANT OFFICE LEASE - GROSS
AIR COMMERCIAL REAL ESTATE ASSOCIATION

1. Basic Provisions ("Basic Provisions").

1.1 Parties: This Lease ("Lease"), dated for reference purposes only September 1, 2016

is made by and between De Long Business Center, LLC, a California limited liability company

(Lessor) and Bay Area Air Quality Management District

(Lessee), (collectively the "Parties", or individually a "Party").

1.2(a) Premises: That certain portion of the Project (as defined below), known as Suite Numbers(s) 230 second floor(s), consisting of approximately 441 rentable square feet and approximately 390 useable square feet("Premises"). The Premises are located at: 695 De Long Avenue in the City of Novato, County of Marin, State of California, with zip code 94945. In addition to Lessee's rights to use and occupy the Premises as hereinafter specified, Lessee shall have non-exclusive rights to the Common Areas (as defined in Paragraph 2.7 below) as hereinafter specified, but shall not have any rights to the roof, the exterior walls, the area above the dropped ceilings, or the utility raceways of the building containing the Premises ("Building") or to any other buildings in the Project. The Premises, the Building, the Common Areas, the land upon which they are located, along with all other buildings and improvements thereon, are herein collectively referred to as the "Project." The Project consists of approximately 12,231 rentable square feet. (See also Paragraph 2)

1.2(b) Parking: 2 unreserved and N/A reserved vehicle parking spaces at a monthly cost of \$N/A per unreserved space and \$N/A per reserved space. (See Paragraph 2.6)

1.3 Term: four (4) years and nineteen (19) days months ("Original Term") commencing September 12, 2016 ("Commencement Date") and ending September 30, 2020 ("Expiration Date"). (See also Paragraph 3)

1.4 Early Possession: If the Premises are available Lessee may have non-exclusive possession of the Premises commencing upon Lessor's receipt of insurance under Par. 8 ("Early Possession Date"). (See also Paragraphs 3.2 and 3.3)

1.5 Base Rent: \$1,050.00 per month ("Base Rent)", payable on the first day of each month commencing September 12, 2016. (See also Paragraph 4)

[X] If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted. See Paragraph 50

4.6 Lessee's Share of Operating Expense Increase: percent (%) ("Lessee's Share"). In the event that that size of the Premises and/or the Project are modified during the term of this Lease, Lessor shall recalculate Lessee's Share to reflect such modification.

1.7 Base Rent and Other Monies Paid Upon Execution:

- (a) Base Rent: \$1,715.00 for the period Sept. 12, 2016 - Oct. 31, 2016
(b) Security Deposit: \$1,147.00 ("Security Deposit"). (See also Paragraph 5)
(c) Parking: \$N/A for the period N/A
(d) Other: \$N/A for N/A
(e) Total Due Upon Execution of this Lease: \$2,862.00

1.8 Agreed Use: general administrative office

(See also Paragraph 6)

Handwritten initials and the word INITIALS

Handwritten initials and the word INITIALS

1.9 **Base Year; Insuring Party.** The Base Year is 2016. Lessor is the "Insuring Party". (See also Paragraphs 4.2 and 8)

1.10 **Real Estate Brokers:** (See also Paragraph 15 and 25)

(a) **Representation:** The following real estate brokers (the "Brokers") and brokerage relationships exist in this transaction (check applicable boxes):

- Keegan & Coppin Company, Inc. represents Lessor exclusively ("Lessor's Broker");
 _____ represents Lessee exclusively ("Lessee's Broker"); or
 _____ represents both Lessor and Lessee ("Dual Agency").

(b) **Payment to Brokers:** Upon execution and delivery of this Lease by both Parties, Lessor shall pay to the Brokers the brokerage fee agreed to in a separate written agreement (or if there is no such agreement, the sum of _____ or _____ % of the total Base Rent) for the brokerage services rendered by the Brokers.

1.11 **Guarantor.** The obligations of the Lessee under this Lease shall be guaranteed by N/A ("Guarantor"). (See also Paragraph 37)

1.12 **Business Hours for the Building:** 8:00 a.m. to 6:00 p.m., Mondays through Fridays (except Building Holidays) and 8:00 a.m. to 6:00 p.m. on Saturdays (except Building Holidays). "Building Holidays" shall mean the dates of observation of New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and N/A.

1.13 **Lessor Supplied Services.** Notwithstanding the provisions of Paragraph 11.1, Lessor is NOT obligated to provide the following within the Premises:

- Janitorial services
 Electricity
 Other (specify): _____

1.14 **Attachments.** Attached hereto are the following, all of which constitute a part of this Lease:

- an Addendum consisting of Paragraphs 50 through 53 ;
 a plot plan depicting the Premises;
 a current set of the Rules and Regulations;
 a Work Letter;
 a janitorial schedule;
 other (specify): Leasing Disclosure and Confirmation Regarding Real Estate Agency Relationship; Standard Lease Disclosure Addendum; Standard Lease Conditions Addendum

2. Premises.

2.1 **Letting.** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. While the approximate square footage of the Premises may have been used in the marketing of the Premises for purposes of comparison, the Base Rent stated herein is NOT tied to square footage and is not subject to adjustment should the actual size be determined to be different. **Note: Lessee is advised to verify the actual size prior to executing this Lease.**

2.2 **Condition.** Lessor shall deliver the Premises to Lessee in a clean condition on the Commencement Date or the Early Possession Date, whichever first occurs ("Start Date"), and warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems ("HVAC"), and all other items which the Lessor is obligated to construct pursuant to the Work Letter attached hereto, if any, other than those constructed by Lessee, shall be in good operating condition on said date, that the structural elements of the roof, bearing walls and foundation of the Unit shall be free of material defects, and that the Premises do not contain hazardous levels of any mold or fungi defined as toxic under applicable state or federal law. Lessor also warrants, that unless otherwise specified in writing, Lessor is unaware of (i) any recorded Notices of Default affecting the Premise; (ii) any delinquent amounts due under any loan secured by the Premises; and (iii) any bankruptcy proceeding affecting the Premises.

2.3 **Compliance.** Lessor warrants that to the best of its knowledge the improvements on the Premises and the Common Areas comply with the building codes applicable laws, covenants or restrictions of record, regulations, and ordinances ("Applicable Requirements") that were in effect at the time that each improvement, or portion thereof, was constructed. Said warranty does not apply to the use to which Lessee will put the Premises, modifications which may be required by the Americans with Disabilities Act or any similar laws as a result of Lessee's use (see Paragraph 49), or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. **NOTE: Lessee is responsible for determining whether or not the zoning and other Applicable Requirements are appropriate for Lessee's intended use, and acknowledges that past uses of the Premises may no longer be allowed.** If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same. If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the construction of an addition to or an alteration of the Premises, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Premises ("Capital Expenditure"), Lessor and Lessee shall allocate the cost of such work as follows:

(a) Subject to Paragraph 2.3(c) below, if such Capital Expenditures are required as a result of the specific and unique use of the Premises by Lessee as compared with uses by tenants in general, Lessee shall be fully responsible for the cost thereof, provided, however that if such Capital Expenditure is required during the last 2 years of this Lease and the cost thereof exceeds 6 months' Base Rent, Lessee may instead terminate this Lease unless Lessor notifies Lessee, in writing, within 10 days after receipt of Lessee's termination notice that Lessor has elected to pay the difference between the actual cost thereof and the amount equal to 6 months' Base Rent. If Lessee elects termination, Lessee shall immediately cease the use of the Premises which requires such Capital Expenditure and deliver to Lessor written notice specifying a termination date at least 90 days thereafter. Such termination date shall, however, in no event be earlier than the last day that Lessee could legally utilize the Premises without commencing such Capital Expenditure.

(b) If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally


INITIALS

PAGE 2 OF 18


INITIALS

mandated seismic modifications), then Lessor shall pay for such Capital Expenditure and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease or any extension thereof, on the date that on which the Base Rent is due, an amount equal to 1/144th of the portion of such costs reasonably attributable to the Premises. Lessee shall pay interest on the balance but may prepay its obligation at any time. If, however, such Capital Expenditure is required during the last 2 years of this Lease or if Lessor reasonably determines that it is not economically feasible to pay its share thereof, Lessor shall have the option to terminate this Lease upon 90 days prior written notice to Lessee unless Lessee notifies Lessor, in writing, within 10 days after receipt of Lessor's termination notice that Lessee will pay for such Capital Expenditure. If Lessor does not elect to terminate, and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct same, with interest, from Rent until Lessor's share of such costs have been fully paid. If Lessee is unable to finance Lessor's share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis, Lessee shall have the right to terminate this Lease upon 30 days written notice to Lessor.

(c) Notwithstanding the above, the provisions concerning Capital Expenditures are intended to apply only to nonvoluntary, unexpected, and new Applicable Requirements. If the Capital Expenditures are instead triggered by Lessee as a result of an actual or proposed change in use, change in intensity of use, or modification to the Premises then, and in that event, Lessee shall either: (i) immediately cease such changed use or intensity of use and/or take such other steps as may be necessary to eliminate the requirement for such Capital Expenditure, or (ii) complete such Capital Expenditure at its own expense. Lessee shall not have any right to terminate this Lease.

2.4 Acknowledgements. Lessee acknowledges that: (a) it has been given an opportunity to inspect and measure the Premises, (b) Lessee has been advised by Lessor and/or Brokers to satisfy itself with respect to the size and condition of the Premises (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements), and their suitability for Lessee's intended use, (c) Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its occupancy of the Premises, (d) it is not relying on any representation as to the size of the Premises made by Brokers or Lessor, (e) the square footage of the Premises was not material to Lessee's decision to lease the Premises and pay the Rent stated herein, and (f) neither Lessor, Lessor's agents, nor Brokers have made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease. In addition, Lessor acknowledges that: (i) Brokers have made no representations, promises or warranties concerning Lessee's ability to honor the Lease or suitability to occupy the Premises, and (ii) it is Lessor's sole responsibility to investigate the financial capability and/or suitability of all proposed tenants.

2.5 Lessee as Prior Owner/Occupant. The warranties made by Lessor in Paragraph 2 shall be of no force or effect if immediately prior to the Start Date, Lessee was the owner or occupant of the Premises. In such event, Lessee shall be responsible for any necessary corrective work.

2.6 Vehicle Parking. So long as Lessee is not in default, and subject to the Rules and Regulations attached hereto, and as established by Lessor from time to time, Lessee shall be entitled to rent and use the number of parking spaces specified in Paragraph 1.2(b) at the rental rate applicable from time to time for monthly parking as set by Lessor and/or its licensee.

(a) If Lessee commits, permits or allows any of the prohibited activities described in the Lease or the rules then in effect, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

(b) The monthly rent per parking space specified in Paragraph 1.2(b) is subject to change upon 30 days prior written notice to Lessee. The rent for the parking is payable one month in advance prior to the first day of each calendar month.

2.7 Common Areas - Definition. The term "Common Areas" is defined as all areas and facilities outside the Premises and within the exterior boundary line of the Project and interior utility raceways and installations within the Premises that are provided and designated by the Lessor from time to time for the general nonexclusive use of Lessor, Lessee and other tenants of the Project and their respective employees, suppliers, shippers, customers, contractors and invitees, including, but not limited to, common entrances, lobbies, corridors, stairwells, public restrooms, elevators, parking areas, loading and unloading areas, trash areas, roadways, walkways, driveways, landscaped areas.

2.8 Common Areas - Lessee's Rights. Lessor grants to Lessee, for the benefit of Lessee and its employees, suppliers, shippers, contractors, customers and invitees, during the term of this Lease, the nonexclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by Lessor under the terms hereof or under the terms of any rules and regulations or restrictions governing the use of the Project. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas. Any such storage shall be permitted only by the prior written consent of Lessor or Lessor's designated agent, which consent may be revoked at any time. In the event that any unauthorized storage shall occur then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

2.9 Common Areas - Rules and Regulations. Lessor or such other person(s) as Lessor may appoint shall have the exclusive control and management of the Common Areas and shall have the right, from time to time, to adopt, modify, amend and enforce reasonable rules and regulations ("Rules and Regulations") for the management, safety, care, and cleanliness of the grounds, the parking and unloading of vehicles and the preservation of good order, as well as for the convenience of other occupants or tenants of the Building and the Project and their invitees. The Lessee agrees to abide by and conform to all such Rules and Regulations, and shall use its best efforts to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform. Lessor shall not be responsible to Lessee for the noncompliance with said Rules and Regulations by other tenants of the Project.

2.10 Common Areas - Changes. Lessor shall have the right, in Lessor's sole discretion, from time to time:

(a) To make changes to the Common Areas, including, without limitation, changes in the location, size, shape and number of the lobbies, windows, stairways, air shafts, elevators, escalators, restrooms, driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, walkways and utility raceways;

(b) To close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available;

(c) To designate other land outside the boundaries of the Project to be a part of the Common Areas;

(d) To add additional buildings and improvements to the Common Areas;

(e) To use the Common Areas while engaged in making additional improvements, repairs or alterations to the Project, or any portion thereof; and

(f) To do and perform such other acts and make such other changes in, to or with respect to the Common Areas and Project as Lessor may, in the exercise of sound business judgment, deem to be appropriate.

3. Term.

3.1 Term. The Commencement Date, Expiration Date and Original Term of this Lease are as specified in Paragraph 1.3.

3.2 Early Possession. Any provision herein granting Lessee Early Possession of the Premises is subject to and conditioned upon the


INITIALS


INITIALS

Premises being available for such possession prior to the Commencement Date. Any grant of Early Possession only conveys a non-exclusive right to occupy the Premises. If Lessee totally or partially occupies the Premises prior to the Commencement Date, the obligation to pay Base Rent shall be abated for the period of such Early Possession. All other terms of this Lease (including but not limited to the obligations to pay Lessee's Share of the Operating Expense Increase) shall be in effect during such period. Any such Early Possession shall not affect the Expiration Date.

3.3 **Delay In Possession.** Lessor agrees to use its best commercially reasonable efforts to deliver possession of the Premises to Lessee by the Commencement Date. If, despite said efforts, Lessor is unable to deliver possession by such date, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease or change the Expiration Date. Lessee shall not, however, be obligated to pay Rent or perform its other obligations until Lessor delivers possession of the Premises and any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed under the terms hereof, but minus any days of delay caused by the acts or omissions of Lessee. If possession is not delivered within 60 days after the Commencement Date, as the same may be extended under the terms of any Work Letter executed by Parties, Lessee may, at its option, by notice in writing within 10 days after the end of such 60 day period, cancel this Lease, in which event the Parties shall be discharged from all obligations hereunder. If such written notice is not received by Lessor within said 10 day period, Lessee's right to cancel shall terminate. If possession of the Premises is not delivered within 120 days after the Commencement Date, this Lease shall terminate unless other agreements are reached between Lessor and Lessee, in writing.

3.4 **Lessee Compliance.** Lessor shall not be required to deliver possession of the Premises to Lessee until Lessee complies with its obligation to provide evidence of insurance (Paragraph 8.5). Pending delivery of such evidence, Lessee shall be required to perform all of its obligations under this Lease from and after the Start Date, including the payment of Rent, notwithstanding Lessor's election to withhold possession pending receipt of such evidence of insurance. Further, if Lessee is required to perform any other conditions prior to or concurrent with the Start Date, the Start Date shall occur but Lessor may elect to withhold possession until such conditions are satisfied.

4. **Rent.**

4.1 **Rent Defined.** All monetary obligations of Lessee to Lessor under the terms of this Lease (except for the Security Deposit) are deemed to be rent ("Rent").

4.2 **Operating Expense Increase.** Lessee shall pay to Lessor during the term hereof, in addition to the Base Rent, Lessee's Share of the amount by which all Operating Expenses for each Comparison Year exceeds the amount of all Operating Expenses for the Base Year, such excess being hereinafter referred to as the "Operating Expense Increase", in accordance with the following provisions:

(a) "Base Year" is as specified in Paragraph 1.9.
(b) "Comparison Year" is defined as each calendar year during the term of this Lease subsequent to the Base Year; provided, however, Lessee shall have no obligation to pay a share of the Operating Expense Increase applicable to the first 12 months of the Lease Term (other than such as are mandated by a governmental authority, as to which government mandated expenses Lessee shall pay Lessee's Share, notwithstanding they occur during the first twelve (12) months). Lessee's Share of the Operating Expense Increase for the first and last Comparison Years of the Lease Term shall be prorated according to that portion of such Comparison Year as to which Lessee is responsible for a share of such increase.

(c) The following costs relating to the ownership and operation of the Project, calculated as if the Project was at least 95% occupied, are defined as "Operating Expenses":

(i) Costs relating to the operation, repair, and maintenance in neat, clean, safe, good order and condition, but not the replacement (see subparagraph (g)), of the following:

(aa) The Common Areas, including their surfaces, coverings, decorative items, carpets, drapes and window coverings, and including parking areas, loading and unloading areas, trash areas, roadways, sidewalks, walkways, stairways, parkways, driveways, landscaped areas, striping, bumpers, irrigation systems, Common Area lighting facilities, building exteriors and roofs, fences and gates;

(bb) All heating, air conditioning, plumbing, electrical systems, life safety equipment, communication systems and other equipment used in common by, or for the benefit of, tenants or occupants of the Project, including elevators and escalators, tenant directories, fire detection systems including sprinkler system maintenance and repair.

(cc) All other areas and improvements that are within the exterior boundaries of the Project but outside of the Premises and/or any other space occupied by a tenant.

(ii) The cost of trash disposal, janitorial and security services, pest control services, and the costs of any environmental inspections;

(iii) The cost of any other service to be provided by Lessor that is elsewhere in this Lease stated to be an "Operating Expense";

(iv) The cost of the premiums for the insurance policies maintained by Lessor pursuant to paragraph 8 and any deductible portion of an insured loss concerning the Building or the Common Areas;

(v) The amount of the Real Property Taxes payable by Lessor pursuant to paragraph 10;

(vi) The cost of water, sewer, gas, electricity, and other publicly mandated services not separately metered;

(vii) Labor, salaries, and applicable fringe benefits and costs, materials, supplies and tools, used in maintaining and/or cleaning the Project and accounting and management fees attributable to the operation of the Project;

(viii) The cost of any capital improvement to the Building or the Project not covered under the provisions of Paragraph 2.3 provided, however, that Lessor shall allocate the cost of any such capital improvement over a 12 year period and Lessee shall not be required to pay more than Lessee's Share of 1/144th of the cost of such Capital Expenditure in any given month;

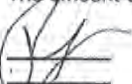
(ix) The cost to replace equipment or improvements that have a useful life for accounting purposes of 5 years or less.

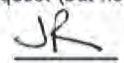
(x) Reserves set aside for maintenance, repair and/or replacement of Common Area improvements and equipment.

(d) Any item of Operating Expense that is specifically attributable to the Premises, the Building or to any other building in the Project or to the operation, repair and maintenance thereof, shall be allocated entirely to such Premises, Building, or other building. However, any such item that is not specifically attributable to the Building or to any other building or to the operation, repair and maintenance thereof, shall be equitably allocated by Lessor to all buildings in the Project.

(e) The inclusion of the improvements, facilities and services set forth in Subparagraph 4.2(c) shall not be deemed to impose an obligation upon Lessor to either have said improvements or facilities or to provide those services unless the Project already has the same, Lessor already provides the services, or Lessor has agreed elsewhere in this Lease to provide the same or some of them.

(f) Lessee's Share of Operating Expense Increase is payable monthly on the same day as the Base Rent is due hereunder. The amount of such payments shall be based on Lessor's estimate of the Operating Expense Expenses. Within 60 days after written request (but not


INITIALS


INITIALS

~~more than once each year) Lessor shall deliver to Lessee a reasonably detailed statement showing Lessee's Share of the actual Common Area Operating Expenses for the preceding year. If Lessee's payments during such Year exceed Lessee's Share, Lessee shall credit the amount of such over-payment against Lessee's future payments. If Lessee's payments during such Year were less than Lessee's Share, Lessee shall pay to Lessor the amount of the deficiency within 10 days after delivery by Lessor to Lessee of said statement. Lessor and Lessee shall forthwith adjust between them by cash payment any balance determined to exist with respect to that portion of the last Comparison Year for which Lessee is responsible as to Operating Expense Increases, notwithstanding that the Lease term may have terminated before the end of such Comparison Year.~~

~~(g) Operating Expense shall not include the costs of replacement for equipment or capital components such as the roof, foundations, exterior walls or a Common Area capital improvement, such as the parking lot paving, elevators, fences that have a useful life for accounting purposes of 5 years or more.~~

~~(h) Operating Expenses shall not include any expenses paid by any tenant directly to third parties, or as to which Lessor is otherwise reimbursed by any third party, other tenant, or by insurance proceeds.~~

4.3 Payment. Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States on or before the day on which it is due, without offset or deduction (except as specifically permitted in this Lease). All monetary amounts shall be rounded to the nearest whole dollar. In the event that any invoice prepared by Lessor is inaccurate such inaccuracy shall not constitute a waiver and Lessee shall be obligated to pay the amount set forth in this Lease. Rent for any period during the term hereof which is for less than one full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor's endorsement of any check so stating. In the event that any check, draft, or other instrument of payment given by Lessee to Lessor is dishonored for any reason, Lessee agrees to pay to Lessor the sum of \$25 in addition to any Late Charge and Lessor, at its option, may require all future Rent be paid by cashier's check. Payments will be applied first to accrued late charges and attorney's fees, second to accrued interest, then to Base Rent and Common Area Operating Expenses, and any remaining amount to any other outstanding charges or costs.

5. Security Deposit. Lessee shall deposit with Lessor upon execution hereof of the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount already due Lessor, for Rents which will be due in the future, and/ or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of the Security Deposit, Lessee shall within 10 days after written request therefor deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. If the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional monies with Lessor so that the total amount of the Security Deposit shall at all times bear the same proportion to the increased Base Rent as the initial Security Deposit bore to the initial Base Rent. Should the Agreed Use be amended to accommodate a material change in the business of Lessee or to accommodate a sublessee or assignee, Lessor shall have the right to increase the Security Deposit to the extent necessary, in Lessor's reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result thereof. If a change in control of Lessee occurs during this Lease and following such change the financial condition of Lessee is, in Lessor's reasonable judgment, significantly reduced, Lessee shall deposit such additional monies with Lessor as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on such change in financial condition. Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within 90 days after the expiration or termination of this Lease, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. Lessor shall upon written request provide Lessee with an accounting showing how that portion of the Security Deposit that was not returned was applied. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease.


6. Use.


6.1 Use. Lessee shall use and occupy the Premises only for the Agreed Use, or any other legal use which is reasonably comparable thereto, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties. Other than guide, signal and seeing eye dogs, Lessee shall not keep or allow in the Premises any pets, animals, birds, fish, or reptiles. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Use, so long as the same will not impair the structural integrity of the Improvements of the Building, will not adversely affect the mechanical, electrical, HVAC, and other systems of the Building, and/or will not affect the exterior appearance of the Building. If Lessor elects to withhold consent, Lessor shall within 7 days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in the Agreed Use.

6.2 Hazardous Substances.

(a) Reportable Uses Require Consent. The term "Hazardous Substance" as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, byproducts or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance (at Lessee's expense) with all Applicable Requirements. "Reportable Use" shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use such as ordinary office supplies (copier toner, liquid paper, glue, etc.) and common household cleaning materials, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration or termination) of protective modifications (such as concrete encasements) and/or increasing the Security Deposit.

(b) Duty to Inform Lessor. If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.


INITIALS


INITIALS

(c) **Lessee Remediation.** Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, comply with all Applicable Requirements and take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease, by or for Lessee, or any third party.

(d) **Lessee Indemnification.** Lessee shall indemnify, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or any third party (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from areas outside of the Project not caused or contributed to by Lessee). Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease. No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.

(e) **Lessor Indemnification.** Except as otherwise provided in paragraph 8.7, Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which result from Hazardous Substances which existed on the Premises prior to Lessee's occupancy or which are caused by the gross negligence or willful misconduct of Lessor, its agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

(f) **Investigations and Remediations.** Lessor shall retain the responsibility and pay for any investigations or remediation measures required by governmental entities having jurisdiction with respect to the existence of Hazardous Substances on the Premises prior to Lessee's occupancy, unless such remediation measure is required as a result of Lessee's use (including "Alterations", as defined in paragraph 7.3(a) below) of the Premises, in which event Lessee shall be responsible for such payment. Lessee shall cooperate fully in any such activities at the request of Lessor, including allowing Lessor and Lessor's agents to have reasonable access to the Premises at reasonable times in order to carry out Lessor's investigative and remedial responsibilities.

(g) **Lessor Termination Option.** If a Hazardous Substance Condition (see Paragraph 9.1(e)) occurs during the term of this Lease, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by the Applicable Requirements and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 6.2(d) and Paragraph 13), Lessor may, at Lessor's option, either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to remediate such condition exceeds 12 times the then monthly Base Rent or \$100,000, whichever is greater, give written notice to Lessee, within 30 days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor's desire to terminate this Lease as of the date 60 days following the date of such notice. In the event Lessor elects to give a termination notice, Lessee may, within 10 days thereafter, give written notice to Lessor of Lessee's commitment to pay the amount by which the cost of the remediation of such Hazardous Substance Condition exceeds an amount equal to 12 times the then monthly Base Rent or \$100,000, whichever is greater. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days following such commitment. In such event, this Lease shall continue in full force and effect, and Lessor shall proceed to make such remediation as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time provided, this Lease shall terminate as of the date specified in Lessor's notice of termination.

6.3 **Lessee's Compliance with Applicable Requirements.** Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants which relate in any manner to the Premises, without regard to whether said Applicable Requirements are now in effect or become effective after the Start Date. Lessee shall, within 10 days after receipt of Lessor's written request, provide Lessor with copies of all permits and other documents, and other information evidencing Lessee's compliance with any Applicable Requirements specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements. Likewise, Lessee shall immediately give written notice to Lessor of: (i) any water damage to the Premises and any suspected seepage, pooling, dampness or other condition conducive to the production of mold; or (ii) any mustiness or other odors that might indicate the presence of mold in the Premises.

6.4 **Inspection; Compliance.** Lessor and Lessor's "Lender" (as defined in Paragraph 30) and consultants shall have the right to enter into Premises at any time, in the case of an emergency, and otherwise at reasonable times, after reasonable notice, for the purpose of inspecting the condition of the Premises and for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a Hazardous Substance Condition (see paragraph 9.1e) is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination. In addition, Lessee shall provide copies of all relevant material safety data sheets (MSDS) to Lessor within 10 days of the receipt of written request therefor.

7. **Maintenance; Repairs; Utility Installations; Trade Fixtures and Alterations.**

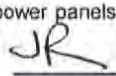
7.1 **Lessee's Obligations.** Notwithstanding Lessor's obligation to keep the Premises in good condition and repair, Lessee shall be responsible for payment of the cost thereof to Lessor as additional rent for that portion of the cost of any maintenance and repair of the Premises, or any equipment (wherever located) that serves only Lessee or the Premises, to the extent such cost is attributable to abuse or misuse. In addition, Lessee rather than the Lessor shall be responsible for the cost of painting, repairing or replacing wall coverings, and to repair or replace any similar improvements within the Premises. Lessor may, at its option, upon reasonable notice, elect to have Lessee perform any particular such maintenance or repairs the cost of which is otherwise Lessee's responsibility hereunder."

7.2 **Lessor's Obligations.** Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 4.2 (Operating Expenses), 6 (Use), 7.1 (Lessee's Obligations), 9 (Damage or Destruction) and 14 (Condemnation), Lessor, subject to reimbursement pursuant to Paragraph 4.2, shall keep in good order, condition and repair the foundations, exterior walls, structural condition of interior bearing walls, exterior roof, fire sprinkler system, fire alarm and/or smoke detection systems, fire hydrants, and the Common Areas. Lessee expressly waives the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease.

7.3 **Utility Installations; Trade Fixtures; Alterations.**

(a) **Definitions.** The term "Utility Installations" refers to all floor and window coverings, air lines, vacuum lines, power panels,


INITIALS


INITIALS

electrical distribution, security and fire protection systems, communication cabling, lighting fixtures, HVAC equipment, and plumbing in or on the Premises. The term "Trade Fixtures" shall mean Lessee's machinery and equipment that can be removed without doing material damage to the Premises. The term "Alterations" shall mean any modification of the improvements, other than Utility Installations or Trade Fixtures, whether by addition or deletion. "Lessee Owned Alterations and/or Utility Installations" are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor pursuant to Paragraph 7.4(a).

(b) **Consent.** Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent. Lessee may, however, make non-structural Alterations or Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof, ceilings, floors or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life safety systems, do not trigger the requirement for additional modifications and/or improvements to the Premises resulting from Applicable Requirements, such as compliance with Title 24, and the cumulative cost thereof during this Lease as extended does not exceed \$2000. Notwithstanding the foregoing, Lessee shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Lessor. Lessor may, as a precondition to granting such approval, require Lessee to utilize a contractor chosen and/or approved by Lessor. Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall be performed in a workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with asbuilt plans and specifications. For work which costs an amount in excess of one month's Base Rent, Lessor may condition its consent upon Lessee providing a lien and completion bond in an amount equal to 150% of the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor.

(c) **Liens; Bonds.** Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use on the Premises, which claims are or may be secured by any mechanic's or materialmen's lien against the Premises or any interest therein. Lessee shall give Lessor not less than 10 days notice prior to the commencement of any work in, on or about the Premises, and Lessor shall have the right to post notices of non-responsibility. If Lessee shall contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend and protect itself, Lessor and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof. If Lessor shall require, Lessee shall furnish a surety bond in an amount equal to 150% of the amount of such contested lien, claim or demand, indemnifying Lessor against liability for the same. If Lessor elects to participate in any such action, Lessee shall pay Lessor's attorneys' fees and costs.

7.4 Ownership; Removal; Surrender; and Restoration.

(a) **Ownership.** Subject to Lessor's right to require removal or elect ownership as hereinafter provided, all Alterations and Utility Installations made by Lessee shall be the property of Lessee, but considered a part of the Premises. Lessor may, at any time, elect in writing to be the owner of all or any specified part of the Lessee Owned Alterations and Utility Installations. Unless otherwise instructed per paragraph 7.4(b) hereof, all Lessee Owned Alterations and Utility Installations shall, at the expiration or termination of this Lease, become the property of Lessor and be surrendered by Lessee with the Premises.

(b) **Removal.** By delivery to Lessee of written notice from Lessor not earlier than 90 and not later than 30 days prior to the end of the term of this Lease, Lessor may require that any or all Lessee Owned Alterations or Utility Installations be removed by the expiration or termination of this Lease. Lessor may require the removal at any time of all or any part of any Lessee Owned Alterations or Utility Installations made without the required consent.

(c) **Surrender; Restoration.** Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the improvements, parts and surfaces thereof clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Notwithstanding the foregoing, if this Lease is for 12 months or less, then Lessee shall surrender the Premises in the same condition as delivered to Lessee on the Start Date with NO allowance for ordinary wear and tear. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Lessee owned Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Lessee shall also remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Lessee, or any third party (except Hazardous Substances which were deposited via underground migration from areas outside of the Premises) to the level specified in Applicable Requirements. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. Any personal property of Lessee not removed on or before the Expiration Date or any earlier termination date shall be deemed to have been abandoned by Lessee and may be disposed of or retained by Lessor as Lessor may desire. The failure by Lessee to timely vacate the Premises pursuant to this Paragraph 7.4(c) without the express written consent of Lessor shall constitute a holdover under the provisions of Paragraph 26 below.

8. Insurance; Indemnity.

8.1 Insurance Premiums. The cost of the premiums for the insurance policies maintained by Lessor pursuant to paragraph 8 are included as Operating Expenses (see paragraph 4.2 (c)(iv)). Said costs shall include increases in the premiums resulting from additional coverage related to requirements of the holder of a mortgage or deed of trust covering the Premises, Building and/or Project, increased valuation of the Premises, Building and/or Project, and/or a general premium rate increase. Said costs shall not, however, include any premium increases resulting from the nature of the occupancy of any other tenant of the Building. If the Project was not insured for the entirety of the Base Year, then the base premium shall be the lowest annual premium reasonably obtainable for the required insurance as of the Start Date, assuming the most nominal use possible of the Building and/or Project. In no event, however, shall Lessee be responsible for any portion of the premium cost attributable to liability insurance coverage in excess of \$2,000,000 procured under Paragraph 8.2(b).

8.2 Liability Insurance.

(a) **Carried by Lessee.** Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$1,000,000 per occurrence with an annual aggregate of not less than \$2,000,000. Lessee shall add Lessor as an additional insured by means of an endorsement at least as broad as the Insurance Service Organization's "Additional Insured-Managers or Lessors of Premises" Endorsement and coverage shall also be extended to include damage caused by heat, smoke or fumes from a hostile fire. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. Lessee shall provide an endorsement on its liability policy(ies) which provides that its insurance shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.


INITIALS


INITIALS

(b) **Carried by Lessor.** Lessor shall maintain liability insurance as described in Paragraph 8.2(a), in addition to, and not in lieu of, the insurance required to be maintained by Lessee. Lessee shall not be named as an additional insured therein.

8.3 Property Insurance - Building, Improvements and Rental Value.

(a) **Building and Improvements.** Lessor shall obtain and keep in force a policy or policies of insurance in the name of Lessor, with loss payable to Lessor, any ground-lessor, and to any Lender insuring loss or damage to the Building and/or Project. The amount of such insurance shall be equal to the full insurable replacement cost of the Building and/or Project, as the same shall exist from time to time, or the amount required by any Lender, but in no event more than the commercially reasonable and available insurable value thereof. Lessee Owned Alterations and Utility Installations, Trade Fixtures, and Lessee's personal property shall be insured by Lessee not by Lessor. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender), including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, the deductible amount shall not exceed \$5,000 per occurrence.

(b) **Rental Value.** Lessor shall also obtain and keep in force a policy or policies in the name of Lessor with loss payable to Lessor and any Lender, insuring the loss of the full Rent for one year with an extended period of indemnity for an additional 180 days ("**Rental Value Insurance**"). Said insurance shall contain an agreed valuation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected Rent otherwise payable by Lessee, for the next 12 month period.

(c) **Adjacent Premises.** Lessee shall pay for any increase in the premiums for the property insurance of the Building and for the Common Areas or other buildings in the Project if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

(d) **Lessee's Improvements.** Since Lessor is the Insuring Party, Lessor shall not be required to insure Lessee Owned Alterations and Utility Installations unless the item in question has become the property of Lessor under the terms of this Lease.

8.4 Lessee's Property; Business Interruption Insurance; Worker's Compensation Insurance.

(a) **Property Damage.** Lessee shall obtain and maintain insurance coverage on all of Lessee's personal property, Trade Fixtures, and Lessee Owned Alterations and Utility Installations. Such insurance shall be full replacement cost coverage with a deductible of not to exceed \$1,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property, Trade Fixtures and Lessee Owned Alterations and Utility Installations.

(b) **Worker's Compensation Insurance.** Lessee shall obtain and maintain Worker's Compensation Insurance in such amount as may be required by Applicable Requirements. Such policy shall include a 'Waiver of Subrogation' endorsement. Lessee shall provide Lessor with a copy of such endorsement along with the certificate of insurance or copy of the policy required by paragraph 8.5.

(c) **Business Interruption.** Lessee shall obtain and maintain loss of income and extra expense insurance in amounts as will reimburse Lessee for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent lessees in the business of Lessee or attributable to prevention of access to the Premises as a result of such perils.

(d) **No Representation of Adequate Coverage.** Lessor makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover Lessee's property, business operations or obligations under this Lease.

8.5 Insurance Policies. Insurance required herein shall be by companies maintaining during the policy term a "General Policyholders Rating" of at least A-, VII, as set forth in the most current issue of "Best's Insurance Guide", or such other rating as may be required by a Lender. Lessee shall not do or permit to be done anything which invalidates the required insurance policies. Lessee shall, prior to the Start Date, deliver to Lessor certified copies of policies of such insurance or certificates with copies of the required endorsements evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after 10 days prior written notice to Lessor. Lessee shall, at least 30 days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may order such insurance and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure and maintain the same.

8.6 Waiver of Subrogation. Without affecting any other rights or remedies, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the insurance is not invalidated thereby.

8.7 Indemnity. Except for Lessor's gross negligence or willful misconduct, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground lessor, partners and Lenders, from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, the use and/or occupancy of the Premises by Lessee. If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be defended or indemnified.

8.8 Exemption of Lessor and its Agents from Liability. Notwithstanding the negligence or breach of this Lease by Lessor or its agents, neither Lessor nor its agents shall be liable under any circumstances for: (i) injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, indoor air quality, the presence of mold or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the Building, or from other sources or places, (ii) any damages arising from any act or neglect of any other tenant of Lessor or from the failure of Lessor or its agents to enforce the provisions of any other lease in the Project, or (iii) injury to Lessee's business or for any loss of income or profit therefrom. Instead, it is intended that Lessee's sole recourse in the event of such damages or injury be to file a claim on the insurance policy(ies) that Lessee is required to maintain pursuant to the provisions of paragraph 8.

8.9 Failure to Provide Insurance. Lessee acknowledges that any failure on its part to obtain or maintain the insurance required herein will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, for any month or portion thereof that Lessee does not maintain the required insurance and/or does not provide Lessor with the required binders or certificates evidencing the existence of the required insurance, the Base Rent shall be automatically increased, without any


INITIALS


INITIALS

requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater. The parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to maintain the required insurance. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to maintain such insurance, prevent the exercise of any of the other rights and remedies granted hereunder, nor relieve Lessee of its obligation to maintain the insurance specified in this Lease.

9. **Damage or Destruction.**

9.1 **Definitions.**

(a) "**Premises Partial Damage**" shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, which can reasonably be repaired in 3 months or less from the date of the damage or destruction, and the cost thereof does not exceed a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(b) "**Premises Total Destruction**" shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in 3 months or less from the date of the damage or destruction and/or the cost thereof exceeds a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(c) "**Insured Loss**" shall mean damage or destruction to improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraph 8.3(a), irrespective of any deductible amounts or coverage limits involved.

(d) "**Replacement Cost**" shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Applicable Requirements, and without deduction for depreciation.

(e) "**Hazardous Substance Condition**" shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance, in, on, or under the Premises which requires restoration.

9.2 **Partial Damage - Insured Loss.** If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect; provided, however, that Lessee shall, at Lessor's election, make the repair of any damage or destruction the total cost to repair of which is \$5,000 or less, and, in such event, Lessor shall make any applicable insurance proceeds available to Lessee on a reasonable basis for that purpose. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, the Insuring Party shall promptly contribute the shortage in proceeds as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within 10 days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said 10 day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within 10 days thereafter to: (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or (ii) have this Lease terminate 30 days thereafter. Lessee shall not be entitled to reimbursement of any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

9.3 **Partial Damage - Uninsured Loss.** If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense), Lessor may either: (i) repair such damage as soon as reasonably possible at Lessor's expense (subject to reimbursement pursuant to Paragraph 4.2), in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within 30 days after receipt by Lessor of knowledge of the occurrence of such damage. Such termination shall be effective 60 days following the date of such notice. In the event Lessor elects to terminate this Lease, Lessee shall have the right within 10 days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

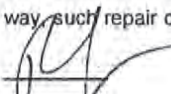
9.4 **Total Destruction.** Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate 60 days following such Destruction. If the damage or destruction was caused by the gross negligence or willful misconduct of Lessee, Lessor shall have the right to recover Lessor's damages from Lessee, except as provided in Paragraph 8.6.

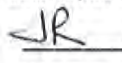
9.5 **Damage Near End of Term.** If at any time during the last 6 months of this Lease there is damage for which the cost to repair exceeds one month's Base Rent, whether or not an Insured Loss, Lessor may terminate this Lease effective 60 days following the date of occurrence of such damage by giving a written termination notice to Lessee within 30 days after the date of occurrence of such damage. Notwithstanding the foregoing, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by, (a) exercising such option and (b) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is 10 days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires. If Lessee duly exercises such option during such period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's commercially reasonable expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Lessee's option shall be extinguished.

9.6 **Abatement of Rent; Lessee's Remedies.**

(a) **Abatement.** In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition for which Lessee is not responsible under this Lease, the Rent payable by Lessee for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired, but not to exceed the proceeds received from the Rental Value insurance. All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein.

(b) **Remedies.** If Lessor is obligated to repair or restore the Premises and does not commence, in a substantial and meaningful way, such repair or restoration within 90 days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair or


INITIALS


INITIALS

restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice, of Lessee's election to terminate this Lease on a date not less than 60 days following the giving of such notice. If Lessee gives such notice and such repair or restoration is not commenced within 30 days thereafter, this Lease shall terminate as of the date specified in said notice. If the repair or restoration is commenced within such 30 days, this Lease shall continue in full force and effect. "Commence" shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.

9.7 **Termination; Advance Payments.** Upon termination of this Lease pursuant to Paragraph 6.2(g) or Paragraph 9, an equitable adjustment shall be made concerning advance Base Rent and any other advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's Security Deposit as has not been, or is not then required to be, used by Lessor.

10. **Real Property Taxes.**

10.1 **Definitions.** As used herein, the term "Real Property Taxes" shall include any form of assessment; real estate, general, special, ordinary or extraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Project, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Project address. "Real Property Taxes" shall also include any tax, fee, levy, assessment or charge, or any increase therein: (i) imposed by reason of events occurring during the term of this Lease, including but not limited to, a change in the ownership of the Project, (ii) a change in the improvements thereon, and/or (iii) levied or assessed on machinery or equipment provided by Lessor to Lessee pursuant to this Lease.

10.2 **Payment of Taxes.** Except as otherwise provided in Paragraph 10.3, Lessor shall pay the Real Property Taxes applicable to the Project, and said payments shall be included in the calculation of Operating Expenses in accordance with the provisions of Paragraph 4.2.

10.3 **Additional Improvements.** Operating Expenses shall not include Real Property Taxes specified in the tax assessor's records and work sheets as being caused by additional improvements placed upon the Project by other lessees or by Lessor for the exclusive enjoyment of such other lessees. Notwithstanding Paragraph 10.2 hereof, Lessee shall, however, pay to Lessor at the time Operating Expenses are payable under Paragraph 4.2, the entirety of any increase in Real Property Taxes if assessed solely by reason of Alterations, Trade Fixtures or Utility Installations placed upon the Premises by Lessee or at Lessee's request or by reason of any alterations or improvements to the Premises made by Lessor subsequent to the execution of this Lease by the Parties.

10.4 **Joint Assessment.** If the Building is not separately assessed, Real Property Taxes allocated to the Building shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available. Lessor's reasonable determination thereof, in good faith, shall be conclusive.

10.5 **Personal Property Taxes.** Lessee shall pay prior to delinquency all taxes assessed against and levied upon Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee contained in the Premises. When possible, Lessee shall cause its Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor. If any of Lessee's said property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee's property within 10 days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

11. **Utilities and Services.**

11.1 **Services Provided by Lessor.** Lessor shall provide heating, ventilation, air conditioning, reasonable amounts of electricity for normal lighting and office machines, water for reasonable and normal drinking and lavatory use in connection with an office, and replacement light bulbs and/or fluorescent tubes and ballasts for standard overhead fixtures. Lessor shall also provide janitorial services to the Premises and Common Areas 3 times per week, excluding Building Holidays, or pursuant to the attached janitorial schedule, if any. Lessor shall not, however, be required to provide janitorial services to kitchens or storage areas included within the Premises.

11.2 **Services Exclusive to Lessee.** Notwithstanding the provisions of paragraph 11.1, Lessee shall pay for all water, gas, light, power, telephone and other utilities and services specially or exclusively supplied and/or metered exclusively to the Premises or to Lessee, together with any taxes thereon. If a service is deleted by Paragraph 1.13 and such service is not separately metered to the Premises, Lessee shall pay at Lessor's option, either Lessee's Share or a reasonable proportion to be determined by Lessor of all charges for such jointly metered service.

11.3 **Hours of Service.** Said services and utilities shall be provided during times set forth in Paragraph 1.12. Utilities and services required at other times shall be subject to advance request and reimbursement by Lessee to Lessor of the cost thereof.

11.4 **Excess Usage by Lessee.** Lessee shall not make connection to the utilities except by or through existing outlets and shall not install or use machinery or equipment in or about the Premises that uses excess water, lighting or power, or suffer or permit any act that causes extra burden upon the utilities or services, including but not limited to security and trash services, over standard office usage for the Project. Lessor shall require Lessee to reimburse Lessor for any excess expenses or costs that may arise out of a breach of this subparagraph by Lessee. Lessor may, in its sole discretion, install at Lessee's expense supplemental equipment and/or separate metering applicable to Lessee's excess usage or loading.

11.5 **Interruptions.** There shall be no abatement of rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor's reasonable control or in cooperation with governmental request or directions.

12. **Assignment and Subletting.**

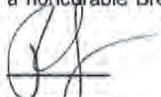
12.1 **Lessor's Consent Required.**

(a) Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or encumber (collectively, "assign or assignment") or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent.

(b) Unless Lessee is a corporation and its stock is publicly traded on a national stock exchange, a change in the control of Lessee shall constitute an assignment requiring consent. The transfer, on a cumulative basis, of 25% or more of the voting control of Lessee shall constitute a change in control for this purpose.

(c) The involvement of Lessee or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, transfer, leveraged buyout or otherwise), whether or not a formal assignment or hypothecation of this Lease or Lessee's assets occurs, which results or will result in a reduction of the Net Worth of Lessee by an amount greater than 25% of such Net Worth as it was represented at the time of the execution of this Lease or at the time of the most recent assignment to which Lessor has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, whichever was or is greater, shall be considered an assignment of this Lease to which Lessor may withhold its consent. "Net Worth of Lessee" shall mean the net worth of Lessee (excluding any guarantors) established under generally accepted accounting principles.

(d) An assignment or subletting without consent shall, at Lessor's option, be a Default curable after notice per Paragraph 13.1(d), or a noncurable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unapproved assignment or subletting as a


INITIALS


INITIALS

noncurable Breach. Lessor may either: (i) terminate this Lease, or (ii) upon 30 days written notice, increase the monthly Base Rent to 110% of the Base Rent then in effect. Further, in the event of such Breach and rental adjustment, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to 110% of the price previously in effect, and (ii) all fixed and non-fixed rental adjustments scheduled during the remainder of the Lease term shall be increased to 110% of the scheduled adjusted rent.

(e) Lessee's remedy for any breach of Paragraph 12.1 by Lessor shall be limited to compensatory damages and/or injunctive relief.

(f) Lessor may reasonably withhold consent to a proposed assignment or subletting if Lessee is in Default at the time consent is requested.

(g) Notwithstanding the foregoing, allowing a de minimis portion of the Premises, i.e. 20 square feet or less, to be used by a third party vendor in connection with the installation of a vending machine or payphone shall not constitute a subletting.

12.2 Terms and Conditions Applicable to Assignment and Subletting.

(a) Regardless of Lessor's consent, no assignment or subletting shall: (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease, (ii) release Lessee of any obligations hereunder, or (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee.

(b) Lessor may accept Rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for Lessee's Default or Breach.

(c) Lessor's consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting.

(d) In the event of any Default or Breach by Lessee, Lessor may proceed directly against Lessee, any Guarantors or anyone else responsible for the performance of Lessee's obligations under this Lease, including any assignee or sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefore to Lessor, or any security held by Lessor.

(e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of \$500 as consideration for Lessor's considering and processing said request. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested. (See also Paragraph 36)

(f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment, entering into such sublease, or entering into possession of the Premises or any portion thereof, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing.

(g) Lessor's consent to any assignment or subletting shall not transfer to the assignee or sublessee any Option granted to the original Lessee by this Lease unless such transfer is specifically consented to by Lessor in writing. (See Paragraph 39.2)

12.3 Additional Terms and Conditions Applicable to Subletting.

The following terms and conditions shall apply to any subletting by Lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein:

(a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all Rent payable on any sublease, and Lessor may collect such Rent and apply same toward Lessee's obligations under this Lease; provided, however, that until a Breach shall occur in the performance of Lessee's obligations, Lessee may collect said Rent. In the event that the amount collected by Lessor exceeds Lessee's then outstanding obligations any such excess shall be refunded to Lessee. Lessor shall not, by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of Rent, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor all Rent due and to become due under the sublease. Sublessee shall rely upon any such notice from Lessor and shall pay all Rents to Lessor without any obligation or right to inquire as to whether such Breach exists, notwithstanding any claim from Lessee to the contrary.

(b) In the event of a Breach by Lessee, Lessor may, at its option, require sublessee to atorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any prior Defaults or Breaches of such sublessor.

(c) Any matter requiring the consent of the sublessor under a sublease shall also require the consent of Lessor.

(d) No sublessee shall further assign or sublet all or any part of the Premises without Lessor's prior written consent.

(e) Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee.

13. Default; Breach; Remedies.

13.1 **Default; Breach.** A "Default" is defined as a failure by the Lessee to comply with or perform any of the terms, covenants, conditions or Rules and Regulations under this Lease. A "Breach" is defined as the occurrence of one or more of the following Defaults, and the failure of Lessee to cure such Default within any applicable grace period:

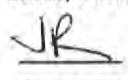
(a) The abandonment of the Premises; or the vacating of the Premises without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Paragraph 8.3 is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism.

(b) The failure of Lessee to make any payment of Rent or any Security Deposit required to be made by Lessee hereunder, whether to Lessor or to a third party, when due, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of 3 business days following written notice to Lessee. THE ACCEPTANCE BY LESSOR OF A PARTIAL PAYMENT OF RENT OR SECURITY DEPOSIT SHALL NOT CONSTITUTE A WAIVER OF ANY OF LESSOR'S RIGHTS, INCLUDING LESSOR'S RIGHT TO RECOVER POSSESSION OF THE PREMISES.

(c) The failure of Lessee to allow Lessor and/or its agents access to the Premises or the commission of waste, act or acts constituting public or private nuisance, and/or an illegal activity on the Premises by Lessee, where such actions continue for a period of 3 business days following written notice to Lessee. In the event that Lessee commits waste, a nuisance or an illegal activity a second time then, the Lessor may elect to treat such conduct as a non-curable Breach rather than a Default.

(d) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate or financial statements, (v) a requested subordination, (vi) evidence concerning any guaranty and/or Guarantor, (vii) any document requested under Paragraph 41, (viii) material data safety sheets (MSDS), or (ix) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where


INITIALS


INITIALS

any such failure continues for a period of 10 days following written notice to Lessee.

(e) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 2.9 hereof, other than those described in subparagraphs 13.1(a), (b) or (c), above, where such Default continues for a period of 30 days after written notice; provided, however, that if the nature of Lessee's Default is such that more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

(f) The occurrence of any of the following events: (i) the making of any general arrangement or assignment for the benefit of creditors; (ii) becoming a "debtor" as defined in 11 U.S.C. § 101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within 30 days; provided, however, in the event that any provision of this subparagraph is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

(g) The discovery that any financial statement of Lessee or of any Guarantor given to Lessor was materially false.

(h) If the performance of Lessee's obligations under this Lease is guaranteed: (i) the death of a Guarantor, (ii) the termination of a Guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty, (iii) a Guarantor's becoming insolvent or the subject of a bankruptcy filing, (iv) a Guarantor's refusal to honor the guaranty, or (v) a Guarantor's breach of its guaranty obligation on an anticipatory basis, and Lessee's failure, within 60 days following written notice of any such event, to provide written alternative assurance or security, which, when coupled with the then existing resources of Lessee, equals or exceeds the combined financial resources of Lessee and the Guarantors that existed at the time of execution of this Lease.

13.2 Remedies. If Lessee fails to perform any of its affirmative duties or obligations, within 10 days after written notice (or in case of an emergency, without notice), Lessor may, at its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. Lessee shall pay to Lessor an amount equal to 115% of the costs and expenses incurred by Lessor in such performance upon receipt of an invoice therefor. In the event of a Breach, Lessor may, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Lessee proves could have been reasonably avoided; (iii) 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 such rental loss that the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent. Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover any damages to which Lessor is otherwise entitled. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under Paragraph 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 13.1. In such case, the applicable grace period required by Paragraph 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

(b) Continue the Lease and Lessee's right to possession and recover the Rent as it becomes due, in which event Lessee may sublet or assign, subject only to reasonable limitations. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Lessor's interests, shall not constitute a termination of the Lessee's right to possession.

(c) Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

13.3 Inducement Recapture. Any agreement for free or abated rent or other charges, the cost of tenant improvements for Lessee paid for or performed by Lessor, or for the giving or paying by Lessor to or for Lessee of any cash or other bonus, inducement or consideration for Lessee's entering into this Lease, all of which concessions are hereinafter referred to as "**Inducement Provisions**", shall be deemed conditioned upon Lessee's full and faithful performance of all of the terms, covenants and conditions of this Lease. Upon Breach of this Lease by Lessee, any such Inducement Provision shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Lessor under such an Inducement Provision shall be immediately due and payable by Lessee to Lessor, notwithstanding any subsequent cure of said Breach by Lessee. The acceptance by Lessor of rent or the cure of the Breach which initiated the operation of this paragraph shall not be deemed a waiver by Lessor of the provisions of this paragraph unless specifically so stated in writing by Lessor at the time of such acceptance.

13.4 Late Charges. Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by any Lender. Accordingly, if any Rent shall not be received by Lessor within 5 days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall immediately pay to Lessor a one-time late charge equal to 10% of each such overdue amount or \$100, whichever is greater. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default or Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for 3 consecutive installments of Base Rent, then notwithstanding any provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance.

13.5 Interest. Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due shall bear interest from the 31st day after it was due. The interest ("**Interest**") charged shall be computed at the rate of 10% per annum but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Paragraph 13.4.

13.6 Breach by Lessor.


INITIALS

PAGE 12 OF 18


INITIALS

(a) **Notice of Breach.** Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph, a reasonable time shall in no event be less than 30 days after receipt by Lessor, and any Lender whose name and address shall have been furnished Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor's obligation is such that more than 30 days are reasonably required for its performance, then Lessor shall not be in breach if performance is commenced within such 30 day period and thereafter diligently pursued to completion.

(b) **Performance by Lessee on Behalf of Lessor.** In the event that neither Lessor nor Lender cures said breach within 30 days after receipt of said notice, or if having commenced said cure they do not diligently pursue it to completion, then Lessee may elect to cure said breach at Lessee's expense and offset from Rent the actual and reasonable cost to perform such cure, provided however, that such offset shall not exceed an amount equal to the greater of one month's Base Rent or the Security Deposit, reserving Lessee's right to seek reimbursement from Lessor for any such expense in excess of such offset. Lessee shall document the cost of said cure and supply said documentation to Lessor.

14. **Condemnation.** If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively "Condemnation"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the rentable floor area of the Premises, or more than 25% of Lessee's Reserved Parking Spaces, if any, are taken by Condemnation, Lessee may, at Lessee's option, to be exercised in writing within 10 days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within 10 days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages; provided, however, that Lessee shall be entitled to any compensation paid by the condemnor for Lessee's relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Paragraph. All Alterations and Utility Installations made to the Premises by Lessee, for purposes of Condemnation only, shall be considered the property of the Lessee and Lessee shall be entitled to any and all compensation which is payable therefor. In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises caused by such Condemnation.

15. **Brokerage Fees.**

15.1 **Additional Commission.** In addition to the payments owed pursuant to Paragraph 1.10 above, Lessor agrees that: (a) if Lessee exercises any Option, (b) if Lessee or anyone affiliated with Lessee acquires from Lessor any rights to the Premises or other premises owned by Lessor and located within the Project, (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of this Lease, or (d) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then, Lessor shall pay Brokers a fee in accordance with the fee schedule of the Brokers in effect at the time the Lease was executed.

15.2 **Assumption of Obligations.** Any buyer or transferee of Lessor's interest in this Lease shall be deemed to have assumed Lessor's obligation hereunder. Brokers shall be third party beneficiaries of the provisions of Paragraphs 1.10, 15, 22 and 31. If Lessor fails to pay to Brokers any amounts due as and for brokerage fees pertaining to this Lease when due, then such amounts shall accrue Interest. In addition, if Lessor fails to pay any amounts to Lessee's Broker when due, Lessee's Broker may send written notice to Lessor and Lessee of such failure and if Lessor fails to pay such amounts within 10 days after said notice, Lessee shall pay said monies to its Broker and offset such amounts against Rent. In addition, Lessee's Broker shall be deemed to be a third party beneficiary of any commission agreement entered into by and/or between Lessor and Lessor's Broker for the limited purpose of collecting any brokerage fee owed.

15.3 **Representations and Indemnities of Broker Relationships.** Lessee and Lessor each represent and warrant to the other that it has had no dealings with any person, firm, broker or finder (other than the Brokers, if any) in connection with this Lease, and that no one other than said named Brokers is entitled to any commission or finder's fee in connection herewith. Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, attorneys' fees reasonably incurred with respect thereto.

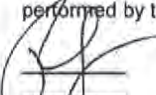
16. **Estoppel Certificates.**

(a) Each Party (as "Responding Party") shall within 10 days after written notice from the other Party (the "Requesting Party") execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the then most current "Estoppel Certificate" form published by the AIRCommercial Real Estate Association, plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

(b) If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such 10 day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's performance, and (iii) if Lessor is the Requesting Party, not more than one month's rent has been paid in advance. Prospective purchasers and encumbrancers may rely upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate. In addition, Lessee acknowledges that any failure on its part to provide such an Estoppel Certificate will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, should the Lessee fail to execute and/or deliver a requested Estoppel Certificate in a timely fashion the monthly Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater for remainder of the Lease. The Parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to provide the Estoppel Certificate. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to provide the Estoppel Certificate nor prevent the exercise of any of the other rights and remedies granted hereunder.

(c) If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee and all Guarantors shall within 10 days after written notice from Lessor deliver to any potential lender or purchaser designated by Lessor such financial statements as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past 3 years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

17. **Definition of Lessor.** The term "Lessor" as used herein shall mean the owner or owners at the time in question of the fee title to the Premises, or, if this is a sublease, of the Lessee's interest in the prior lease. In the event of a transfer of Lessor's title or interest in the Premises or this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Lessor. Upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined.


INITIALS


INITIALS

18. **Severability.** The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

19. **Days.** Unless otherwise specifically indicated to the contrary, the word "days" as used in this Lease shall mean and refer to calendar days.

20. **Limitation on Liability.** The obligations of Lessor under this Lease shall not constitute personal obligations of Lessor or its partners, members, directors, officers or shareholders, and Lessee shall look to the Project, and to no other assets of Lessor, for the satisfaction of any liability of Lessor with respect to this Lease, and shall not seek recourse against Lessor's partners, members, directors, officers or shareholders, or any of their personal assets for such satisfaction.

21. **Time of Essence.** Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

22. **No Prior or Other Agreements; Broker Disclaimer.** This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. Lessor and Lessee each represents and warrants to the Brokers that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Lease and as to the use, nature, quality and character of the Premises. Brokers have no responsibility with respect thereto or with respect to any default or breach hereof by either Party.

23. **Notices.**

23.1 **Notice Requirements.** All notices required or permitted by this Lease or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, or by email, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 23. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notices. Either Party may by written notice to the other specify a different address for notice, except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for notice. A copy of all notices to Lessor shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate in writing.

23.2 **Date of Notice.** Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 72 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices delivered by hand, or transmitted by facsimile transmission or by email shall be deemed delivered upon actual receipt. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

24. **Waivers.**

(a) No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent.

(b) The acceptance of Rent by Lessor shall not be a waiver of any Default or Breach by Lessee. Any payment by Lessee may be accepted by Lessor on account of moneys or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

(c) THE PARTIES AGREE THAT THE TERMS OF THIS LEASE SHALL GOVERN WITH REGARD TO ALL MATTERS RELATED THERETO AND HEREBY WAIVE THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE TO THE EXTENT THAT SUCH STATUTE IS INCONSISTENT WITH THIS LEASE.

25. **Disclosures Regarding The Nature of a Real Estate Agency Relationship.**

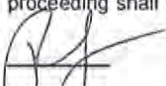
(a) When entering into a discussion with a real estate agent regarding a real estate transaction, a Lessor or Lessee should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction. Lessor and Lessee acknowledge being advised by the Brokers in this transaction, as follows:

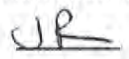
(i) **Lessor's Agent.** A Lessor's agent under a listing agreement with the Lessor acts as the agent for the Lessor only. A Lessor's agent or subagent has the following affirmative obligations: To the Lessor: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessor. To the Lessee and the Lessor: a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(ii) **Lessee's Agent.** An agent can agree to act as agent for the Lessee only. In these situations, the agent is not the Lessor's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Lessor. An agent acting only for a Lessee has the following affirmative obligations. To the Lessee: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessee. To the Lessee and the Lessor: a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(iii) **Agent Representing Both Lessor and Lessee.** A real estate agent, either acting directly or through one or more associate licenses, can legally be the agent of both the Lessor and the Lessee in a transaction, but only with the knowledge and consent of both the Lessor and the Lessee. In a dual agency situation, the agent has the following affirmative obligations to both the Lessor and the Lessee: a. A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Lessor or the Lessee. b. Other duties to the Lessor and the Lessee as stated above in subparagraphs (i) or (ii). In representing both Lessor and Lessee, the agent may not without the express permission of the respective Party, disclose to the other Party that the Lessor will accept rent in an amount less than that indicated in the listing or that the Lessee is willing to pay a higher rent than that offered. The above duties of the agent in a real estate transaction do not relieve a Lessor or Lessee from the responsibility to protect their own interests. Lessor and Lessee should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

(b) Brokers have no responsibility with respect to any default or breach hereof by either Party. The Parties agree that no lawsuit or other legal proceeding involving any breach of duty, error or omission relating to this Lease may be brought against Broker more than one year after the Start Date and that the liability (including court costs and attorneys' fees), of any Broker with respect to any such lawsuit and/or legal proceeding shall not exceed the fee received by such Broker pursuant to this Lease; provided, however, that the foregoing limitation on each Broker's


INITIALS


INITIALS

liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

(c) Lessor and Lessee agree to identify to Brokers as "Confidential" any communication or information given Brokers that is considered by such Party to be confidential.

26. **No Right To Holdover.** Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. In the event that Lessee holds over, then the Base Rent shall be increased to 150% of the Base Rent applicable immediately preceding the expiration or termination. Holdover Base Rent shall be calculated on a monthly bases. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

27. **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

28. **Covenants and Conditions; Construction of Agreement.** All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions. In construing this Lease, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa. This Lease shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

29. **Binding Effect; Choice of Law.** This Lease shall be binding upon the Parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located.

30. **Subordination; Attornment; Non-Disturbance.**

30.1 **Subordination.** This Lease and any Option granted hereby shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or security device (collectively, "Security Device"), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof. Lessee agrees that the holders of any such Security Devices (in this Lease together referred to as "Lender") shall have no liability or obligation to perform any of the obligations of Lessor under this Lease. Any Lender may elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device by giving written notice thereof to Lessee, whereupon this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

30.2 **Attornment.** In the event that Lessor transfers title to the Premises, or the Premises are acquired by another upon the foreclosure or termination of a Security Device to which this Lease is subordinated (i) Lessee shall, subject to the non-disturbance provisions of Paragraph 30.3, attorn to such new owner, and upon request, enter into a new lease, containing all of the terms and provisions of this Lease, with such new owner for the remainder of the term hereof, or, at the election of the new owner, this Lease will automatically become a new lease between Lessee and such new owner, and (ii) Lessor shall thereafter be relieved of any further obligations hereunder and such new owner shall assume all of Lessor's obligations, except that such new owner shall not: (a) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership; (b) be subject to any offsets or defenses which Lessee might have against any prior lessor, (c) be bound by prepayment of more than one month's rent, or (d) be liable for the return of any security deposit paid to any prior lessor which was not paid or credited to such new owner.

30.3 **Non-Disturbance.** With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance agreement (a "Non-Disturbance Agreement") from the Lender which Non-Disturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises. Further, within 60 days after the execution of this Lease, Lessor shall, if requested by Lessee, use its commercially reasonable efforts to obtain a Non-Disturbance Agreement from the holder of any pre-existing Security Device which is secured by the Premises. In the event that Lessor is unable to provide the Non-Disturbance Agreement within said 60 days, then Lessee may, at Lessee's option, directly contact Lender and attempt to negotiate for the execution and delivery of a Non-Disturbance Agreement.

30.4 **Self-Executing.** The agreements contained in this Paragraph 30 shall be effective without the execution of any further documents; provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or Non-Disturbance Agreement provided for herein.

31. **Attorneys' Fees.** If any Party or Broker brings an action or proceeding involving the Premises whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "Prevailing Party" shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. In addition, Lessor shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting Breach (\$200 is a reasonable minimum per occurrence for such services and consultation).

32. **Lessor's Access; Showing Premises; Repairs.** Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable prior notice for the purpose of showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary or desirable and the erecting, using and maintaining of utilities, services, pipes and conduits through the Premises and/or other premises as long as there is no material adverse effect on Lessee's use of the Premises. All such activities shall be without abatement of rent or liability to Lessee.

33. **Auctions.** Lessee shall not conduct, nor permit to be conducted, any auction upon the Premises without Lessor's prior written consent. Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to permit an auction.

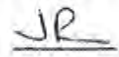
34. **Signs.** Lessor may place on the Premises ordinary "For Sale" signs at any time and ordinary "For Lease" signs during the last 6 months of the term hereof. Lessor may not place any sign on the exterior of the Building that covers any of the windows of the Premises. Except for ordinary "For Sublease" signs which may be placed only on the Premises, Lessee shall not place any sign upon the Project without Lessor's prior written consent. All signs must comply with all Applicable Requirements.

35. **Termination; Merger.** Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, that Lessor may elect to continue any one or all existing subtenancies. Lessor's failure within 10 days following any such event to elect to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

36. **Consents.** Except as otherwise provided herein, wherever in this Lease the consent of a Party is required to an act by or for the other Party,


INITIALS

PAGE 15 OF 18


INITIALS

such consent shall not be unreasonably withheld or delayed. Lessor's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent, including but not limited to consents to an assignment, a subletting or the presence or use of a Hazardous Substance, shall be paid by Lessee upon receipt of an invoice and supporting documentation therefor. Lessor's consent to any act, assignment or subletting shall not constitute an acknowledgment that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing by Lessor at the time of such consent. The failure to specify herein any particular condition to Lessor's consent shall not preclude the imposition by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given. In the event that either Party disagrees with any determination made by the other hereunder and reasonably requests the reasons for such determination, the determining party shall furnish its reasons in writing and in reasonable detail within 10 business days following such request.

37. Guarantor.

37.1 Execution. The Guarantors, if any, shall each execute a guaranty in the form most recently published by the AIR Commercial Real Estate Association.

37.2 Default. It shall constitute a Default of the Lessee if any Guarantor fails or refuses, upon request to provide: (a) evidence of the execution of the guaranty, including the authority of the party signing on Guarantor's behalf to obligate Guarantor, and in the case of a corporate Guarantor, a certified copy of a resolution of its board of directors authorizing the making of such guaranty, (b) current financial statements, (c) an Estoppel Certificate, or (d) written confirmation that the guaranty is still in effect.

38. Quiet Possession. Subject to payment by Lessee of the Rent and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession and quiet enjoyment of the Premises during the term hereof.

39. Options. If Lessee is granted any Option, as defined below, then the following provisions shall apply.

39.1 Definition. "Option" shall mean: (a) the right to extend or reduce the term of or renew this Lease or to extend or reduce the term of or renew any lease that Lessee has on other property of Lessor; (b) the right of first refusal or first offer to lease either the Premises or other property of Lessor; (c) the right to purchase, the right of first offer to purchase or the right of first refusal to purchase the Premises or other property of Lessor.

39.2 Options Personal To Original Lessee. Any Option granted to Lessee in this Lease is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and, if requested by Lessor, with Lessee certifying that Lessee has no intention of thereafter assigning or subletting.

39.3 Multiple Options. In the event that Lessee has any multiple Options to extend or renew this Lease, a later Option cannot be exercised unless the prior Options have been validly exercised.

39.4 Effect of Default on Options.

(a) Lessee shall have no right to exercise an Option: (i) during the period commencing with the giving of any notice of Default and continuing until said Default is cured, (ii) during the period of time any Rent is unpaid (without regard to whether notice thereof is given Lessee), (iii) during the time Lessee is in Breach of this Lease, or (iv) in the event that Lessee has been given 3 or more notices of separate Default, whether or not the Defaults are cured, during the 12 month period immediately preceding the exercise of the Option.

(b) The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of Paragraph 39.4(a).

(c) An Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and prior to the commencement of the extended term or completion of the purchase, (i) Lessee fails to pay Rent for a period of 30 days after such Rent becomes due (without any necessity of Lessor to give notice thereof), or (ii) if Lessee commits a Breach of this Lease.

40. Security Measures. Lessee hereby acknowledges that the Rent payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties. In the event, however, that Lessor should elect to provide security services, then the cost thereof shall be an Operating Expense.

41. Reservations.

(a) Lessor reserves the right: (i) to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, (ii) to cause the recordation of parcel maps and restrictions, (iii) to create and/or install new utility raceways, so long as such easements, rights, dedications, maps, restrictions, and utility raceways do not unreasonably interfere with the use of the Premises by Lessee. Lessor may also: change the name, address or title of the Building or Project upon at least 90 days prior written notice; provide and install, at Lessee's expense, Building standard graphics on the door of the Premises and such portions of the Common Areas as Lessor shall reasonably deem appropriate; grant to any lessee the exclusive right to conduct any business as long as such exclusive right does not conflict with any rights expressly given herein; and to place such signs, notices or displays as Lessor reasonably deems necessary or advisable upon the roof, exterior of the Building or the Project or on signs in the Common Areas. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate such rights. The obstruction of Lessee's view, air, or light by any structure erected in the vicinity of the Building, whether by Lessor or third parties, shall in no way affect this Lease or impose any liability upon Lessor.

(b) Lessor also reserves the right to move Lessee to other space of comparable size in the Building or Project. Lessor must provide at least 45 days prior written notice of such move, and the new space must contain improvements of comparable quality to those contained within the Premises. Lessor shall pay the reasonable out of pocket costs that Lessee incurs with regard to such relocation, including the expenses of moving and necessary stationary revision costs. In no event, however, shall Lessor be required to pay an amount in excess of two months Base Rent. Lessee may not be relocated more than once during the term of this Lease.

(c) Lessee shall not: (i) use a representation (photographic or otherwise) of the Building or Project or their name(s) in connection with Lessee's business; or (ii) suffer or permit anyone, except in emergency, to go upon the roof of the Building.

42. Performance Under Protest. If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay. A Party who does not initiate suit for the recovery of sums paid "under protest" within 6 months shall be deemed to have waived its right to protest such payment.

43. Authority; Multiple Parties; Execution

(a) If either Party hereto is a corporation, trust, limited liability company, partnership, or similar entity, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on its behalf. Each Party shall, within 30 days after request, deliver to the other Party satisfactory evidence of such authority.


INITIALS


INITIALS

(b) If this Lease is executed by more than one person or entity as "Lessee", each such person or entity shall be jointly and severally liable hereunder. It is agreed that any one of the named Lessees shall be empowered to execute any amendment to this Lease, or other document ancillary thereto and bind all of the named Lessees, and Lessor may rely on the same as if all of the named Lessees had executed such document.

(c) This Lease may be executed by the Parties in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

44. **Conflict.** Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

45. **Offer.** Preparation of this Lease by either party or their agent and submission of same to the other Party shall not be deemed an offer to lease to the other Party. This Lease is not intended to be binding until executed and delivered by all Parties hereto.

46. **Amendments.** This Lease may be modified only in writing, signed by the Parties in interest at the time of the modification. As long as they do not materially change Lessee's obligations hereunder, Lessee agrees to make such reasonable nonmonetary modifications to this Lease as may be reasonably required by a Lender in connection with the obtaining of normal financing or refinancing of the Premises.

47. **Waiver of Jury Trial.** THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING INVOLVING THE PROPERTY OR ARISING OUT OF THIS AGREEMENT.

48. **Arbitration of Disputes.** An Addendum requiring the Arbitration of all disputes between the Parties and/or Brokers arising out of this Lease

is is not attached to this Lease.

49. **Accessibility; Americans with Disabilities Act.**

(a) The Premises: have not undergone an inspection by a Certified Access Specialist (CASp). have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises met all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq. have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises did not meet all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq.

(b) Since compliance with the Americans with Disabilities Act (ADA) is dependent upon Lessee's specific use of the Premises, Lessor makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. In the event that Lessee's use of the Premises requires modifications or additions to the Premises in order to be in ADA compliance, Lessee agrees to make any such necessary modifications and/or additions at Lessee's expense.

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE AIR COMMERCIAL REAL ESTATE ASSOCIATION OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:

1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.
2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING AND SIZE OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE.


WARNING: IF THE PREMISES ARE LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THE LEASE MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PREMISES ARE LOCATED.

The parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

Executed at: _____ Executed at: _____
On: September 15, 2016 On: _____

By LESSOR:

De Long Business Center, LLC, a
California limited liability company

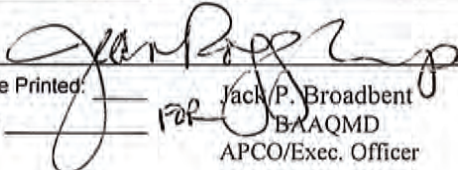
By: 
Name Printed: _____
Title: _____

By: _____
Name Printed: Rosanna M. Sansone
Title: _____
Address: 12 Pepper Avenue
Corte Madera, CA 94925


INITIALS

By LESSEE:

Bay Area Air Quality Management District

By: 
Name Printed: _____
Title: Jack P. Broadbent
BAAQMD
APCO/Exec. Officer

By: _____
Name Printed: _____
Title: _____
Address: _____


INITIALS

Telephone:(415) 328-5959
Facsimile:()
Email: delongbusinesscenter@gmail.com
Email:
Federal ID No.

Telephone:()
Facsimile:()
Email:
Email:
Federal ID No.

LESSOR'S BROKER:

Keegan & Coppin Company, Inc.

Attn: Theo Banks
Address: 101 Larkspur Landing Cir., Suite 112
Larkspur, CA 94939

Telephone:(415) 461-1010
Facsimile:(415) 925-2310
Email: tbanks@keegancoppin.com
Broker/Agent BRE License #: 01359605

LESSEE'S BROKER:

Attn:
Address:

Telephone:()
Facsimile:()
Email:
Broker/Agent BRE License #:

NOTICE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AIR Commercial Real Estate Association, 500 N Brand Blvd, Suite 900, Glendale, CA 91203. Telephone No. (213) 687-8777. Fax No.: (213) 687-8616.

©Copyright 1999-By AIR Commercial Real Estate Association.
All rights reserved.

No part of these works may be reproduced in any form without permission in writing.


INITIALS


INITIALS

**Addendum to Lease
by and between
De Long Business Center, LLC, a California limited liability company, hereafter "Lessor"
and
Bay Area Air Quality Management District, hereafter "Lessee"
Dated September 1, 2016**

50. Rent Schedule:

Rent shall be paid monthly, on the first day of each month, in accordance with the following schedule:

September 12, 2016 – October 31, 2016:	Prepaid (\$1,715.00)
November 1, 2016 – September 30, 2017:	\$1,050.00 per month
October 1, 2017 – September 30, 2018:	\$1,082.00 per month
October 1, 2018 – September 30, 2019:	\$1,114.00 per month
October 1, 2019 – September 30, 2020:	\$1,147.00 per month

51. Tenant Improvements:

Lessor shall not be obligated to perform any work to the Premises. Lessee accepts the Premises in its AS-IS condition.

Upon taking early possession, Lessee, at Lessee's sole expense, may install all telecom wiring in the Premises.

52. Signage:

Lessee, at Lessee's sole expense and using Lessor's vendor, shall be permitted building standard suite entry door signage. Lessor shall provide Lessee with the signage company contact information for consistency. Lessor shall place Lessee's name in the lobby directory. All signage shall first receive Lessor's approval, which shall not be unreasonably withheld, and all signage shall meet current governmental code requirements.

53. Option to Renew:

Lessee is given **one (1)** option to extend the term on all the provisions contained in this Lease, except for rent, for a **two (2) year** period (the "extended term") following expiration of the initial term by giving notice of exercise of the option ("option notice") to Lessor at least **three (3) months** and not earlier than **six (6) months** before the expiration of the initial term; provided that, if Lessee is in default as of the date of giving the option notice, the option notice shall be ineffective, or if Lessee is in default as of the date the extended term is to commence, the extended term shall not commence and this Lease shall expire at the end of the initial term.

a. Rent. The base rent for the extended term shall be as follows:

October 1, 2020 – September 30, 2021:	\$1,181.00 per month
October 1, 2021 – September 30, 2022:	\$1,217.00 per month

- b. No Further Extension. Lessee shall have no further option to extend the term of this Lease.

All other terms of the Lease remain unchanged and are incorporated herein by reference.

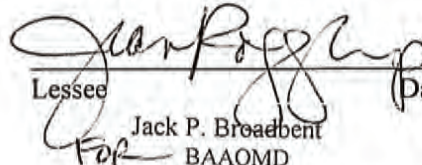
Agreed and Approved:



Lessor

9/15/14

Date



Lessee

9/9/14

Date

For Jack P. Broadbent
BAAQMD
APCO/Exec. Officer

LEASING DISCLOSURE AND CONFIRMATION REGARDING REAL ESTATE AGENCY RELATIONSHIP

When you enter into a discussion with a real estate agent regarding a real estate transaction, you should from the outset understand what type of agency relationship or representation you wish to have with the agent in the transaction. With each specific transaction, you should read the Agency Disclosure and consider how you are being represented.

LANDLORD'S AGENT

A Landlord's agent under a listing agreement with the Landlord acts as the agent for the Landlord. A Landlord's agent or a subagent of that agent has the following affirmative obligations:

- To the Landlord: A fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Landlord.
To Tenant and Landlord: (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
(b) A duty of honest and fair dealing and good faith.
(c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

An agent is not obligated to reveal to either party any confidential information obtained from the other party which does not involve the affirmative duties set forth above.

TENANT'S AGENT

A Tenant's agent can, with a Tenant's consent, agree to act as agent for the Tenant only. In these situations, the agent is not the Landlord's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Landlord. An agent acting only for a Tenant has the following affirmative obligations:

- To the Tenant: A fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Tenant.
To Tenant and Landlord: (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
(b) A duty of honest and fair dealing and good faith.
(c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

An agent is not obligated to reveal to either party any confidential information obtained from the other party which does not involve the affirmative duties set forth above.

AGENT REPRESENTING BOTH LANDLORD AND TENANT

A real estate agent, either acting directly or through one or more associate licensees, can legally be the agent of both the Landlord and the Tenant in a transaction, but only with the knowledge and consent of both the Landlord and the Tenant.

In a dual agency situation, the agent has the following affirmative obligations to both the Landlord and the Tenant:

- (a) A fiduciary duty of utmost care, integrity, honest and loyalty in the dealings with either Landlord or Tenant.
(b) Other duties to the Landlord and the Tenant as stated above in their respective sections.

In representing both Landlord and Tenant, the agent may not, without the express permission of the respective party, disclose to the other party that the Landlord will accept a rent less than the listed rent or that the Tenant will pay a rent greater than the rent offered.

The above duties of the agent in a real estate transaction do not relieve a Landlord or Tenant from the responsibility to protect their own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction. A real estate agent is a person qualified to advise someone about real estate. If legal or tax advice is desired, consult a competent professional.

Throughout your real property transaction you may receive more than one disclosure form, depending upon the number of agents assisting in the transaction. The law requires each agent with whom you have more than a casual relationship to present you with this disclosure form. You should read its contents each time it is presented to you, considering the relationship between you and the real estate agent in your specific transaction. This disclosure form includes the provisions of Sections 2079.13 to 2079.24, inclusive of the Civil Code set forth on the reverse hereof. Read it carefully.

We acknowledge receipt of a copy of this disclosure:

Tenant [Signature] Date 9/9/16 Landlord [Signature] Date 9/15/16
Tenant [Signature] Date [Blank] Landlord [Signature] Date [Blank]
Agent [Signature] Date [Blank] Agent [Signature] Date 9-15-16

CONFIRMATION OF AGENCY

We authorize the following agency:

N/A is the agent of: (Check one)
The Tenant exclusively; or
The Landlord exclusively; or
Both the Tenant and Landlord

Keegan & Coppin Company, Inc. is the agent of: (Check one)
X The Landlord exclusively; or
Both the Tenant and Landlord

CONFIRMED AND AUTHORIZED:

Tenant [Signature] Date 9/9/16
Tenant [Signature] Date [Blank]
Agent for Tenant [Blank] Lic. # [Blank]

CONFIRMED AND AUTHORIZED:

Landlord [Signature] Date 9/15/16
Landlord [Signature] Date [Blank]
Agent for Landlord Theo Banks Lic. #01359605

PROPERTY ADDRESS: 695 De Long Avenue, Suite 230, Novato, CA 94945

2079.13. As used in Sections 2079.14 to 2079.24, inclusive, the following terms have the following meanings:

- (a) "Agent" means a person acting under provisions of Title 9 (commencing with section 2295) in a real property transaction, and includes a person who is licensed as a real property transaction, and includes a person who is licensed as a real estate broker under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions code, and under whose license a listing is executed or an offer to purchase is obtained.
- (b) "Associate licensee" means a person who is licensed as a real estate broker or salesperson under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code and who is either licensed under a broker or has entered into written contract with a broker to act as the broker's agent in connection with acts requiring a real estate license and to function under the broker's supervision in the capacity of an associate licensee.
The agent in the real property transaction bears responsibility for his or her associate licensees who perform as agents of the agent. When as associate licensee owes a duty to any principal, or to transaction, that duty is equivalent to the duty owed to that party by the broker for whom the associate licensee functions.
- (c) "Buyer" means a transferee in a real property transaction, and includes a person who executes an offer to purchase real property from a seller through an agent, or who seeks the services of an agent in more than a casual, transitory, or preliminary manner, with the object of entering into a real property transaction. "Buyer" includes vendee or lessee.
- (d) "Commercial real property" means all real property in the state, except single-family residential real property, dwelling units made subject to Chapter 2 (commencing with Section 1940) of Title 5, mobilehomes, as defined in Section 798.3, or recreational vehicles, as defined in Section 799.29.
- (e) "Dual agent" means an agent acting, either directly or through an associate licensee, as agent for both the seller and the buyer in a real property transaction.
- (f) "Listing agreement" means a contract between an owner of real property and an agent, by which the agent has been authorized to sell the real property or to find or obtain a buyer.
- (g) "Listing agent" means a person who has obtained a listing of real property to act as an agent for compensation.
- (h) "Listing price" is the amount expressed in dollars specified in the listing for which the seller is willing to sell the real property through the listing agent.
- (i) "Offering price" is the amount expressed in dollars specified in an offer to purchase for which the buyer is willing to buy the real property.
- (j) "Offer to purchase" means a written contract executed by a buyer acting through a selling agent that becomes the contract for the sale of the real property upon acceptance by the seller.
- (k) "real property" means any estate specified by subdivision (1) or (2) of Section 761 in property that constitutes or is improved with one to four dwelling units, any commercial real property, any leasehold in these types of property exceeding one year's duration, and mobilehomes, when offered for sale or sold through an agent pursuant to the authority contained in Section 10131.6 of the Business of Professions Code.
- (l) "Real property transaction" means a transaction for the sale of real property in which an agent is employed by one or more of the principals to act in that transaction, and includes a listing or an offer to purchase.
- (m) "Sell," "sale" or "sold" refers to a transaction for the transfer of real property from the seller to the buyer, and includes exchanges of real property between the seller and buyer, transactions for the creation of a real property sales contract within the meaning of Section 2985, and transactions for the creation of leasehold exceeding one year's duration.
- (n) "Seller" means the transferor in a real property transaction, and includes an owner who lists real property with an agent, whether or not a transfer results, or who receives an offer to purchase real property or which he or she is the owner from an agent on behalf of another. "Seller" includes both a vendor and a lessor.
- (o) "Selling agent" means a listing agent who acts alone, or an agent who acts in cooperation with a listing agent, and who sells or finds and obtains a buyer for the real property, or an agent who locates property for a buyer or who finds a buyer for a property for which no listing exists and presents an offer to purchase to the seller.
- (p) "Subagent" means a person to whom an agent delegates agency powers as provided in Article 5(commencing with Section 2349) of Chapter 1 of title 9. However, "subagent" does not include an associate licensee who is acting under the supervision of an agent in real property transaction.

2079.14. Listing agents and selling agents shall provide the seller and buyer in a real property transaction with a copy of the disclosure from specified in Section 2079.16, and, except as provided in subdivision (c), shall obtain a signed acknowledgement of receipt from that seller or buyer, except as provided in this section or Section 2079.15, as follows:

- (a) The listing agent, if any, shall provide the disclosure form to the seller prior to entering into the listing agreement.
- (b) The selling agent shall provide the disclosure form to the seller as soon as practicable prior to presenting the seller with an offer to purchase, unless the selling agent previously provided the seller with a copy of the disclosure form pursuant to subdivision (a).
- (c) Where the selling agent does not deal on a face-to-face basis with the seller, the disclosure form prepared by the selling agent may be furnished to the seller (and acknowledgement of receipt obtained for the selling agent from the seller) by the listing agent, or the selling agent may deliver the disclosure form by certified mail addressed to the seller as his or her last known address, in which case no signed acknowledgement of this receipt is required.
- (d) The selling agent shall provide the disclosure form to the buyer as soon as practicable prior to execution of the buyer's offer to purchase, except that if the offer to purchase is not prepared by the selling agent, the selling agent shall present the disclosure form to the buyer not later than the next business day after the selling agent receives the offer to purchase from the buyer.

2079.15 In any circumstance in which the seller or buyer refuses to sign an acknowledgement or receipt pursuant to Section 2079.14, the agent, or an associate licensee acting for the agent, shall set forth, sign, and date a written declaration of the facts of the refusal.

- 2079.17. (a) As soon as practicable, the selling agent shall disclose to the buyer and seller whether the selling agent is acting in the real property transaction exclusively as the buyer's agent, exclusively as the seller's agent, or as a dual agent representing both the buyer and the seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller, the buyer, and the selling agent prior to or coincident with execution of that contract by the buyer and the seller, respectively.
- (b) As soon as practicable, the listing agent shall disclose to the seller whether the listing agent is acting in the real property transaction exclusively as the seller's agent, or as a dual agent representing both the buyer and seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller and the listing agent prior to or coincident with the execution of that contract by the seller.
- (c) The confirmation required by subdivisions (a) and (b) shall be in the following form:

_____ is the agent of (Name of Listing Agent) (Check one) <input type="checkbox"/> the seller exclusively; or <input type="checkbox"/> both the buyer and seller.	_____ is the agent of (Name of Selling Agent if not the same as the Listing Agent) (Check one) <input type="checkbox"/> the buyer exclusively; or <input type="checkbox"/> the seller exclusively; or <input type="checkbox"/> both the buyer and seller.
---	--

(d) The disclosures and confirmation required by this section shall be in addition to the disclosure required by Section 2079.14.

2079.18. No selling agent in a real property transaction may act as an agent for the buyer only, when the selling agent is also acting as the listing agent in the transaction.

2079.19. The payment of compensation or the obligation to pay compensation to an agent by the seller or buyer is not necessarily determinative of a particular agency relationship between an agent and the seller or buyer. A listing agent and a selling agent may agree to share any compensation or commission paid, or any right to any compensation or commission for which an obligation arises as the result of a real estate transaction, and the terms of any such agreement shall not necessarily be determinative of a particular relationship.

2079.20. Nothing in this article prevents an agent from selecting, as a condition of the agent's employment, a specific form of agency relationship not specifically prohibited by this article if the requirements of Section 2079.14 and Section 2079.17 are complied with.

2079.21. A dual agent shall not disclose to buyer that the seller is willing to sell the property as a price less than the listing price, without the express written consent of the seller. A dual agent shall not disclose to the seller that the buyer is willing to pay a price greater than the offering price, without the express written consent of the buyer. This section does not alter in any way the duty of responsibility of a dual agent to any principal with respect to confidential information other than price.

2079.22 Nothing in this article precludes a listing agent from also being a selling agent, and the combination of these functions in one agent does not, of itself, make that agent a dual agent.

- 2079.23. (a) A contract between the principal and agent may be modified or altered to change the agency relationship at any time before the performance of the act which is the object of the agency with the written consent of the parties to the agency relationship.
- (b) A lender or an auction company retained by a lender to control aspects of a transaction of real property subject to this part, including validating the sales price, shall not require, as a condition of receiving the lender's approval of the transaction, the homeowner or listing agent to defend or indemnify the lender or auction company from any liability alleged to result from the actions of the lender or auction company. Any clause, provision, covenant, or agreement purporting to impose an obligation to defend or indemnify a lender or an auction company in violation of this subdivision is against public policy, void, and unenforceable.

2079.24. Nothing in this article shall be construed to either diminish the duty of disclosure owed buyers and sellers by agents and their associate licensees, subagents, and employees from liability for their conduct in connection with acts governed by this article or for any breach of a fiduciary duty or a duty of disclosure.

Initials JR JG

STANDARD LEASE CONDITIONS ADDENDUM

To Lease dated September 1, 2016 by and between

Lessor De Long Business Center, LLC and Lessee Bay Area Air Quality Management District

A. Financial Information

Lessor has reviewed and approves financial statements and credit reports regarding Lessee.

Lessor may deliver such financial information in Lessor's possession to lending institutions, mortgage brokers, investors in the subject property, or prospective purchasers.

Keegan & Coppin Company, Inc. is authorized to release deposits and first month's rent to Lessor upon receipt of a fully executed Lease.

B. Hazardous Waste

"If Lessee uses, stores, or becomes aware of any hazardous waste or substances as listed by Proposition 65, Lessee will advise Lessor within three (3) days of such existence, and either obtain approval from Lessor and the appropriate governing agencies within thirty (30) days from notice or remove and clean up said hazardous waste to standards required by the Lessor and the appropriate governing agencies within sixty (60) days from notice."

"If Lessee, its invitees, employees, agents or associates cause or allow a spill or contamination of the premises, common area, soil or surrounding area, then it will be the responsibility of Lessee to clean up said hazard to the degree required and within the time frame set by any public entity which has jurisdiction and particularly in response to the Super Fund Act and Proposition 65."

Lessor is responsible for any hazardous waste violations, occurrences or clean-up required prior to Lease commencement or caused by Lessor or other tenants during the Lease term without reimbursement from Lessee.

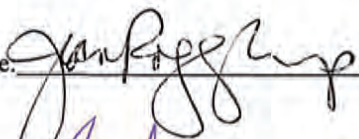
C. Area Measurement


Lessee has reviewed and approves the system of measurement, the usable and rentable square footage amounts of the subject premises.

D. Building Expenses and Systems

Lessee has reviewed and approves the scope and delineation of Lessee's and Lessor's responsibilities for Lease expenses, including common area expenses, repairs and maintenance, taxes, insurance, capital replacements, base year expenses, or other assessments, including past experienced costs or future estimates under the subject Lease.

Lessee has reviewed and approves the physical condition of all systems that Lessee is responsible for maintaining, or replacements under the Lease, and as stipulated in the above scope of responsibilities including HVAC, electrical equipment, lighting, road surfaces, landscaping, sprinkler and/or other mechanical or electrical systems.

Agreed by: Lessee:  Date: 9/9/16

Agreed by: Lessor:  Date: 9/15/16

STANDARD LEASE DISCLOSURE ADDENDUM

Certified Access Specialist Disclosure

Pursuant to California Civil Code Section 1938 the subject property has _____ has not X been inspected by a "Certified Access Specialist". If subject property has been inspected, the property has _____ has not _____ been determined to meet all applicable construction related accessibility standards pursuant to California Civil Code Section 55.53.

Notice to Owners, Buyers and Tenants Regarding Hazardous Wastes or Substances and Underground Storage Tanks

Comprehensive federal and state laws and regulations have been enacted in the last few years in an effort to develop controls over the use, storage, handling, cleanup, removal and disposal of hazardous wastes or substances. Some of these laws and regulations, such as, for example, the so-called "Super Fund Act", provide for broad liability schemes wherein an owner, tenant or other user of the property may be liable for cleanup costs and damages regardless of fault. Other laws and regulations set standards for the handling of asbestos or establish requirements for the use, modification, abandonment, or closing of underground storage tanks.

It is not practical or possible to list all such laws and regulations in this Notice. Therefore, lessors and lessees are urged to consult legal counsel to determine their respective rights and liabilities with respect to the issues described in this Notice as well as other aspects of the proposed transaction. If various materials that have been or may be in the future determined to be toxic, hazardous or undesirable, or are going to be used, stored, handled or disposed of on the property, or if the property has or may have underground storage tanks for storage of such hazardous materials, or that such materials may be in the equipment, improvements or soil, it is essential that legal and technical advice be obtained to determine, among other things, what permits and approvals have been or may be required, if any, the estimated costs and expenses associated with the use, storage, handling, cleanup, removal or disposal of the hazardous wastes or substances and what contractual provisions and protection are necessary or desirable. It may also be important to obtain expert assistance for site investigations and building inspections. The past uses of the property may provide valuable information as to the likelihood of hazardous wastes or substances, or underground storage tanks being on the property.

The term "hazardous wastes or substances" is used in this Notice in its very broadest sense and includes, but is not limited to, all those listed under Proposition 65, petroleum base products, paints and solvents, lead, cyanide, DDT, printing inks, acids, pesticides, ammonium compounds, asbestos, PCBs and other chemical products. Hazardous wastes or substances and underground storage tanks may be present on all types of real property. This Notice is, therefore, meant to apply to any transaction involving any type of real property, whether improved or unimproved.

Although Keegan & Coppin Co., Inc. or its salespeople, will disclose any knowledge it actually possesses with respect to the existence of hazardous wastes or substances, or underground storage tanks on the property, Keegan & Coppin Co., Inc. has not made investigations or obtained reports regarding the subject matter of this Notice, except as may be described in a separate written document, studies or investigation by experts. Therefore, unless there are additional documents or studies attached to this notice, lease or contract, this will serve as notification that Keegan & Coppin Co., Inc. or its salespeople make no representation regarding the existence or non-existence of hazardous wastes or substances, or underground storage tanks on the property. You should contact a professional, such as a civil engineer, geologist, industrial hygienist or other persons with experience in these matters to advise you concerning the property.

Americans with Disabilities Act (ADA) On July 26, 1990, President Bush signed the federal legislation known as the Americans with Disabilities Act (ADA) into law. The purpose of the ADA is to integrate persons with disabilities into the economic and social mainstream of American life. Title III of the ADA applies to Lessors and Lessees of "places of public accommodation" and "commercial facilities", and requires that places of public accommodation undertake "readily achievable" removal of communication and access barriers to the disabled. This requirement of Title III of the ADA is effective January 26, 1992.

It is important that building owners identify and undertake "readily achievable" removal of any such barriers in the common areas, sidewalks, parking lots and other areas of the building under their control.

The Lessor and Lessee are responsible for compliance with ADA relating to removal of barriers within the workplace i.e., arrangement of interior furnishings and access within the premises, and any improvements installed by Lessor and Lessee.

Keegan & Coppin Company, Inc. recommends that both parties seek expert advice regarding the implications of the Act as it affects this agreement.

Natural Hazards Disclosure Act:

"The property which is the subject of this contract may be situated in a Special Study Zone as designated under the Natural Hazards Disclosure Act, inclusive, of the California Public Resources Code; and, as such, the construction or development on this property of any structure for human occupancy may be subject to the findings of a geologic report prepared by a geologist registered in the State of California, unless such report is waived by the City or County under the terms of that act. No representations on the subject are made by the lessor or agent, and the lessee should make his own inquiry or investigation".

Flood Hazard Area Disclosure:

The subject property may be situated in a "Special Flood Hazard Area" as set forth on a Federal Emergency Management Agency (FEMA) "Flood Insurance Rate Map" (FIRM) or "Flood Hazard Boundary Map" (FHBM). The law provides that, as a condition of obtaining financing on most structures located in a "Special Floods Hazard Area", lender requires flood insurance where the property or its attachments are security for a loan. Lessee should consult with experts concerning the possible risk of flooding.

Toxic Mold Disclosure (Pursuant to the Toxic Mold Protection Act of 2001)

The Toxic Mold Protection Act of 2001 requires any person who sells, transfers or rents residential, commercial or industrial property to disclose if they have ACTUAL KNOWLEDGE of a mold condition on the property. The law also requires the California Department of Health Services to identify tolerable exposure limits and develop guidelines for toxic mold identification and remediation. Property owners will be required to provide a more detailed disclosure on toxic mold once the Department of Health Services develops and adopts standards for identifying, measuring and remediating toxic mold.

The Toxic Mold Protection Act of 2001 does NOT require that a property owner have their property tested for toxic mold. It also does NOT require that an agent investigate a property for toxic mold. Property owners only need to disclose any ACTUAL KNOWLEDGE of a mold condition on their property until the above mentioned guidelines are developed and approved. This disclosure can be made on the Real Estate Transfer Disclosure Statement (TDS 11) Form. A chapter-discussing Mold has also been added to the Environmental Hazards: A Guide for Homeowners, Buyers, Landlords and Tenants booklet that must be provided to a buyer or tenant in the transaction. The chapter contains descriptions of mold, symptoms of mold exposure, and information on testing and cleanup procedures. The chapter also lists other publications available that discuss mold and indoor air quality. For local assistance, contact your county or city Department of Health, Housing, or Environmental Health.

Explanation of Mold Conditions on Property: (to be completed by Transfer or if they have ACTUAL KNOWLEDGE of a mold condition on the property.)

Assembly Bill 1103 Requirements

DISCLOSURE REGARDING COMMERCIAL BUILDING ENERGY USE: CA AB 1103 Commercial Building Energy Use Disclosure Program requires disclosures of energy benchmarking data as described in Sections 1680-1684 of the California Energy Commission. On or after July 1, 2013, a "building owner" of a nonresidential building with a total gross floor area measuring more than 10,000 square feet shall disclose the Disclosure Summary Sheet, Statement of Energy Performance, Data Checklist, and the Facility Summary for the building to a prospective tenant, lender or buyer of the building, no later than 24 hours prior to execution of the contract.

Note the definition of a "building owner" in Section 1681 includes "a person possessing title, or an agent authorized to act on behalf of a person possessing title".

Acknowledgment:

Lessee: Jan Rogge

Date: 9/9/14

Lessee: _____

Date: _____

Lessor: AF

Date: 9/15/14

Lessor: _____

Date: _____



First AMENDMENT TO LEASE

THIS AMENDMENT TO LEASE is made and entered into as of October 1, 2020, by and between De Long Business Center, LLC ("Lessor") and Bay Area Air Quality Management District ("Lessee").

WHEREAS, on or about September 1, 2016 a Lease was entered into by and between Lessor and Lessee relating to certain real property commonly known as (street address, city, state, zip): 695 De Long Avenue, Suite 230, Novato, CA 94945 (the "Premises"), and

WHEREAS, Lessor and Lessee have have not previously amended said Lease, and

WHEREAS, the Lessor and Lessee now desire to amend said Lease,

NOW, THEREFORE, for good and valuable consideration to Lessor, the receipt and sufficiency of which is hereby acknowledged, the parties mutually agree to make the following additions and modifications to the Lease:

TERM: The Expiration Date is hereby advanced extended to September 30, 2023.

AGREED USE: The Agreed Use is hereby modified to: _____.

BASE RENT ADJUSTMENT: Monthly Base Rent shall be as follows: October 1, 2020 - September 30, 2021 \$1,147.00, October 1, 2021 - September 30, 2022 \$1,181.00 and October 1, 2022 - September 30, 2023 \$1,217.00.

OTHER: In the event that current Lessor, De Long Business Center, LLC and/or assignee, sells the Project during the extended Lease Term, new Project owner shall have the right to terminate the Lease by giving Lessee at least one hundred twenty (120) days prior written notice terminating the Lease and requiring Lessee to vacate the Premise.

This Amendment shall not be construed against the party preparing it, but shall be construed as if all parties jointly prepared this Amendment and any uncertainty and ambiguity shall not be interpreted against any one party. Signatures to this Amendment accomplished by means of electronic signature or similar technology shall be legal and binding.

All other terms and conditions of this Lease shall remain unchanged and shall continue in full force and effect except as specifically amended herein.

EXECUTED as of the day and year first above written.

By Lessor:

De Long Business Center, LLC

By: _____

Name Printed: Rosanna Sansone

Title: Member

Phone: _____

Fax: _____

Email: _____

By: _____

Name Printed: _____

Title: _____

Phone: _____

Fax: _____

Email: _____

Address: _____

Federal ID No.: _____

By Lessee:

Bay Area Air Quality Management District

DocuSigned by: Jeff McKay 10/7/2020

Name Printed: Jeff McKay Broadbent

Title: Executive Officer/APCO

Phone: _____

Fax: _____

Email: _____

By: Brian Bungler 10/7/2020

Name Printed: Brian Bungler jnnger

Title: District Counsel

Phone: _____

Fax: _____

Email: _____

Address: _____

Federal ID No.: _____

AIR CRE * <https://www.aircre.com> * 212 687 0777 * contracts@aircre.com
NOTICE: No part of these works may be reproduced or transmitted in any form without permission in writing.

JM
BB

INITIALS

© 2017 AIR CRE. All Rights Reserved.

ATL-1.02, Revised 06-10-2019

Last Edited: 10/1/2020 12:21 PM

Page 1 of 1



Rosanna

First AMENDMENT TO LEASE

THIS AMENDMENT TO LEASE is made and entered into as of October 1, 2020, by and between De Long Business Center, LLC ("Lessor") and Bay Area Air Quality Management District ("Lessee").

WHEREAS, on or about September 1, 2016 a Lease was entered into by and between Lessor and Lessee relating to certain real property commonly known as (street address, city, state, zip): 695 De Long Avenue, Suite 230, Novato, CA 94945 (the "Premises"), and

WHEREAS, Lessor and Lessee have have not previously amended said Lease, and

WHEREAS, the Lessor and Lessee now desire to amend said Lease,

NOW, THEREFORE, for good and valuable consideration to Lessor, the receipt and sufficiency of which is hereby acknowledged, the parties mutually agree to make the following additions and modifications to the Lease:

TERM: The Expiration Date is hereby advanced extended to September 30, 2023.

AGREED USE: The Agreed Use is hereby modified to: _____.

BASE RENT ADJUSTMENT: Monthly Base Rent shall be as follows: October 1, 2020 - September 30, 2021 \$1,147.00, October 1, 2021 - September 30, 2022 \$1,181.00 and October 1, 2022 - September 30, 2023 \$1,217.00.

OTHER: In the event that current Lessor, De Long Business Center, LLC and/or assignee, sells the Project during the extended Lease Term, new Project owner shall have the right to terminate the Lease by giving Lessee at least one hundred twenty (120) days prior written notice terminating the Lease and requiring Lessee to vacate the Premise.

This Amendment shall not be construed against the party preparing it, but shall be construed as if all parties jointly prepared this Amendment and any uncertainty and ambiguity shall not be interpreted against any one party. Signatures to this Amendment accomplished by means of electronic signature or similar technology shall be legal and binding.

All other terms and conditions of this Lease shall remain unchanged and shall continue in full force and effect except as specifically amended herein.

EXECUTED as of the day and year first above written.

By Lessor:

De Long Business Center, LLC

DocuSigned by:

By: Rosanna Sansone 10/6/2020
Name: 49FA79733E4E40E...one
Title: Member
Phone: _____
Fax: _____
Email: _____

By: _____
Name Printed: _____
Title: _____
Phone: _____
Fax: _____
Email: _____

Address: _____
Federal ID No.: _____

By Lessee:

Bay Area Air Quality Management District

By: _____
Name Printed: _____
Title: _____
Phone: _____
Fax: _____
Email: _____

By: _____
Name Printed: _____
Title: _____
Phone: _____
Fax: _____
Email: _____

Address: _____
Federal ID No.: _____

AIR CRE * <https://www.aircre.com> * 213-687-8777 * contracts@aircre.com
NOTICE: No part of these works may be reproduced in any form without permission in writing.

DS
RS
INITIALS

INITIALS



Second AMENDMENT TO LEASE

THIS AMENDMENT TO LEASE is made and entered into as of October 1, 2023, by and between Chabad of Novato, a California nonprofit corporation, assigned from Rosanna M. Sansone Revocable Trust dated March 25, 2015, The Roma Rock Trust, dated May 1, 2013 and The Saint John's Trust, dated November 12, 2009, and assigned from Giovanni A. Sansone Trust ("Lessor") and Bay Area Air Quality Management District ("Lessee").

WHEREAS, on or about September 1, 2016 a Lease was entered into by and between Lessor and Lessee relating to certain real property commonly known as (street address, city, state, zip): 695 De Long Avenue, Suite 230, Novato, CA 94945 (the "Premises"), and

WHEREAS, Lessor and Lessee have have not previously amended said Lease, and

WHEREAS, the Lessor and Lessee now desire to amend said Lease,

NOW, THEREFORE, for payment of TEN DOLLARS and other good and valuable consideration to Lessor, the receipt and sufficiency of which is hereby acknowledged, the parties mutually agree to make the following additions and modifications to the Lease:

TERM: The Expiration Date is hereby advanced extended to September 30, 2027.

AGREED USE: The Agreed Use is hereby modified to: _____.

BASE RENT ADJUSTMENT: Monthly Base Rent shall be as follows: October 1, 2023 - September 30, 2024 \$1,254.00, October 1, 2024 - September 30, 2025 \$1,291.00, October 1, 2025 - September 30, 2026 \$1,330.00 and October 1, 2026 - September 30, 2027 \$1,370.00.

OTHER: _____.

This Amendment shall not be construed against the party preparing it, but shall be construed as if all parties jointly prepared this Amendment and any uncertainty and ambiguity shall not be interpreted against any one party. Signatures to this Amendment accomplished by means of electronic signature or similar technology shall be legal and binding.

All other terms and conditions of this Lease shall remain unchanged and shall continue in full force and effect except as specifically amended herein.

EXECUTED as of the day and year first above written.

By Lessor:

Chabad of Novato, a California nonprofit corporation, assigned from Rosanna M. Sansone Revocable Trust dated March 25, 2015, The Roma Rock Trust, dated May 1, 2013 and The Saint John's Trust, dated November 12, 2009, and assigned from Giovanni A. Sansone Trust

By: _____
Name Printed: Menachem Landa
Title: Director
Phone: 415-312-8385
Fax: _____
Email: rabbi@jewishnovato.com

By: _____
Name Printed: _____
Title: _____
Phone: _____
Fax: _____
Email: _____

Address: _____
Federal ID No.: _____

By Lessee:

Bay Area Air Quality Management District

By: _____
Name Printed: _____
Title: _____
Phone: _____
Fax: _____
Email: _____

By: _____
Name Printed: _____
Title: _____
Phone: _____
Fax: _____
Email: _____

Address: _____
Federal ID No.: _____

AIR CRE * <https://www.aircre.com> * 213-687-8777 * contracts@aircre.com
NOTICE: No part of these works may be reproduced in any form without permission in writing.

INITIALS

INITIALS

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairperson John J. Bauters and Members
of the Board of Directors

From: Philip M. Fine
Executive Officer/APCO

Date: September 20, 2023

Re: Authorization for Board Members to Attend the Air District's Washington D.C.
Advocacy Trip

RECOMMENDED ACTION

The Board of Directors will consider authorizing the \$100 per meeting compensation, up to a maximum of \$200 per day, pursuant to Division I, Section 1.2(d) of the Administrative Code, for Chair Bauters, Vice-Chair Hurt, and Board Members Rice and Veenker for attendance at the Air District's D.C. Advocacy Trip from October 19, 2023 to October 25, 2023. Travel expenses have been considered for authorization by the Finance and Administration Committee at its September 6, 2023 meeting, pursuant to Division II, Section 5.1(a) of the Administrative Code.

BACKGROUND

The Air District has missed opportunities with federal advocacy, in sharing the good work the Air District is doing, learning about the future initiatives of our federal partners, and how the Air District's work, narratives and goals align with the goals and objectives of federal agencies.

Directors are authorized to receive \$100 per meeting compensation for the attendance at meetings of this type, up to a maximum of \$200 per day, pursuant to Division I, Section 1.2(d) of the Administrative Code. For meetings outside of California, compensation needs to be approved in advance by the Board of Directions. Board members are also entitled to reimbursement for their travel expenses pursuant to Division II, Section 5.1(a) of the Administrative Code. Reimbursement for expenses was approved in advance by the Finance and Administrative Committee (not the full Board) at its September 6, 2023 meeting.

DISCUSSION

The Air District's Board of Director's Chair believes that the Air District will benefit greatly from relationship development, learning from and engaging with our Bay Area delegation, federal agency leaders, and other organizations working in the same space.

The D.C. Advocacy Trip will allow the Board of Directors to connect with federal agency leaders and inform them of how the Air District's goals align with the objectives of the federal government.

BUDGET CONSIDERATION/FINANCIAL IMPACT

Funding for Board member travel for this trip, including travel expenses and per diem compensation for meeting attendance, is estimated at \$10,000 and is included in Program 121, Fiscal Year Ending 2024.

Respectfully submitted,

Philip M. Fine
Executive Officer/APCO

Prepared by: Aloha de Guzman
Reviewed by: Philip M. Fine

ATTACHMENTS:

None

BOARD MEETING DATE: September 20, 2023

REPORT: Finance and Administration Committee

SYNOPSIS: The Finance and Administration Committee (Committee) held a meeting on Wednesday, September 6, 2023. The following is a summary of the meeting.

RECOMMENDED ACTION:

Receive and file. The Committee's recommendation to appoint two Hearing Board members will be presented to the Board for consideration at the next meeting.

John J. Bauters, Chair
Finance and Administration Committee

JB:mh

Committee Members

Present, In-Person (375 Beale Street, Board Room, San Francisco, California, 94105): Chairperson John J. Bauters; Vice Chairperson Davina Hurt; and Directors David Haubert, Tyrone Jue, and Sergio Lopez.

Present, In-Person Satellite Location (Santa Rosa Junior College Campus, Doyle Library, 1501 Mendocino Ave., Room 148, Santa Rosa, California 95401): Director Brian Barnacle.

Present, In-Person Satellite Location: (Office of Contra Costa County Supervisor John Gioia, Conference Room, 11780 San Pablo Avenue, Suite D, El Cerrito, California, 94530): Director Mark Ross.

Present, In-Person Satellite Location: (County of Sonoma County Administrator's Office, 575 Administration Drive, Sunroom, Suite #110A, Santa Rosa, California, 95403): Director Lynda Hopkins.

Absent: Directors Abe-Koga, David Hudson, and Katie Rice.

Call to Order

Chair Bauters called the meeting to order at 1:14 p.m.

For additional details of the Finance and Administration Committee Meeting, please refer to the webcast, which can be found [here](#) 24 hours after the meeting has concluded. Please use the webcast's index to view specific agenda items.

CONSENT CALENDAR (Items 3 – 4)

- 3. **APPROVAL OF THE DRAFT MINUTES OF THE FINANCE AND ADMINISTRATION COMMITTEE MEETING OF JULY 5, 2023**
- 4. **COMMITTEE AUTHORIZATION FOR CHAIR BAUTERS, VICE CHAIR HURT, DIRECTOR RICE, AND DIRECTOR VEENKER TO ATTEND THE AIR DISTRICT'S WASHINGTON D.C. ADVOCACY TRIP**

Public Comments

No requests received.

Committee Comments

None.

Committee Action

Director Haubert made a motion, seconded by Director Jue, to **approve** the Consent Calendar, Items 3 and 4; and the motion **carried** by the following vote of the Committee:

AYES: Barnacle, Bauters, Haubert, Hopkins, Hurt, Jue, Lopez, Ross.
NOES: None.
ABSTAIN: None.
ABSENT: Abe-Koga, Hudson, Rice.

ACTION ITEMS (5 – 6)

- 5. **CONDUCT INTERVIEWS AND CONSIDER RECOMMENDING BOARD OF DIRECTORS APPROVAL OF CANDIDATES FOR APPOINTMENT TO THE AIR DISTRICT'S HEARING BOARD**

The Committee conducted interviews of three candidates who were applying for various vacant seats on the Air District's Hearing Board. The candidates were asked the following questions by the Committee: how their experience and perspectives might assist the Hearing Board in reviewing and deciding cases; their knowledge and experience regarding air quality matters and environmental justice; their experience serving on other boards or commissions; why they became interested in this opportunity; whether things from their personal or professional backgrounds may conflict with serving on the Hearing Board; whether they have viewed or observed the Air District's Hearing Board meetings; and their availability to serve on the Hearing Board.

Public Comments

No requests received.

Committee Comments

The Committee and staff discussed the general nature of the Air District's Hearing Board matters; appreciation for an applicant's interest learning about the Air District's permit appeal process; and how to garner more candidates for the Hearing Board's Medical category.

Committee Action

Vice Chair Hurt made a motion, seconded by Director Lopez, to recommend the Board **approve** the appointment of Dr. Sumeet Batra, as Alternate Member in the Medical category of the Hearing Board; and the motion **carried** by the following vote of the Committee:

AYES: Barnacle, Bauters, Haubert, Hopkins, Hurt, Jue, Lopez, Ross.
NOES: None.
ABSTAIN: None.
ABSENT: Abe-Koga, Hudson, Rice.

Chair Bauters made a motion, seconded by Director Haubert, to recommend the Board **approve** the appointment of Rajiv Dabir, as Principal Member in the Professional Engineer category of the Hearing Board, and of Jeffrey Maddox as Alternate Member in the Professional Engineer category of the Hearing Board; and the motion **carried** by the following vote of the Committee:

AYES: Barnacle, Bauters, Haubert, Hopkins, Hurt, Jue, Lopez, Ross.
NOES: None.
ABSTAIN: None.
ABSENT: Abe-Koga, Hudson, Rice.

After these Committee recommendations to the Board were voted upon, Chair Bauters explained that as of October 7, 2023, there would be two more Hearing Board vacancies (a Principal member and Alternate member in the Public category), and that there were over ten applications to consider. To fill the upcoming two vacancies as quickly as possible, so as not to disrupt Hearing Board proceedings that have already been scheduled, Chair Bauters recommended that an ad hoc committee be formed, comprised of the members of the Finance and Administration Committee, to narrow down the number of applications to five. **Director Hopkins, Hurt, and Ross volunteered to sit on an ad hoc committee, which would, over the next two weeks, identify the five applications that would result in interviews for the positions of Principal and Alternate members in the Public category of the Hearing Board. When asked by Air District staff to develop scoring criteria to identify the five applications, the Committee members present identified the following criteria:**

- applicants that do not qualify for the Hearing Board categories of Professional Engineer, Attorney, or Medical;
- diversity of professional experience
- demonstration of dedicated community service
- applications that were completed the most substantively; and
- geographic diversity throughout the Bay Area

6. REMOTE TELECONFERENCING GUIDANCE

Sharon L. Landers, Interim Chief Operating Officer, gave the staff presentation *Remote Teleconferencing Guidance*, including: outline; requested actions; often used locations; teleconferencing locations; Board and committee meeting preferences; and what should be included in a remote teleconferencing policy?

Public Comments

No requests received.

Committee Comments

The Committee was asked to consider what elements should be included in a Remote Teleconferencing Policy if the Committee was interested in continuing to allow remote teleconferencing for Committee meetings.

The Committee and staff discussed the need for accountability of the Board members hosting remote locations; the current remote attendance policies of other Bay Area regional agencies' Brown Act bodies; the feasibility of holding a monthly Board meeting instead of the current bi-weekly schedule, and the possibility of a later starting time; whether the Board's committee meetings would still utilize remote locations, if monthly Board meetings required full in-person participation; whether hybrid meetings should require an in-person participation minimum, or at least the in-person participation of the Chair and Vice Chair of the committees; the suggestion of having only four remote locations (North, South, East, and West Bay Area), and whether to rent, lease, or purchase office space; whether the Air District pays for use of the remote locations that are currently utilized for Board and committee meetings; how often Board members used to travel to 375 Beale Street for Board and committee meetings, prior to the COVID-19 pandemic; the perception that some Board members have taking advantage of remote meeting participation in ways it was not intended for, which can erode public trust of the Air District; the risk of attempting to attend Board meetings remotely while traveling; whether Board members who are experiencing health emergencies should be allowed to attend Board meeting remotely without noticing their location; and whether the Board members may have appointed alternate members to represent their jurisdictions if they cannot attend Air District Board or committee meetings.

Committee Action

Although no formal action was taken, there was consensus among the Committee members present to recommend that Board members attend one Board meeting per month (first Wednesday of the month) at 375 Beale Street, San Francisco, California, 94105, at the new start time of 10:00 a.m., in person, with no remote participation allowed except for testing positive for COVID-19. The Board's committee meetings may continue to utilize remote locations/satellite offices, but Air District staff will not staff those locations.

The Committee provided the following staff direction:

- Bring the Board a proposed plan for sharing permanently leased remote meeting locations with other Bay Area regional agencies, as agencies have expressed such interest.

- Survey the Board members regarding where they are willing to commute for Air District meetings and bring back a suggested maximum number of remote locations.
- Allow the Committee to bifurcate potential elements of a policy that Air District staff proposed, moving forward with the elements that the Committee *deemed acceptable*, and continuing to develop the others:
 1. Only use Board members’ offices available for free that can be staffed by their teams.
 2. *Limit teleconferencing to locations within the Air District’s jurisdiction.*
 3. *Require training with Executive Office staff for those assisting at remote locations.*
 4. Require notification of remote location a minimum of 30 days before meeting.
 5. *Require a primary and secondary point of contact (POC) for each remote Board location.*
 6. *Require Board member staff to post meeting notices, open the space, connect with Beale St., and provide technical assistance as needed.*
 7. *Require an agreement guaranteeing the selected requirements will be met.*
 8. Work on securing permanent satellite locations in the North Bay and South Bay.

OTHER BUSINESS

7. PUBLIC COMMENT ON NON-AGENDA MATTERS

No requests received.

8. COMMITTEE MEMBER COMMENTS

None.

9. TIME AND PLACE OF NEXT MEETING

Wednesday, October 4, 2023, at 1:00 p.m. at 375 Beale Street, San Francisco, CA 94105. The meeting will be in-person for the Committee members and members of the public will be able to either join in-person or via webcast.

Adjournment

The meeting was adjourned at 3:33 p.m.

Attachments

- #3: Draft Minutes of the Finance and Administration Committee Meeting of July 5, 2023
- #4: Committee Authorization for Chair Bauters, Vice Chair Hurt, Director Rice, and Director Veenker to Attend the Air District's Washington D.C. Advocacy Trip
- #5: Conduct Interviews and Consider Recommending Board of Directors Approval of Candidates for Appointment to the Air District’s Hearing Board
- #6: Remote Teleconferencing Guidance

BOARD MEETING DATE: September 13, 2023

REPORT: Advisory Council

SYNOPSIS: The Advisory Council (Council) held a meeting on Monday, September 11, 2023. The following is a summary of the meeting.

RECOMMENDED ACTION:
Receive and file.

Dr. Linda Rudolph, Co-Chair
Dr. Gina Solomon, Co-Chair

LR/GS:mh

Council Members

Present: Co-Chairpersons Dr. Linda Rudolph and Dr. Gina Solomon; and Vice Chairperson Professor Michael Kleinman.

Absent: Member Garima Raheja; and Board Liaison David Haubert.

Call to Order

Advisory Council (Council) Co-Chairperson, Dr. Gina Solomon, called the meeting to order at 9:31 a.m.

For additional details of the Advisory Council Meeting, please refer to the [webcast](#). Please use the webcast's index to view specific agenda items.

INFORMATIONAL ITEMS (Items 2 – 3)

- 3. APPROVAL OF THE DRAFT MINUTES OF THE ADVISORY COUNCIL MEETING MINUTES OF JANUARY 30, 2023**
- 4. APPROVAL OF THE DRAFT MINUTES OF THE ADVISORY COUNCIL MEETING MINUTES OF JUNE 12, 2023**

Public Comments

No requests received.

Council Comments

None.

Council Action

Vice Chair Kleinman made a motion, seconded by Co-Chair Rudolph, to **approve** the Draft Minutes of the Advisory Council Meeting Minutes of January 30, 2023; and the motion **carried** by the following vote of the Council:

AYES: Kleinman, Rudolph, Solomon.
NOES: None.
ABSTAIN: None.
ABSENT: Haubert, Raheja.

Vice Chair Kleinman made a motion, seconded by Co-Chair Rudolph, to **approve** the Draft Minutes of the Advisory Council Meeting Minutes of June 12, 2023; and the motion **carried** by the following vote of the Council:

AYES: Kleinman, Rudolph, Solomon.
NOES: None.
ABSTAIN: None.
ABSENT: Haubert, Raheja.

INFORMATIONAL ITEM

4. FINE PARTICULATE LOCAL RISK METHODOLOGY UPDATE

Dr. David Holstius, Senior Advanced Projects Advisor, gave the staff presentation *Fine Particulate Matter Local Risk Methodology Update*. Dr. Holstius explained that the main goal was to make it clearer that what are spoken of as “adjustments” are frequently adjustments relative to BenMAP, but not relative to HRAs, in respect to which they are actually alignments; and that this recalled what Vice-Chair Kleinman remarked on during the last meeting in June, when he invited staff to comment on what might be called “conservative” aspects of the methodology by some. Dr. Holstius continued that the goal is show how such aspects are not conservative at all, in the sense of being without precedent; rather, they are bringing things into alignment with what has been done for the past several decades. Dr. Holstius remarked that the methodology has three pillars in its current form: epidemiology, linearity, and exposure science. Dr. Holstius added that the second main part of the talk would be a response to a request from the Co-Chair at the previous meeting on June 12, in which staff were asked to take a look at effect sizes for health endpoints other than mortality or asthma.

Public Comments

Public comments were given by Christine Wolfe, California Council for Environmental and Economic Balance.

Council Comments

Co-Chair Rudolph commented that what she heard was that as the baseline changes, the overall risk changes, and wished to highlight how important that is, in terms of the increasing proportion of PM exposure that we understand is likely to come from wildfire smoke; that it would be reasonable to expect that the baseline prevalence of things like asthma will increase as annual levels of PM exposure for that vulnerable population increase; therefore, integrating that into the methodology is very important; further, that understanding that we are facing an increasing cumulative risk, from PM exposure, speaks to the importance of a methodology that does account for worst-case scenarios for the most vulnerable populations, because we are facing a situation in which the worst case is evolving with increasing wildfire smoke. Dr. Rudolph stated that she shared Co-Chair Solomon's perspective that the material is complicated, and a hope that staff will be able to find ways to provide at least somewhat simplified explanations, so that the larger public can really understand what has been done, even including a simplification of the figures presented; and that the effort has involved a great deal of work and is making a contribution to figuring out how to address these complicated issues.

Vice-Chair Kleinman commented that the concept of background levels being subject to exceptional events like wildfires—which are now going to be not very exceptional, but pervasive, most likely—require a better strategy for integrating this variation in regional exposure, and put that in the context of the exposure of vulnerable populations where local sources are also causing incremental changes, which, as Dr. Rudolph said, is a very complex issue, but something that merits attention, and better ways to predict incursions from wildfires and also consider it as a separate source category, in some ways.

Co-Chair Solomon commented that this raises the dual issue of baseline or background concentrations of PM_{2.5}, combined with the issue discussed in the presentation and in the report on baseline rates of the outcomes, cardiovascular disease or pediatric asthma; and that both of those are important, although it may be possible to become confused about which baseline is being talked about. In regard to the health effect, Dr. Solomon remarked, if one looks at cardiovascular disease or pediatric asthma, one will see big differences in the baseline among different populations; as such, her understanding is that for those baselines, staff are using a population average, rather than the baseline for, say, pediatric asthma onset in African-American children in the Bay Area, which would be higher, as a baseline; given that the baseline is important for the outcome, that in fact that might systematically underestimate the true impact, and requested clarification from staff. Dr. Holstius responded that the methodology does use age-specific baseline rates, such that when calculations are set up, every year has its own baseline rate; but that those are general to the Bay Area population otherwise, looking to data from the Centers for Disease Control and Prevention (CDC); that the baseline rates will be higher, for example, in African-American communities, or even by county; that it is difficult to say how specific to be, geographically, and that using regional rates keeps things stable over time, as the regulated community was speaking to earlier; and that the other consideration is that sometimes one can run into things like the Hispanic Paradox, or the healthy worker effect, and that it could actually result in lower numbers for some groups, where we have reason to believe otherwise; therefore, for version 2.0, and since version 1.1, the methodology has used regional baseline rates.

Co-Chair Solomon expressed appreciation for the clarification, and that it makes sense, the way that this is handled in the methodology, since what was done was to address susceptible subpopulations in the F factor instead of in the baseline, because of some of these problems, such as the shifting baseline problem and the paradoxical baseline issues with, for example, the healthy worker effect; and that this is wise, and overall more consistent, and likely more fair. Dr. Solomon suggested that it might be interesting to discuss how some of that is being moved into the adjustment factor, instead of having different baselines that might account for each susceptible population in each geographic area; one could derive an empirical number, and it might be interesting to see what that might look like for, say, African-American children in Oakland, for asthma. Dr. Solomon then expressed her appreciation for the amount of work that staff invested in looking into all of the other endpoints between June and September, necessitating the review of many studies and many calculations, by OEHHA staff and Dr. Holstius and the Air District's team; and that it provides a lot of useful information; further, it builds confidence that things are heading in the right direction with the numbers and outcomes that were selected; and that if the time were invested to calculate all kinds of different endpoints, that it would seem that the results would not likely change substantially, which is very important to know, so that we are confident that we are not missing a very sensitive endpoint; and that we are on a more solid scientific foundation, with the information that was presented about other endpoints.

In regard to the other endpoints, Vice-Chair Kleinman expressed appreciation that the approach taken covers the critical organs—the lung, the heart, the brain, and reproductive systems—which are all important targets. Dr. Kleinman commented that there may be, as Dr. Solomon mentioned, many other health endpoints and outcomes, but what was presented could capture a major fraction of the impact on human health; and that putting this together is moving the field of public health and the field of air pollution science forward together.

In regard to the linearity issue, Co-Chair Solomon commented that there was mention of concentration, exposure, and intake, and a presumption of linearity across each of those [on slide 7]; that she believed this made a lot of sense, and that it is important to clarify and make this explicit; that the Council has discussed dose-response relationships a good deal; that the issue was something that the Council has been grappling with for quite some time, and that some may not be accustomed to thinking about linear dose-response functions for non-carcinogens; but for PM_{2.5}, the evidence is frankly overwhelming, and it no longer makes scientific sense to try to imagine a threshold for this pollutant, because within the range of exposures within the population, there is no evidence for that; while there might be some pristine place in theory, when one is thinking practically about exposure levels and the range of vulnerabilities across the actual population, a linear presumption makes sense. Dr. Solomon stated that she wished to acknowledge that this is a change, as the public commenter [Ms. Wolfe] pointed out, and so it is going to take some time for some to recognize that this is the direction that the science says we need to go; and that doing the hard work that staff have done to take that process stepwise and incorporate it into the day-to-day functions of the Air District is commendable.

Co-Chair Solomon added a final comment, which was to underscore something remarked by Dr. Rudolph: that the document is very thorough, and very scientifically dense, and uses terminology

that many people will have difficulty with; therefore, it will need a glossary, and insofar as it is feasible to simplify the language for the final version, that will be helpful for some audiences; and that there will need to be a summary created to explain the methodology; and recognized that staff are sure to have considered these needs already.

Council Action

None; receive and file.

ACTION ITEM

5. VOTE TO SUBMIT LETTER OF SUPPORT TO AIR DISTRICT BOARD OF DIRECTORS

Co-Chair Solomon introduced the letter of support, that she had drafted with the assistance of staff and with Co-Chair Rudolph and was sent out with the packet the week prior. Dr. Solomon suggested that the Council consider submitting the letter to the Chair and members of the Air District's Board of Directors. The purpose of the letter, Dr. Solomon explained, was to summarize the lengthy process that the Council has been through, for the past four to five years, beginning with the decision to convene workshops and a symposium on the health effects of particulate matter, to solicit presentations from experts, and assemble a report, under the previous Council, of which all those present were also members.

Public Comments

No requests received.

Council Comments

Co-Chair Rudolph remarked that, as Dr. Solomon said, the methodology has undergone a great deal of editing and discussion by the Council and with others; that the Council appreciates the work that has gone into it, and the care that has been taken to involve OEHHA and other agency review; and that she was very comfortable with the basic methodology that has been developed; therefore, she supported sending a letter to formalize the comfort level that the Advisory Council has with the methodology that has been developed.

Vice-Chair Kleinman expressed a desire to clarify whether staff were comfortable with the level of flexibility provided, given the phrasing of the letter, or whether the Council ought to make additions or edits. Dr. Fine responded that staff were comfortable with the letter as is, especially given the discussion that was just had, but that staff could again report back if there were a change that went astray of the endorsement being given today.

Council Action

Co-Chair Rudolph made a motion, seconded by Vice Chair Kleinman, to **submit** *a letter of support to the Board of Directors for the research and methodology in the white paper,*

Modeling Health Risks from Local Sources of Fine Particulate Matter PM_{2.5}, version 2.0 (August 2023); and the motion **carried** by the following vote of the Council:

AYES: Kleinman, Rudolph, Solomon.
NOES: None.
ABSTAIN: None.
ABSENT: Haubert, Raheja.

OTHER BUSINESS

6. REPORT OF THE EXECUTIVE OFFICER / AIR POLLUTION CONTROL OFFICER (APCO)

Dr. Philip M. Fine, Executive Officer/APCO, announced that as of July 7, 2023, the Council's seats are vacant, and recruitment for these vacancies will be open to the public until September 22, 2023.

Dr. Fine also announced that the Air District offered the following positions to the following candidates: Dr. Meredith Bauer as Deputy Executive Officer of Engineering & Compliance; Hyacinth "Hy" Hinojosa as Deputy Executive Officer of Finance & Administration; and Viet Tran as Deputy Executive Officer of Public Affairs. The associated press release can be found [here](#).

7. PUBLIC COMMENT ON NON-AGENDA ITEMS

No requests received.

8. COUNCIL MEMBER COMMENTS / OTHER BUSINESS

Co-Chair Rudolph announced that this would be her final meeting as a Council member.

9. TIME AND PLACE OF NEXT MEETING

The next Advisory Council meeting is to be held at the Call of the Chair, at 375 Beale Street, San Francisco, California, 94105. The meeting will be in-person for members of the public will be able to either join in person or via webcast.

Adjournment

The meeting was adjourned at 10:36 a.m.

Attachments

- #2 – Draft Minutes of the Advisory Council Meeting of January 30, 2023
- #3 – Draft Minutes of the Advisory Council Meeting of June 12, 2023
- #4 – Fine Particulate Local Risk Methodology Update
- #5 – Vote to Submit Letter of Support to Air District Board of Directors

BOARD MEETING DATE: September 13, 2023

REPORT: Stationary Source and Climate Impacts Committee

SYNOPSIS: The Stationary Source and Climate Impacts Committee (Committee) held a meeting on Wednesday, September 13, 2023. The following is a summary of the meeting.

RECOMMENDED ACTION:

Receive and file. The Committee’s recommendation to the Board of Directors to authorize the Air District to accept a \$1 million grant from the US EPA Climate Pollution Reduction Grant Program; and authorize the Executive Officer/APCO to enter into all necessary agreements to accept, obligate, and expend program funds.

Lynda Hopkins, Chair
Finance and Administration Committee

LH:mh

Committee Members

Present, In-Person (Bay Area Metro Center, 375 Beale Street, Yerba Buena Room, San Francisco, California, 94105): Vice Chairperson David Haubert; Board Chairperson John J. Bauters; and Directors Tyrone Jue, and Myrna Melgar.

Present, In-Person Satellite Location (Office of Contra Costa County Supervisor, John Gioia, Conference Room, 11780 San Pablo Ave., Suite D, El Cerrito, CA 94530): Directors Ken Carlson and Mark Ross.

Present, In-Person Satellite Location (Palo Alto City Hall, 250 Hamilton Ave., 7th Floor, Palo Alto, California, 94301): Director Vicki Veenker.

Present, In-Person Satellite Location (Office of Santa Clara County Supervisor Otto Lee, 70 W Hedding St., East Wing, 10th Floor, San Jose, California, 95110): Director Otto Lee.

Absent: Committee Chairperson Lynda Hopkins; and Directors Noelia Corzo and John Gioia.

Call to Order

Vice Chair Haubert called the meeting to order at 10:00 a.m.

For additional details of the Stationary Source and Climate Impacts Committee Meeting, please refer to the webcast, which can be found [here](#) 24 hours after the meeting as concluded. Please use the webcast’s index to view specific agenda items.

CONSENT CALENDAR

3. APPROVAL OF THE DRAFT MINUTES OF THE STATIONARY SOURCE AND CLIMATE IMPACTS COMMITTEE MEETING OF JULY 12, 2023

Public Comments

No requests received.

Committee Comments

None.

Committee Action

Director Jue made a motion, seconded by Board Chair Bauters, to **approve** the Draft Minutes of the Stationary Source and Climate Impacts Committee Meeting of July 12, 2023; and the motion **carried** by the following vote of the Committee:

AYES: Bauters, Carlson, Haubert, Jue, Lee, Melgar, Veenker.
NOES: None.
ABSTAIN: None.
ABSENT: Corzo, Gioia, Hopkins, Ross.

ACTION ITEM

4. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (EPA) CLIMATE POLLUTION REDUCTION GRANT

Before the staff presentation, Director Jue explained that he was personally recusing himself from voting on this item, because of his new job as Director of the San Francisco Environment Department, which will potentially be a recipient of monies from this grant. He explained that there is no ethical violation present, and that he was recusing himself as an act of transparency and good governance.

Abby Young, Climate Protection Manager, gave the staff presentation *United States Environmental Protection Agency (EPA) Climate Pollution Reduction Grant*, including: outline; requested actions; grant overview; planning process; budget; timeline; requested action.

Public Comments

Public comments were given by Therese Trivedi, Metropolitan Transportation Commission; Allison Brooks, Bay Area Regional Collaborative; and Aleka Seville, Collective Strategies Consulting.

Committee Comments

The Committee and staff discussed types of work that will be awarded subawards; concern regarding the State’s decision to separate Santa Clara County from Alameda, Contra Costa, Marin, San Francisco, and San Mateo Counties, so that it is its own grant region with San Benito County, the Air District’s level of involvement with assisting Santa Clara County in its planning process; whether the Air District is engaging the workforce (laborers and unions) to make them aware of the grant monies available for workforce analysis; and activities of Santa Clara County regarding its planning process.

Committee Action

Director Melgar made a motion, seconded by Director Lee, to recommend that the Board of Directors **authorizes** the Air District to accept a \$1 million grant from the US EPA Climate Pollution Reduction Grant Program, and **authorizes** the Executive Officer/Air Pollution Control Officer (APCO) to enter into all necessary agreements to accept, obligate, and expend program funds; and the motion **carried** by the following vote of the Committee:

- AYES: Bauters, Carlson, Haubert, Lee, Melgar, Veenker.
- NOES: None.
- ABSTAIN: None.
- ABSENT: Corzo, Gioia, Hopkins, Jue, Ross.

INFORMATIONAL ITEM

5. AMENDMENTS TO REGULATION 8: ORGANIC COMPOUNDS, RULE 8: WASTEWATER COLLECTION AND SEPARATION SYSTEMS

Robert Cave, Senior Air Quality Engineer, gave the staff presentation *Amendments to Regulation 8: Organic Compounds, Rule 8: Wastewater Collection and Separation Systems*, including: outcome; outline; requested action; background; simplified wastewater treatment system; emissions from wastewater collection and treatment systems; rule development process; draft amendments; comments received; and next steps.

Public Comments

No requests received.

Committee Comments

The Committee and staff discussed why these amendments pertain to refinery wastewater treatment systems but not municipal wastewater systems; anticipated health benefits from the implementation of the proposed amendments; and appreciation for preventative regulations that protect the public from hazardous substances.

Committee Action

None; receive and file.

OTHER BUSINESS

6. PUBLIC COMMENT ON NON-AGENDA MATTERS

No requests received.

8. COMMITTEE MEMBER COMMENTS

None.

9. TIME AND PLACE OF NEXT MEETING

Wednesday, October 11, 2023, at 10:00 a.m. at 375 Beale Street, San Francisco, CA 94105. The meeting will be in-person for the Stationary Source and Climate Impacts Committee members and members of the public will be able to either join in-person or via webcast.

Adjournment

The meeting was adjourned at 10:53 a.m.

Attachments

#3: Draft Minutes of the Stationary Source and Climate Impacts Committee Meeting of July 12, 2023

#4: United States Environmental Protection Agency Climate Pollution Reduction Grant

#5: Amendments to Regulation 8: Organic Compounds, Rule 8: Wastewater Collection and Separation Systems

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairperson John J. Bauters and Members
of the Board of Directors

From: Philip M. Fine
Executive Officer/APCO

Date: September 20, 2023

Re: Advisory Council Presentation on the Work of the Council and Fine Particulate Local
Risk Methodology

RECOMMENDED ACTION

None; receive and file.

BACKGROUND

Over several meetings in 2022, Air District staff began discussion with the Advisory Council on the Air District's efforts to develop a PM_{2.5} local risk methodology and consider key questions to help guide those efforts. The Advisory Council provided feedback for incorporation and in fall 2022, the Air District released a draft white paper, *Proposed Methodology for Determining Local Health Risks from Fine Particulate Matter* for public comment.

The Air District extended invitations to each commenter to present and share information with the Advisory Council. In early 2023, the Advisory Council received presentations from three of the organizations that provided public comment. In June 2023, the Advisory Council received presentations from both Air District staff and staff from the California Environmental Protection Agency's Office of Environmental Health Hazard Assessment (OEHHA), regarding feedback on the proposed methodology for modeling health risks from local sources of fine particulate matter (PM_{2.5}). Air District staff incorporated the feedback of the Advisory Council members and presented the white paper, *Modeling Health Risks from Local Sources of Fine Particulate Matter (PM_{2.5})*, version 2.0 (August 2023) to the Advisory Council at the September 11, 2023 meeting.

DISCUSSION

At their September 11, 2023 meeting, the Advisory Council considered and voted to submit a letter to the Air District Board of Directors offering their support for the methodology detailed in *Modeling Health Risks from Local Sources of Fine Particulate Matter (PM_{2.5})*, version 2.0 (August 2023) and encouraging the Air District to continue the important work toward reducing particulate matter in the Bay Area.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Philip M. Fine
Executive Officer/APCO

Prepared by: Sonam Shah-Paul

Reviewed by: Greg Nudd

ATTACHMENTS:

1. Advisory Council Letter to the Board of Directors



**BAY AREA
AIR QUALITY
MANAGEMENT
DISTRICT**

September 11, 2023

Board of Directors
Bay Area Air Quality Management District
375 Beale St, Ste 600
San Francisco, CA 94105

RE: PM_{2.5} Local Risk Methodology

Dear Chair Bauters and Members of the Board:

ADVISORY COUNCIL

Gina Solomon, MD, MPH
(Co-Chair)

Linda Rudolph, MD, MPH
(Co-Chair)

Michael Kleinman, PhD
(Vice Chair)

Garima Raheja

Vacant

Vacant

Vacant

David Haubert
(Board Liaison)

Over the past five years the Advisory Council has worked with Air District staff to develop a strong scientific foundation and methodology to improve protection of public health from fine particulate matter (PM_{2.5}). Specifically, in 2019, the Advisory Council convened a series of symposia on the health effects of PM_{2.5}. During the symposia we heard from subject matter experts, industry representatives, community members and others. The series culminated in the 2020 Advisory Council [*Particulate Matter Reduction Strategy Report*](#).

Our 2020 report found that low-income communities of color are disproportionately impacted by PM_{2.5}. Furthermore, epidemiological research has demonstrated that people living in these communities have more serious health impacts from PM_{2.5}, even given the same level of exposure. The report also noted that “substantially elevated PM_{2.5} exposures can occur in locations adjacent to local PM sources. Therefore, controlling emissions in these local impacted areas is of primary importance.”

Over the past three years, guided by the Advisory Council, Air District staff has developed a new methodology to model increases in certain health risks resulting from local PM_{2.5} exposures. The Air District has experience in modeling source-specific contributions to ambient concentrations of PM_{2.5}, but to date had not conducted any corresponding health risk assessments. This new methodology would enable those assessments, filling an important gap in the Air District’s regulatory toolbox.

The methodology has benefited from expert review by staff at the California Office of Environmental Health Hazard Assessment (OEHHA), the California Air Resources Board (CARB), and the US Environmental Protection Agency (EPA). Key feedback was also provided by independent scientists, healthcare providers, industry, non-governmental organizations and community members through a transparent public process, in the form of public comments on the draft methodology and presentations to the Advisory Council. The methodology has been documented in detail in the white paper, *Modeling Health Risks from Local Sources of Fine Particulate Matter (PM_{2.5})*, version 2.0 (August 2023).

Similar to the approach taken to regulate toxic air contaminants (TACs), this methodology is designed to protect highly exposed susceptible groups, under

Connect with the
Bay Area Air District:



higher-risk scenarios potentially involving exposures over multiple years. This methodology focuses on two health outcomes: (1) increased risk of premature adult mortality and (2) pediatric asthma onset. The Advisory Council concluded that these outcomes are strongly scientifically attributable to PM_{2.5} exposures and have sufficiently well-understood dose-response relationships.

In addition to drawing on epidemiological knowledge, this methodology also draws on exposure science, taking into account the potential for Bay Area residents to be inhabiting “leaky” buildings, for students to be attending classes with open windows, for children at daycare to be playing outside, and for nearby workers to be laboring outdoors, directly exposed to PM_{2.5} from the local source. Finally, it accounts for increased activity levels and breathing rates associated with certain locations such as outdoor workplaces. The adjustment factors that account for these potential situations have been carefully developed and vetted through the same public process and are consistent with the treatment of potential long-term exposure and the principle of health-protectiveness embodied in the Air District’s existing guidance for health risk assessments of toxic air contaminants.

The application of this methodology would represent a substantial advance in environmental regulation, in keeping with the spirit and reputation of Bay Area policymakers as leaders in protecting and promoting public health. The Advisory Council notes that the US EPA has proposed to lower the annual average standard for PM_{2.5}. That revision would represent an appropriate advancement in the regulation of PM_{2.5} at a regional level, but the EPA’s action would still leave important gaps pertaining to source-specific local exposures, which this methodology can address.

The Advisory Council has fully reviewed the proposed PM_{2.5} methodology and endorses it as scientifically sound and necessary to protect public health. Please let us know if we can be of further assistance to the Board as you consider the scientific and health aspects of the proposed methodology.

Sincerely,



Gina Solomon, MD, MPH



Linda Rudolph, MD, MPH

Co-Chairs

Bay Area Air Quality Management District Advisory Council

Cc: Dr. Philip Fine, Executive Officer/Air Pollution Control Officer, Bay Area Air Quality Management District
Greg Nudd, Deputy Executive Officer, Bay Area Air Quality Management District