**Amendment to Lease Agreement**

This Amendment to lease agreement (“Amendment”) is made by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Landlord”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Tenant”)**,** for the benefit of the City and County of San Francisco, a municipal corporation, acting by and through the Mayor’s Office of Housing and Community Development (the “City”),and is entered into this \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_\_\_.

RECITALS:

A. Landlord and Tenant entered into that certain lease agreement dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Lease”) relating to certain premises located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ San Francisco, California, as more particularly described in the Lease (the “Leased Property”).

B. Tenant is the recipient of a grant for capital improvements (hereafter, “Grant”) from the City under the Community Development Block Grant (“CDBG”) Program to be used for the renovation or other improvement of the Leased Property. The CDBG Program is a federal program administered by the United States Department of Housing and Urban Development (“HUD”).

1. Landlord and Tenant acknowledge that the renovations or other improvements will be funded in whole or in part with the CDBG funds received by Tenant under the Grant.
2. Lessor and Lessee agree that the Leased Property will be used for secular purposes and will be available to persons regardless of religious affiliation in accordance with 24 C.F.R. 570.200(j).
3. The parties desire, under the provisions set forth in this Amendment, to assure compliance with all applicable HUD regulations, including the use of the Leased Property for CDBG-eligible purposes for a specified period of time and the separation of church and state requirements of the First Amendment of the United States Constitution, as specified at 24 CFR 570.200(j)(2).
4. Landlord and Tenant now desire to amend the Lease as set forth below.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES AGREE AS FOLLOWS:

1. Recitals. The above Recitals are true and correct and are incorporated herein.
2. Definitions. Terms used in this Amendment that are defined in the Lease shall have the same meaning as in the Lease, unless otherwise noted.
3. Use. Notwithstanding anything to the contrary set forth in the Lease, the Leased Property shall be used throughout the term for CDBG-eligible purposes (in accordance with 24 C.F.R. § 570.200 et seq.) for: (i) the benefit of low or moderate income persons as defined by HUD, and (ii) providing neighborhood facilities for eligible activities as defined by HUD. Landlord and Tenant further agree that the Leased Property shall be used for secular purposes and will be available to persons regardless of religious affiliation in accordance with 24 C.F.R. 570.200(j) throughout the term of the Lease.
4. Term. Notwithstanding anything to the contrary in the Lease, the parties agree that the Lease shall not expire before the “Outside Date.” The Outside Date shall be the last day of the Tenure Period, as defined in the Grant. As set forth in the Grant, the last day of the Tenure Period is five (5) years following the date of completion of construction of the improvements funded in whole or part with CDBG funds. The date of completion for the improvements shall be the date that the City makes its final reimbursement payment to Tenant for the work under the Grant. Upon such final reimbursement payment, the parties agree to memorialize the Outside Date in writing; provided, the failure to make such writing shall not change the Outside Date. If the Lease term, as defined in the Lease, ends before the Outside Date, the parties hereby agree to extend the term so that it ends on the Outside Date. If the Lease term, as defined in the Lease, ends after the Outside Date, then there shall be no change to the term of the Lease. All terms and provisions of the Lease, including the rental rate, shall remain in effect during any extension of the Lease required by this paragraph.
5. City’s Rights as Third party Beneficiary. Landlord and Tenant hereby agree that the City, as a third-party beneficiary of the Lease, shall have certain rights exercisable at the election of the City upon a default by Tenant which rights shall survive the rights of Tenant and shall remain in full force and effect until the Outside Date. These rights are as follows:
6. Upon the default by Tenant, and subject to receipt of all necessary City approvals, the City may, at its discretion, either assume the rights and obligations of the Tenant under the Lease, or substitute another non-profit entity to perform such function. In the event the City chooses to substitute another nonprofit entity, such entity shall be subject to Landlord’s prior written approval, which approval shall not be unreasonably withheld or delayed; provided, the parties agree that it shall not be deemed reasonable for Landlord to refuse to consent to a nonprofit entity if such entity performs services similar to the services performed by Tenant at the Leased Property and such entity is as credit worthy as Tenant. As a condition to any such assumption, Landlord shall recognize the City or the substitute nonprofit, as appropriate, as Tenant under the Lease, according to all of the provisions of the Lease. The City or the substitute nonprofit, as appropriate, shall not be liable for any defaults or other liability arising prior to the date of such assumption.
7. Landlord shall not have the right to cancel the Lease unless the City is given written notice of default and the City does not, within sixty (60) days after receipt of such notice, notify the Landlord in writing that the City elects to exercise its rights under the above paragraph of this Amendment. The City shall have the right, within thirty (30) days after giving such notice to Landlord, to commence to cure the default of Tenant and, so long as the City shall diligently and in good faith continue to cure Tenant's default, Landlord may not terminate the Lease. Notwithstanding any of the above provisions, if the default of Tenant is the failure to pay rent, the City shall cure such default within sixty (60) days after giving such notice to Landlord.
8. Lease Payments. Lease payments shall not exceed the fair market rent of the Leased Property (excluding the CDBG funded improvements), and the cost of any improvements that serve a part of the building which is not leased to Tenant will be proportionally allocated between Landlord and Tenant based upon the square footage of the respective areas of Landlord and Tenant.
9. Value of Improvements. Landlord agrees that unless Tenant, or a qualified successor tenant suggested by the City, retains the use of the Leased Property for purposes consistent with the provisions of 24 C.F.R. 570.200 et seq. through the Outside Date, Landlord shall pay to the City within thirty (30) days after the City’s demand an amount equal to the greater of: (i) fair market value of the CDBG-funded improvements to the Leased Property, less any portion of the value attributable to expenditures of non-CDBG funds to such improvements to the Leased Property; or (ii) $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [*Insert Grant Amount*]. Landlord understands and agrees that the City would not make the Grant to Tenant without this agreement by Landlord. If Landlord fails to pay the City any amount due under this Section 7, Tenant shall pay to the City such amount due under this Section 7 within thirty (30) days after the City’s demand to Tenant.
10. Insurance. Landlord and Tenant hereby agree that during the term of the Lease, Landlord / Tenant **[line out Landlord or Tenant and both parties initial: \_\_\_\_\_\_\_\_\_\_\_\_]** shall provide property insurance covering all leased real property constructed, improved or rehabilitated in whole or in part by CDBG funds, covering all risks of loss, excluding earthquake and flood, for 100% of the replacement value, with deductible, if any, acceptable to the City, and naming the City as a Loss Payee, as its interest may appear.
11. Notices. All notices, demands for payment, requests and other communications required hereunder shall be in writing and shall be hand delivered or sent by certified or registered mail, postage pre­paid as follows:

|  |  |
| --- | --- |
| LANDLORD: |     |
|  |  |
| TENANT: |     |
| CITY: | Mayor’s Office of Housing and Community Development 1 South Van Ness Avenue, 5th FloorSan Francisco, CA 94103Attn: Director |

1. Governing Law. This Amendment shall be governed by and construed in accordance with California law and applicable HUD regulations.
2. Miscellaneous. Except as expressly modified herein, the terms, covenants and conditions of the Lease shall remain in full force and effect. This Amendment constitutes the entire agreement of the parties concerning the subject matter hereof, and supersedes and cancels and all previous negotiations, agreements, or understandings, if any, regarding the matters contained herein. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original agreement, and the parties may rely upon facsimile signatures. Nothing herein shall make the City a guarantor of Tenant’s obligations under the Lease, and the City shall have no obligations to make payments to Landlord unless the City expressly assumes, in writing, Tenant’s obligations under the Lease.
3. Ratification. Landlord and Tenant hereby ratify and confirm all of the provisions of the Lease as amended by paragraphs 1 through 11 above.

In witness whereof, the parties hereto have executed this Amendment as of the date written above.

BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Signature of Landlord Date

BY:

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Signature of Tenant Date