

LEASE AGREEMENT

This LEASE AGREEMENT (the “Agreement”) is entered into as of the ____ day of _____, 2019, by and between the CITY OF SAN PABLO, a California municipal corporation (the “City”) and the SAN PABLO ECONOMIC DEVELOPMENT CORPORATION, a California nonprofit public benefit corporation (the “EDC”).

Recitals

A. The City is the owner/occupant of certain real property known and identified as the new San Pablo City Hall located at 1000 Gateway Avenue, San Pablo, California 94806 (“City Hall”), as more particularly shown in the map attached hereto as Exhibit A and incorporated herein by this reference.

B. The EDC engages in comprehensive business retention and recruitment efforts designed to attract businesses and jobs to San Pablo, to retain its existing business and employment base, and to enhance economic productivity of real property within the City. The EDC desires to lease from the City, and the City desires to lease to EDC, certain office space at City Hall.

D. The EDC is the owner of certain real property known and identified as Mission Plaza located at 14501 San Pablo Avenue, San Pablo, California 94806 (“Mission Plaza”), as more particularly shown on the map attached hereto as Exhibit B and incorporated herein by this reference. The City desires to lease from the EDC, and the EDC desires to lease to the City, certain business suite space at Mission Plaza to be used for storage.

D. It is the intent of the parties that each leasing of space shall serve as consideration for the other, together with the other agreements of the parties set forth herein.

Agreements

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements hereinafter expressed, the parties mutually agree as follows:

ARTICLE 1 - DEFINITIONS/EXHIBITS

Section 1-1. Definitions.

- (a) “Agreement” means this Lease Agreement between the City and the EDC.
- (b) “City” means the City of San Pablo, a California municipal corporation.
- (c) “City Events of Default” is defined in Section 3-13(a).
- (d) “City Hall” is defined in Recital A.
- (e) “City Hall Common Areas” is defined in Section 2-1(b).
- (f) “City Indemnified Parties” is defined in Section 2-4(e).

- (g) “City Storage Premises” is defined in Section 3-1(a).
- (h) “City Storage Premises Lease Term” is defined in Section 3-2.
- (i) “City Storage Premises Lease Term Commencement Date” is defined in Section 3-2.
- (j) “City Storage Premises Lease Term Expiration Date” is defined in Section 3-2.
- (k) “CPI” is defined in Section 2-15.
- (l) “EDC” means the San Pablo Economic Development Corporation, a California nonprofit public benefit corporation.
- (m) “EDC Events of Default” is defined in Section 2-14(a).
- (n) “EDC Indemnified Parties” is defined in Section 3-4(e).
- (o) “EDC Office Premises” is defined in Section 2-1(a).
- (p) “EDC Office Premises Lease Term” is defined in Section 2-2.
- (q) “EDC Office Premises Lease Term Commencement Date” is defined in Section 2-2.
- (r) “EDC Office Premises Lease Term Expiration Date” is defined in Section 2-2.
- (s) “Hazardous Substances” is defined in Sections 2-4(d) and 3-4(d).
- (t) “Mission Plaza” is defined in Recital D.
- (u) “Mission Plaza Common Areas” is defined in Section 3-1(b).

Section 1-2. Exhibits.

- (a) Exhibit A is a map showing City Hall, as identified in Recital A.
- (b) Exhibit B is a map showing Mission Plaza, as identified in Recital D.
- (c) Exhibit C is a Form of Memorandum of Lease (EDC Office Premises Lease), as identified in Section 2-18.

ARTICLE 2 - LEASE OF EDC OFFICE PREMISES AT CITY HALL

Section 2-1. EDC Office Premises Lease.

(a) The City hereby leases to the EDC, and the EDC hereby leases from the City, those certain furnished premises within City Hall shown cross-hatched on Exhibit A, together with the rights to use associated portions of the “City Hall Common Areas” as defined in Section 2-1(b) below (the “EDC Office Premises”). The furnishings provided with the EDC Office Premises are and shall continue to be owned by the City (the “City-owned furnishings”). Said City-owned furnishings shall be separately inventoried and listed on a schedule to be approved by the City and the EDC. The approved City-owned furnishings inventory shall be an addendum to this EDC Office Premises Lease. The EDC shall be responsible for the repair or replacement of any damaged City-owned furnishings, and any replacement of the City-owned furnishings shall be consistent with the original thereof and approved by the City. In the event the EDC fails to repair or replace damaged City-owned furnishings, upon written notice from the City, the City shall be authorized to undertake the repair or replacement of the damaged City-owned furnishings and bill the EDC for the cost thereof, which bill shall be payable upon demand.

(b) “City Hall Common Areas” shall mean the lobby, plaza, sidewalk and parking areas and the areas in City Hall devoted to corridors, fire vestibules, electric and telephone closets, restrooms, break room, gym, mechanical rooms, janitor's closets, and other similar facilities.

Section 2-2. Term of EDC Office Premises Lease. The term of the EDC Office Premises lease (the “EDC Office Premises Lease Term”) shall commence on January 1, 2020 (the “EDC Office Premises Lease Commencement Date”), provided, however, that the EDC shall have no obligations under this EDC Office Premises Lease until possession of the EDC Office Premises has been delivered to and accepted by the EDC. Unless sooner terminated as hereinafter provided, the EDC Office Premises Lease Term shall end twenty (20) years after the EDC Office Premises Lease Commencement Date (the “EDC Office Premises Lease Expiration Date”). Once the EDC Office Premises Lease Commencement Date has been determined, the City and the EDC shall execute an addendum to this Agreement stating the EDC Office Premises Lease Commencement Date. The EDC’s acceptance of possession of the EDC Office Premises shall constitute the EDC’s acknowledgment that the EDC Office Premises are in good order and satisfactory condition. Notwithstanding anything contained in this EDC Office Premises Lease to the contrary, the City shall have the right to terminate the EDC Office Premises Lease upon giving written notice to the EDC at least one (1) year prior to termination in its absolute discretion. In such event, the EDC shall be deemed to have simultaneously given its written notice of termination of the City Storage Premises Lease pursuant to Section 3-2, provided, however, that the City Storage Premises shall in this circumstance continue until the date of termination of the EDC Office Premises Lease.

Section 2-3. Consideration for EDC Office Premises Lease. There shall be no base or minimum rental payments due during the EDC Office Premises Lease Term, it being understood and agreed by the City and the EDC that the consideration for the lease of the EDC Office Premises shall be the corresponding lease of the City Storage Premises to the City pursuant to Article 3 of this Agreement and the other obligations of the EDC under this Agreement.

Section 2-4. Use of EDC Office Premises.

(a) Use. The EDC Office Premises shall be used only for office uses of the EDC and for no other purpose. The EDC shall provide wayfinding assistance to City Hall visitors as needed. It is expressly understood and agreed by the Parties that the EDC, while providing services pursuant to this Agreement or leasing the EDC Office Premises, is an independent contractor and not an employee of the City. The EDC is solely responsible for the means and methods by which it provides services pursuant to this Agreement. The EDC is solely responsible for all matters relating to the payment of its employees, including compliance with social security, withholding tax and all other laws and regulations governing such matters. The EDC is solely responsible for its own acts and those of its agents and employees during the EDC Office Premises Lease Term. The EDC agrees that it will not represent, at any time or in any manner, that the EDC is an employee of the City or that EDC employees are City employees.

(b) No Insurance Hazard. The EDC shall not commit, or permit the commission of any acts on the EDC Office Premises, or use or permit the use of the EDC Office Premises in any manner, that will increase the existing rates for or cause the cancellation of any fire, liability, or other insurance policy insuring the EDC Office Premises or the improvements thereon.

(b) No Nuisance or Waste. The EDC shall not commit, or permit others to commit, any waste on the EDC Office Premises. The EDC shall not maintain, commit, or permit others to maintain or commit, any nuisance (as defined in Civil Code section 3479) on the EDC Office Premises.

(c) No Illegal Use. The EDC shall not use the EDC Office Premises or permit anything to be done in or about the EDC Office Premises which will in any way conflict with any law, statute, ordinance, or governmental rule or regulation now in force or which may hereafter be enacted or promulgated.

(d) No Hazardous Substances. The EDC shall not, and shall not permit others, to generate, release, recycle, use, reuse, sell, store, handle, manage, transport or dispose of any Hazardous Substances in, on, about, or under the EDC Office Premises. The EDC shall strictly comply with all applicable environmental laws, rules, regulations and ordinances, and the terms and conditions of any applicable permits or other governmental approvals, with respect to the handling, transportation, storage, treatment, disposal or use of any Hazardous Substances and/or toxic waste by the EDC or others in, on, under, or about the EDC Office Premises. As used in this Section, "Hazardous Substances" means any toxic or hazardous substance, material or waste, pollutant, hazardous substance or wastes, petroleum or petroleum derived substance or waste, radioactive substance, material or waste, asbestos containing materials, or any constituent of any such substance or waste regulated under or defined by or pursuant to any and all federal, state, or local laws (including common law), rules, regulations, orders, ordinances, permits, authorizations, writs, judgments, injunctions, decrees or determinations, whether issued by a court or government agency, in effect during the EDC Office Premises Lease Term that relate to the protection of the environment, the release of any Hazardous Substances into the environment, the generation, management, transportation, storage, treatment and disposal of Hazardous Substances, or the pollution of air, soil, groundwater or surface water (including, without limitation, the Clean Air Act, the Toxic Substance Control Act, the Clean Water Act, the Comprehensive Environmental Response Compensation and Liability Act, and the Resource Conservation and Recovery Act, all as amended, including similar state or local laws).

(e) Indemnity Regarding Hazardous Substances. The EDC shall be solely responsible for and shall indemnify, defend and hold the City and its officers, employees, contractors, invitees, representatives, agents, successors and assigns (the “City Indemnified Parties”) harmless from and against any and all losses, costs, claims, damages, liabilities and causes of action, including attorneys' fees, arising out of or in connection with the storage, use, transportation, release or disposal of Hazardous Substances by the EDC, its officers, employees, contractors, invitees, representatives or agents, including any claims for the clean-up or remediation of any Hazardous Substances, provided, however, that the EDC shall have no obligation to indemnify, defend and hold the City Indemnified Parties harmless from any and all losses, costs, claims, damages, liabilities and causes of action, including attorneys' fees, arising in whole or in part out of (1) the City's ownership or use of the EDC Office Premises and City Hall prior to the Commencement Date and/or (2) any Hazardous Substances placed or released onto the EDC Office Premises and/or City Hall by the City Indemnified Parties. This indemnification shall survive the termination of the EDC Office Premises Lease. The EDC shall give to the City written notice of any communication received by the EDC from any governmental authority or other party alleging the existing of Hazardous Substances in, on, under or about the EDC Office Premises, or any alleged violation of environmental laws with respect to the EDC Office Premises. Without limiting any other provision of this Agreement, the EDC shall provide the City with access to the EDC Office Premises during all reasonable times in order to enable the City to conduct any inspection, monitoring, remediation, removal or repair relating to the presence or alleged presence of Hazardous Substances in, on, under, or about the EDC Office Premises.

Section 2-5. Utilities. The City shall provide and pay for all water, gas, heat, light, power, garbage and janitorial services supplied to the EDC Office Premises. The EDC shall obtain and pay for any telephone or cable services supplied to the EDC Office Premises to the extent not covered by an existing contract with the City.

Section 2-6. Personal Property Taxes. The EDC shall pay, before they become delinquent, all taxes, assessments, and other charges levied or imposed by any governmental entity on the furniture, trade fixtures, appliances, and other personal property that the EDC places in, on, or about the EDC Office Premises. This shall include, without limiting the generality of the other terms used in this section, any shelves, counters, vaults, vault doors, wall safes, partitions, fixtures, machinery, office equipment, and communication equipment that the EDC brings onto the EDC Office Premises.

Section 2-7. Possessory Interest Tax. In accordance with California Revenue and Taxation Code Section 107.6, the EDC acknowledges that Contra Costa County may impose a possessory interest tax for the use of the EDC Office Premises, and if such tax is imposed, that the EDC will be responsible for its payment.

Section 2-8. Alterations, Maintenance and Repairs.

(a) Alterations. The EDC shall not make or cause to be made any alterations, additions or improvements (collectively “alterations”) in, on or to the EDC Office Premises or any part thereof without the prior written consent of the City, which consent will not be unreasonably withheld. When applying for any such consent, the EDC shall furnish complete plans and specifications for the desired alterations, unless the cost thereof is less than one Thousand Dollars (\$1,000.00). Subsequent to obtaining the City's consent and prior to commencement of

construction of the alterations, the EDC shall deliver to the City the building permit and a copy of the executed construction contract covering the alterations. If the City consents to the making of any alterations, the same shall be made by the EDC at the EDC's sole cost and expense, and any contractor or person selected by the EDC to make the same must first be approved in writing by the City. The EDC shall provide, at its expense, such completion, performance and/or payment bonds as the City considers necessary with respect to such construction work. The EDC shall also require its contractor to maintain insurance in amounts and in such form as the City may require. Any construction, alteration, maintenance, repair, replacement, installation, removal or decoration undertaken by the EDC in connection with the EDC Office Premises shall be completed in accordance with the plans and specifications approved by the City, shall be carried out in a good, workmanlike and prompt manner, shall comply with all applicable statutes, laws, ordinances, regulations, rules, orders and requirements of the authorities having jurisdiction thereof, including applicable prevailing wage requirements, and shall be subject to supervision by the City or its employees, agents or contractors. Any alterations made by the EDC shall remain on and be surrendered with the EDC Office Premises upon the expiration or sooner termination of the EDC Office Premises Lease Term, except the EDC shall upon demand by the City, at the EDC's sole cost and expense, forthwith and with all due diligence remove all or any portion of any alterations made by the EDC which are designated by the City to be removed, and the EDC shall forthwith and with all due diligence, and at its sole cost and expense, repair and restore the EDC Office Premises to its original condition, reasonable wear and tear excepted.

(b) The EDC, at the EDC's sole cost and expense, shall maintain the interior of the EDC Office Premises in a clean and safe condition and in good order and repair. The EDC, at the EDC's sole cost and expense, shall make all necessary repairs and replacements to all parts of the same. The EDC shall return the EDC Office Premises to the City in a clean and safe condition and in good order and repair at the end of the EDC Office Premises Lease Term. The EDC acknowledges receipt of the EDC Office Premises in a clean and safe condition and in good order and repair.

(c) In the event the EDC does not fully perform its repair and maintenance obligations under the provisions of this Agreement within thirty (30) days after written notice from the City, or if the EDC fails to commence, within thirty (30) days after written notice by the City of the need for such repair and/or maintenance, any repair and/or maintenance obligation for which the reasonable completion period exceeds thirty (30) days, or thereafter fails to diligently prosecute this obligation to completion, it is understood and agreed that the City may take such action as it deems necessary to perform such repair and/or maintenance. Any sums the City expends in so doing shall be due and payable from the EDC upon demand from the City.

Section 2-9. Assignment and Subletting.

(a) The EDC shall not, without the prior written consent of the City, which consent may be given or withheld at the sole discretion of the City: (a) assign, mortgage, pledge, encumber or otherwise transfer this EDC Office Premises Lease or any interest hereunder; (b) permit the EDC Office Premises or any part thereof to be utilized by anyone other than the EDC (whether as concessionaire, franchisee, licensee, permittee or otherwise); or (c) sublet or offer or advertise for subletting the EDC Office Premises or any part thereof. Any assignment, mortgage, pledge, encumbrance, transfer or sublease without the City's consent shall be voidable and, at the City's election, shall constitute a default.

(b) Regardless of the City's consent, no subletting or assignment shall release the EDC from, or alter the primary liability of the EDC to perform, its obligations hereunder. Consent to one assignment or subletting shall not be deemed consent to any subsequent assignment or subletting. If any assignee of the EDC or any successor of the EDC defaults in the performance of any of the terms hereof, the City may proceed directly against the EDC without the necessity of exhausting remedies against such assignee or successor.

Section 2-10. Indemnification and Insurance.

(a) Waiver of Liability. The City shall not be liable or responsible in any way for, and the EDC hereby waives all claims against the City with respect to or arising out of: any death or any injury of any nature whatsoever that may be suffered or sustained by the EDC or any officer, employee, licensee, invitee, guest, agent or customer of the EDC or any other person, from any causes whatsoever; or for any loss or damage or injury to any property outside or within the EDC Office Premises belonging to the EDC or its officers, employees, agents, customers, licensees, invitees, guests or any other person, unless such injury or damage is caused by the gross negligence or willful misconduct of the City, its employees or agents. Without limiting the generality of the foregoing, the City shall not be liable for any damage or damages of any nature whatsoever to persons or property caused by explosion, fire, theft or breakage, by sprinkler, drainage or plumbing systems, by failure for any cause to supply adequate drainage, by the interruption of any public utility or service, by gas, water, rain or other substances leaking, issuing or flowing into any part of the EDC Office Premises, by natural occurrence, acts of the public enemy, riot, strike, insurrection, war, court order, requisition or order of government body or authority, or for any damage or inconvenience which may arise through repair, maintenance or alteration of any part of City Hall.

(b) Indemnity. The EDC agrees to indemnify, defend, and hold the City Indemnified Parties harmless from all claims and liability of every kind, arising in any way from any occurrence on the EDC Office Premises, or related to any use or occupancy of the EDC Office Premises, specifically including, without limitation, any claim, liability of every kind, loss, or damage arising by reason of:

(1) The death or injury of any person or persons, including any person who is an officer, employee or agent of the EDC, or by reason of the damage to or destruction of any property, including property owned by the EDC or any person who is an officer, employee or agent of the EDC, and caused or allegedly caused by either the condition of the EDC Office Premises, or some act or omission of the EDC or of some agent, contractor, subcontractor, employee, servant, sublessee, concessionaire or any other party conducting work for the EDC on the EDC Office Premises;

(2) Any work performed on the EDC Office Premises or materials furnished to the EDC Office Premises at the EDC's, or any of the EDC's agents or employees, instance or request;

(3) The EDC's failure to perform any provision of this Agreement or to comply with any requirement of law or any requirement imposed on the EDC Office Premises by any duly authorized governmental agency or political subdivision;

(4) Any claim made by any third party;

(5) Any vandalism, theft, or loss from vehicles or any other personal property stored, placed, or left on the EDC Office Premises; or

(6) Any determination by a court of competent jurisdiction or the California Public Employees Retirement System (“PERS”) that the EDC or any employee, agent, subconsultant or subcontractor of the EDC providing services under this Agreement is eligible for enrollment in PERS as an employee of the City (for purposes of this subsection 2-10(b)(6), the EDC’s indemnification, defense and hold harmless obligations shall include the payment of any employee and/or employer contributions for PERS benefits on behalf of the EDC or its employees, agents, subconsultants or subcontractors, as well as the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City).

The indemnification, defense and hold harmless obligations of the EDC shall not apply to any liability, claim, or damage which has ultimately been determined to have resulted from the gross negligence or willful misconduct of the City Indemnified Parties. The indemnification, defense and hold harmless obligations of the EDC shall survive the termination of this EDC Office Premises Lease.

(c) Insurance. The EDC shall maintain during the EDC Office Premises Lease Term insurance against claims or injuries to persons or damages to property arising from or in connection with the EDC’s use of the EDC Office Premises. The cost of such insurance shall be borne by the EDC. The EDC shall maintain insurance at least as broad as follows:

(1) Commercial General Liability Insurance covering commercial general liability on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$2,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance with a general aggregate limit is used, either the general aggregate limit shall apply separately to this location or the general aggregate limit shall be twice the occurrence limit.

The General Liability policy is to contain, or be endorsed to contain, the following provisions:

The City, its officers, employees, agents and volunteers are to be covered as additional insureds by endorsement with respect to liability arising out of work or operations performed by or on behalf of the EDC within City Hall. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, employees, agents or volunteers.

The EDC’s insurance coverage shall be primary insurance with regard to the City, its officers, employees, agents and volunteers with respect to any of their activities in City Hall. Any insurance maintained by the City, its officers, employees, agents and volunteers shall be excess of the EDC’s insurance and shall not contribute to it.

(2) Property Insurance. The EDC shall maintain: (i) property insurance against all risks of loss to any tenant improvement or betterment at full replacement cost with no

coinsurance penalty provision; and (ii) insurance covering fixtures and equipment of the EDC as determined to be necessary and appropriate by the EDC.

(3) Worker's Compensation Insurance and Employer's Liability. The EDC shall also maintain Workers' Compensation Insurance as required by the State of California within statutory limits and Employer's Liability Insurance with limits no less than \$1,000,000 per accident for bodily injury or disease.

(4) General Requirements.

(i) Insurance is to be placed with insurers with a Best's rating of no less than A:VII.

(ii) The EDC shall furnish to the City certificates of insurance and endorsements as required by this Section. All certificates and endorsements are to be received and approved by the City before the EDC takes possession of the EDC Office Premises. However, failure to obtain the required documents shall not waive the EDC's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications at any time.

Section 2-11. Americans With Disabilities Act. City Hall, including the EDC Office Premises, is a newly constructed facility and has been constructed in compliance with the requirements of the Americans With Disabilities Act, as well as similar state and local law. The EDC shall be responsible for ensuring that the EDC Office Premises remain compliant with the Americans With Disabilities Act, and any similar state or local law, and shall defend, indemnify and hold the City harmless from and against any and all claims, lawsuits and damages arising directly or indirectly, in whole or in part, from allegations of violation of laws or regulations concerning access for the disabled. This indemnification provision shall survive the termination of this EDC Office Premises Lease.

Section 2-12. Destruction or Damage. In the event of a fire or other casualty in the EDC Office Premises, the EDC shall immediately give notice thereof to the City. The following provisions shall apply to fire or other casualty occurring in the EDC Office Premises and/or City Hall:

(a) If the damage is limited solely to the EDC Office Premises and the EDC Office Premises can be made tenantable with all damage repaired within six (6) months from the date of damage or destruction, then the City shall be obligated to repair or restore the same and shall proceed diligently to do so; provided, however, that the City shall have no obligation to repair or restore improvements installed in the EDC Office Premises by the EDC except to the extent that the City realizes insurance proceeds, if any, sufficient for such purposes and for all other restoration and repair purposes.

(b) If portions of City Hall outside the boundaries of the EDC Office Premises are damaged or destroyed (whether or not the EDC Office Premises are also damaged or destroyed) and the EDC Office Premises and City Hall can both be made tenantable with all damage repaired within six (6) months from the date of damage or destruction, and provided that the City determines that it is economically feasible, then the City shall be obligated to do so; provided, however, that the City shall have no obligation to repair or restore improvements installed in the EDC Office

Premises by the EDC except to the extent that the City realizes insurance proceeds, if any, sufficient for such purpose and for all other restoration and repair purposes.

(c) If neither subsection (a) nor (b) above applies, the City shall notify the EDC within sixty (60) days after the date of such damage or destruction and either the EDC or the City may terminate this EDC Office Premises Lease within thirty (30) days after the date of such notice; provided, however, that the City shall have the right to elect to reconstruct City Hall and the EDC Office Premises.

(d) The proceeds from any insurance paid by reason of damage to or destruction of City Hall or any part thereof, insured by the City, shall belong to and be paid to the City subject to the rights of any beneficiary of any deed of trust which constitutes an encumbrance.

(e) Notwithstanding the foregoing, the City shall have no obligation to rebuild the EDC Office Premises in the event of damage or destruction of the EDC Office Premises occurring during the last year of the EDC Office Premises Lease Term.

Section 2-13. Entry by the City. The City may enter the EDC Office Premises at reasonable hours to: (a) inspect the same; (b) determine whether the EDC is complying with all of its obligations hereunder; (c) supply janitorial service and any other service to be provided by the City to the EDC hereunder; (d) post notices of non-responsibility; or (e) make repairs to any adjoining space or utility services or make repairs, alterations or improvements to any other portion of City Hall; provided, however, that all such work shall be done as promptly as reasonably possible and so as to cause as little interference to the EDC as reasonably possible. The EDC hereby waives any claim for damages for any injury or inconvenience to or interference with the EDC's business, any loss of occupancy or quiet enjoyment of the EDC Office Premises, and any other loss occasioned by such entry. The City shall at all times have and retain a key with which to unlock all of the doors in, on, or about the EDC Office Premises. The City shall have the right to use any and all means which the City may deem proper to open such doors in an emergency in order to obtain entry to the EDC Office Premises, and no entry to the EDC Office Premises obtained by the City by any of such means shall under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the EDC Office Premises or an eviction, actual or constructive, of the EDC from the EDC Office Premises, or any portion thereof.

Section 2-14. Default and Remedies.

(a) Events of Default. In addition to any other event specified in this EDC Office Premises Lease as an event of default, the occurrence of any one or more of the following events ("EDC Events of Default") shall constitute a breach of the EDC Office Premises Lease by the EDC: (a) vacation or abandonment of the EDC Office Premises for a continuous period in excess of ten (10) business days; (b) failure by the EDC to pay any sum when and as the same becomes due and payable if such failure continues for more than ten (10) days after notice thereof from the City; (c) failure by the EDC to perform or observe any other obligations of the EDC hereunder if such failure continues for more than ten (10) days after notice thereof from the City, unless such default cannot reasonably be cured within such ten (10) day period and the EDC shall within such period commence with due diligence and dispatch the curing of such default, and, having so commenced, shall thereafter prosecute or complete with due diligence and dispatch the curing of such default; (d) the making by the EDC of a general assignment for the benefit of creditors, or the admission of its inability to pay its debts as they become due or the filing of a petition, case or

proceeding in bankruptcy, or the adjudication of the EDC bankrupt or, insolvent, or the filing of a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, or the filing of an answer admitting or failing reasonably to contest the material allegations of a petition filed against it in any such proceeding, or the seeking or consenting to or acquiescence in the appointment of any trustee, receiver or liquidator of the EDC or any material part of its properties; (e) if within ninety (90) days after the commencement of any proceeding against the EDC seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such proceeding shall not have been dismissed, or if, within ninety (90) days after the appointment without the consent or acquiescence of the EDC, of any trustee, receiver or liquidator of the EDC or of any material part of its properties, such appointment shall not have been vacated; or (f) if this EDC Office Premises Lease or any estate of the EDC hereunder shall be levied upon under any attachment or execution and such attachment or execution is not vacated within ten (10) days.

(b) City's Remedies. If an EDC Event of Default shall occur, the City at any time thereafter may give a written termination notice to the EDC, and on the date specified in such notice (which shall be not less than six (6) days after the giving of such notice), the EDC's right to possession shall terminate and this EDC Office Premises Lease shall terminate, unless on or before such date all arrears of sums payable by the EDC hereunder (together with interest thereon at the rate set forth in subsection (c) below) and all costs and expenses incurred by or on behalf of the City hereunder shall have been paid by the EDC and all other breaches of this EDC Office Premises Lease by the EDC at the time existing shall have been fully remedied to the satisfaction of the City. Should the City terminate this Lease of the EDC Office Premises pursuant to the provisions of this Section, the City shall have all the rights and remedies of a landlord provided by Section 1951.2 of the California Civil Code or any successor code section. Upon such termination, in addition to any other rights and remedies to which the City may be entitled under applicable law, the City may recover from the EDC any amount necessary to compensate the City for all the detriment proximately caused by the EDC's failure to perform its obligations hereunder or which in the ordinary course of things would be likely to result therefrom.

(c) Interest. Every payment due hereunder from the EDC to the City which shall not be paid within ten (10) days after the same shall have become due and payable, shall bear interest at the rate of ten percent (10%) per annum, or at the highest rate legally permitted, whichever is less, from the date that the same became due and payable until paid, whether or not demand be made therefor.

(d) Lease Continues Until Termination. Even though the EDC has breached this Lease and abandoned the EDC Office Premises, the EDC Office Premises Lease shall continue in effect for so long as the City does not terminate the EDC's right to possession, and the City may enforce all its rights and remedies under this Agreement. Acts of maintenance or preservation or efforts to re-let the EDC Office Premises or the appointment of a receiver upon initiative of the City to protect the City's interest under this Agreement shall not constitute a termination of the EDC's rights to possession.

(e) Remedies Cumulative. The remedies provided for in this Agreement are in addition to any of the remedies available to the parties hereto at law or in equity by statute or otherwise.

(f) Waiver. The failure of the City to exercise its rights in connection with any breach or violation of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained.

Section 2-15. Holding Over. If the EDC shall remain in possession after the expiration or sooner termination of the EDC Office Premises Lease, all of the terms, covenants and agreements hereof shall continue to apply and bind the EDC so long as the EDC shall remain in possession insofar as the same are applicable, except that if the EDC remains in possession without the City's written consent, the EDC shall pay a monthly rent in the amount of \$3,000.00 increased by the percentage change in the Consumer Price Index for all urban consumers for the San Francisco-Oakland-Hayward area (the "CPI") from the date of execution of this EDC Office Premises Lease, and the EDC shall indemnify the City against any and all claims, losses and liabilities for damages resulting from failure to surrender possession. If the EDC remains in possession of the EDC Office Premises with the City's written consent, such tenancy shall be from month to month, terminable by either party on not less than thirty (30) days written notice.

Section 2-16. Surrender of EDC Office Premises. At the end of the EDC Office Premises Lease Term or upon sooner termination of this EDC Office Premises Lease, the EDC shall peaceably deliver up to the City possession of the EDC Office Premises, together with all improvements or additions upon or belonging to the same, by whomsoever made, in the same condition as received, or first installed, reasonable wear and tear excepted. The EDC may, upon the termination of this EDC Office Premises Lease, remove all movable partitions of less than full height from floor to ceiling, as well as counters and other trade fixtures installed by the EDC, repairing any damage caused by such removal. Property not so removed shall be deemed abandoned by the EDC and title to the same shall thereupon pass to the City. Upon request by the City, unless otherwise agreed to in writing by the City, the EDC, at its cost, shall remove any or all permanent improvements or additions to the EDC Office Premises installed by the EDC and all movable partitions, counters, and other trade fixtures which may be left by the EDC and repair any damage resulting from such removal.

Section 2-17. Relocation of EDC Office Premises. The City shall have the right to relocate the EDC Office Premises to another part of City Hall on the following terms and conditions:

(a) The physical relocation of the EDC Office Premises shall be accomplished by the City at its cost.

(b) The City shall give the EDC at least ninety (90) days' notice of the City's intention to relocate the EDC Office Premises.

(c) The physical relocation of the EDC Office Premises shall take place on a weekend, if practicable, and shall be accomplished as quickly as reasonably practicable.

(d) All reasonable actual costs incurred by the EDC as a result of the relocation, including, without limitation, costs incurred in changing addresses on stationery, business cards, directories, advertising, and other such items, but excluding other intangible costs, shall be paid by the City.

(e) The parties shall immediately execute an amendment to this Agreement identifying the relocated EDC Office Premises.

Section 2-18. Memorandum of EDC Office Premises Lease. The parties shall execute a Memorandum of EDC Office Premises Lease in the form attached hereto as Exhibit C, and the City shall cause the Memorandum to be recorded in the official records.

ARTICLE 3 - LEASE OF CITY STORAGE PREMISES AT MISSION PLAZA

Section 3-1. City Storage Premises Lease.

(a) The EDC hereby leases to the City, and the City hereby leases from the EDC, those certain premises within Mission Plaza shown cross-hatched on Exhibit B, together with the rights to use associated portions of the "Mission Plaza Common Areas" as defined in Section 3-1(b) below (the "City Storage Premises").

(b) "Mission Plaza Common Areas" shall mean the sidewalk, landscaped and parking areas in Mission Plaza.

Section 3-2. Term of City Storage Premises Lease. The term of the City Storage Premises lease (the "City Storage Premises Lease Term") shall commence on January 1, 2020 (the "City Storage Premises Lease Commencement Date"). Unless sooner terminated as hereinafter provided, the City Storage Premises Lease Term shall end twenty (20) years after the City Storage Premises Lease Commencement Date (the "City Storage Premises Lease Expiration Date"). Once the City Storage Premises Lease Commencement Date has been determined, the City and the EDC shall execute an addendum to this Agreement stating the City Storage Premises Lease Commencement Date. The City's acceptance of possession of the City Storage Premises shall constitute the City's acknowledgment that the City Storage Premises are in good order and satisfactory condition. Notwithstanding anything contained in this City Storage Premises Lease to the contrary, the EDC shall have the right to terminate the City Storage Premises Lease upon giving written notice to the City at least six (6) months prior to termination. In such event, the City shall be deemed to have simultaneously given its written notice of termination of the EDC Office Premises Lease pursuant to Section 2-2.

Section 3-3. Consideration for City Storage Premises Lease. There shall be no base or minimum rental payments due during the City Storage Premises Lease Term, it being understood and agreed by the City and the EDC that the consideration for the lease of the City Storage

Premises shall be the corresponding lease of the EDC Office Premises to the EDC pursuant to Article 2 of this Agreement and the other obligations of the City under this Agreement.

Section 3-4. Use of City Storage Premises.

(a) Use/Access. The City Storage Premises shall be used only for storage by the City and for no other purpose. The City shall have the unrestricted right to access of the City Storage Premises.

(b) No Insurance Hazard. The City shall not commit, or permit the commission of any acts on the City Storage Premises, or use or permit the use of the City Storage Premises in any manner, that will increase the existing rates for or cause the cancellation of any fire, liability, or other insurance policy insuring the City Storage Premises or the improvements thereon.

(b) No Nuisance or Waste. The City shall not commit, or permit others to commit, any waste on the City Storage Premises. The City shall not maintain, commit, or permit others to maintain or commit, any nuisance (as defined in Civil Code section 3479) on the City Storage Premises.

(c) No Illegal Use. The City shall not use the City Storage Premises or permit anything to be done in or about the City Storage Premises which will in any way conflict with any law, statute, ordinance, or governmental rule or regulation now in force or which may hereafter be enacted or promulgated.

(d) No Hazardous Substances. The City shall not, and shall not permit others, to generate, release, recycle, use, reuse, sell, store, handle, manage, transport or dispose of any Hazardous Substances in, on, about, or under the City Storage Premises. The City shall strictly comply with all applicable environmental laws, rules, regulations and ordinances, and the terms and conditions of any applicable permits or other governmental approvals, with respect to the handling, transportation, storage, treatment, disposal or use of any Hazardous Substances and/or toxic waste by the City or others in, on, under, or about the City Storage Premises. As used in this Section, "Hazardous Substances" means any toxic or hazardous substance, material or waste, pollutant, hazardous substance or wastes, petroleum or petroleum derived substance or waste, radioactive substance, material or waste, asbestos containing materials, or any constituent of any such substance or waste regulated under or defined by or pursuant to any and all federal, state, or local laws (including common law), rules, regulations, orders, ordinances, permits, authorizations, writs, judgments, injunctions, decrees or determinations, whether issued by a court or government agency, in effect during the City Storage Premises Lease Term that relate to the protection of the environment, the release of any Hazardous Substances into the environment, the generation, management, transportation, storage, treatment and disposal of Hazardous Substances, or the pollution of air, soil, groundwater or surface water (including, without limitation, the Clean Air Act, the Toxic Substance Control Act, the Clean Water Act, the Comprehensive Environmental Response Compensation and Liability Act, and the Resource Conservation and Recovery Act, all as amended, including similar state or local laws).

(e) Indemnity Regarding Hazardous Substances. The City shall be solely responsible for and shall indemnify, defend and hold the EDC and its officers, employees, contractors, invitees, representatives, agents, successors and assigns (the "EDC Indemnified Parties") harmless from and against any and all losses, costs, claims, damages, liabilities and causes of action, including

attorneys' fees, arising out of or in connection with the storage, use, transportation, release or disposal of Hazardous Substances by the City, its officers, employees, contractors, invitees, representatives or agents, including any claims for the clean-up or remediation of any Hazardous Substances, provided, however, that the City shall have no obligation to indemnify, defend and hold the EDC Indemnified Parties harmless from any and all losses, costs, claims, damages, liabilities and causes of action, including attorneys' fees, arising in whole or in part out of (1) the EDC's ownership or use of the City Storage Premises and Mission Plaza prior to the Commencement Date and/or (2) any Hazardous Substances placed or released onto the City Storage Premises and/or Mission Plaza by the EDC Indemnified Parties. This indemnification shall survive the termination of the City Storage Premises Lease. The City shall give to the EDC written notice of any communication received by the City from any governmental authority or other party alleging the existing of Hazardous Substances in, on, under or about the City Storage Premises, or any alleged violation of environmental laws with respect to the City Storage Premises. Without limiting any other provision of this Agreement, the City shall provide the EDC with access to the City Storage Premises during all reasonable times in order to enable the EDC to conduct any inspection, monitoring, remediation, removal or repair relating to the presence or alleged presence of Hazardous Substances in, on, under, or about the City Storage Premises.

Section 3-5. Utilities. The EDC shall provide and pay for all water, gas, heat, light, power, garbage and other services supplied to the City Storage Premises. The City shall have no obligation to contribute to any expenses of the EDC whatsoever for the utilities, operation, maintenance, repair or improvement of the Mission Plaza Common Areas.

Section 3-6. Real Property Taxes. The EDC shall be responsible for the payment of any and all taxes, assessments, and other charges levied or imposed by any governmental entity on the City Storage Premises.

Section 3-7. Alterations, Maintenance and Repairs.

(a) Alterations. The City shall not make or cause to be made any alterations, additions or improvements (collectively "alterations") in, on or to the City Storage Premises or any part thereof without the prior written consent of the EDC, which consent will not be unreasonably withheld. When applying for any such consent, the City shall furnish complete plans and specifications for the desired alterations, unless the cost thereof is less than one Thousand Dollars (\$1,000.00). Subsequent to obtaining the EDC's consent and prior to commencement of construction of the alterations, the City shall deliver to the EDC the building permit and a copy of the executed construction contract covering the alterations. If the EDC consents to the making of any alterations, the same shall be made by the City at the City's sole cost and expense, and any contractor or person selected by the City to make the same must first be approved in writing by the EDC. The City shall provide, at its expense, such completion, performance and/or payment bonds as the EDC considers necessary with respect to such construction work. The City shall also require its contractor to maintain insurance in amounts and in such form as the EDC may require. Any construction, alteration, maintenance, repair, replacement, installation, removal or decoration undertaken by the City in connection with the City Storage Premises shall be completed in accordance with the plans and specifications approved by the EDC, shall be carried out in a good, workmanlike and prompt manner, shall comply with all applicable statutes, laws, ordinances, regulations, rules, orders and requirements of the authorities having jurisdiction thereof, and shall be subject to supervision by the EDC or its employees, agents or contractors. Upon the expiration or sooner termination of the City Storage Premises Lease Term, the City shall remove any and all

alterations, repair any damage to the floor, wall and ceilings and surrender the City Storage Premises in a warm shell condition.

(b) The City, at the City's sole cost and expense, shall maintain the interior of the City Storage Premises in a clean and safe condition and in good order and repair. The City, at the City's sole cost and expense, shall make all necessary repairs and replacements to all parts of the same. The City shall return the City Storage Premises to the EDC in a clean and safe condition and in good order and repair at the end of the City Storage Premises Lease Term. The City acknowledges receipt of the City Storage Premises in a clean and safe condition and in good order and repair.

(c) In the event the City does not fully perform its repair and maintenance obligations under the provisions of this Agreement within thirty (30) days after written notice from the EDC, or if the City fails to commence, within thirty (30) days after written notice by the EDC of the need for such repair and/or maintenance, any repair and/or maintenance obligation for which the reasonable completion period exceeds thirty (30) days, or thereafter fails to diligently prosecute this obligation to completion, it is understood and agreed that the EDC may take such action as it deems necessary to perform such repair and/or maintenance. Any sums the EDC expends in so doing shall be due and payable from the City upon demand from the EDC.

Section 3-8. Assignment and Subletting.

(a) The City shall not, without the prior written consent of the EDC, which consent may be given or withheld at the sole discretion of the City: (a) assign, mortgage, pledge, encumber or otherwise transfer this City Storage Premises Lease or any interest hereunder; (b) permit the City Storage Premises or any part thereof to be utilized by anyone other than the City (whether as concessionaire, franchisee, licensee, permittee or otherwise); or (c) sublet or offer or advertise for subletting the City Storage Premises or any part thereof. Any assignment, mortgage, pledge, encumbrance, transfer or sublease without the EDC's consent shall be voidable and, at the EDC's election, shall constitute a default.

(b) Regardless of the EDC's consent, no subletting or assignment shall release the City from, or alter the primary liability of the City to perform, its obligations hereunder. Consent to one assignment or subletting shall not be deemed consent to any subsequent assignment or subletting. If any assignee of the City or any successor of the City defaults in the performance of any of the terms hereof, the EDC may proceed directly against the City without the necessity of exhausting remedies against such assignee or successor.

Section 3-9. Indemnification and Insurance.

(a) Waiver of Liability. The EDC shall not be liable or responsible in any way for, and the City hereby waives all claims against the EDC with respect to or arising out of: any death or any injury of any nature whatsoever that may be suffered or sustained by the City or any officer, employee, licensee, invitee, guest, agent or customer of the City or any other person, from any causes whatsoever; or for any loss or damage or injury to any property outside or within the City Storage Premises belonging to the City or its officers, employees, agents, customers, licensees, invitees, guests or any other person, unless such injury or damage is caused by the gross negligence or willful misconduct of the EDC, its employees or agents. Without limiting the generality of the foregoing, the EDC shall not be liable for any damage or damages of any nature whatsoever to persons or property caused by explosion, fire, theft or breakage, by sprinkler, drainage or plumbing

systems, by failure for any cause to supply adequate drainage, by the interruption of any public utility or service, by gas, water, rain or other substances leaking, issuing or flowing into any part of the City Storage Premises, by natural occurrence, acts of the public enemy, riot, strike, insurrection, war, court order, requisition or order of government body or authority, or for any damage or inconvenience which may arise through repair, maintenance or alteration of any part of Mission Plaza.

(b) Indemnity. The City agrees to indemnify, defend, and hold the EDC Indemnified Parties harmless from all claims and liability of every kind, arising in any way from any occurrence on the City Storage Premises, or related to any use or occupancy of the City Storage Premises, specifically including, without limitation, any claim, liability of every kind, loss, or damage arising by reason of:

(1) The death or injury of any person or persons, including any person who is an officer, employee or agent of the City, or by reason of the damage to or destruction of any property, including property owned by the City or any person who is an officer, employee or agent of the City, and caused or allegedly caused by some act or omission of the City or of some agent, contractor, subcontractor, employee, servant, sublessee, concessionaire or any other party conducting work for the City on the City Storage Premises;

(2) Any work performed on the City Storage Premises or materials furnished to the City Storage Premises by the City, or any of the City's agents or employees;

(3) The City's failure to perform any provision of this Agreement or to comply with any requirement of law or any requirement imposed on the City Storage Premises by any duly authorized governmental agency or political subdivision; or

(4) Any vandalism, theft, or loss from vehicles or any other personal property stored, placed, or left on the City Storage Premises.

The indemnification, defense and hold harmless obligations of the City shall not apply to any liability, claim, or damage which has ultimately been determined to have resulted from the gross negligence or willful misconduct of the EDC Indemnified Parties. The indemnification, defense and hold harmless obligations of the City shall survive the termination of this City Storage Premises Lease.

(c) Insurance. The City shall maintain during the City Storage Premises Lease Term insurance against claims or injuries to persons or damages to property arising from or in connection with the City's use of the City Storage Premises. The cost of such insurance shall be borne by the City. The City shall maintain insurance or self-insurance at least as broad as follows:

(1) Commercial General Liability Insurance covering commercial general liability on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$2,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance with a general aggregate limit is used, either the general aggregate limit shall apply separately to this location or the general aggregate limit shall be twice the occurrence limit.

Any Commercial General Liability Insurance policy shall contain or be endorsed to contain (and any City self-insurance shall provide coverage in accordance with), the following provisions:

The EDC, its officers, employees, agents and volunteers are to be covered as additional insureds by endorsement with respect to liability arising out of work or operations performed by or on behalf of the City on the City Storage Premises. The coverage shall contain no special limitations on the scope of protection afforded to the EDC, its officers, employees, agents or volunteers.

The City's insurance coverage shall be primary insurance with regard to the EDC, its officers, employees, agents and volunteers with respect to any of their activities on the City Storage Premises. Any insurance maintained by the EDC, its officers, employees, agents and volunteers shall be excess of the City's insurance and shall not contribute to it.

(2) Worker's Compensation Insurance and Employer's Liability. The City shall also maintain Workers' Compensation Insurance as required by the State of California within statutory limits and Employer's Liability Insurance with limits no less than \$1,000,000 per accident for bodily injury or disease.

(3) Property Insurance. The City shall maintain or provide self-insurance including: (i) property insurance against all risks of loss to any tenant improvement or betterment at full replacement cost with no coinsurance penalty provision; and (ii) insurance covering fixtures and equipment of the City as determined to be necessary and appropriate by the City.

(4) General Requirements.

(i) Insurance is to be placed with insurers with a Best's rating of no less than A:VII.

(ii) The City shall furnish to the EDC certificates of insurance and endorsements as required by this Section. All certificates and endorsements are to be received and approved by the EDC before the City takes possession of the City Storage Premises. However, failure to obtain the required documents shall not waive the City's obligation to provide them. The EDC reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications at any time.

Section 3-10. Americans With Disabilities Act. The EDC shall be responsible for ensuring that the Mission Plaza Common Areas are compliant with the Americans With Disabilities Act, and any similar state or local law, and shall defend, indemnify and hold the City harmless from and against any and all claims, lawsuits and damages arising directly or indirectly, in whole or in part, from allegations of violation of laws or regulations concerning access for the disabled. This indemnification provision shall survive the termination of this EDC Office Premises Lease. The Mission Plaza Common Areas have been inspected by a Certified Access Specialist. The City Storage Premises have not been inspected by a Certified Access Specialist.

Section 3-11. Destruction or Damage. In the event of a fire or other casualty in the City Storage Premises, the City shall immediately give notice thereof to the EDC. The following

provisions shall apply to fire or other casualty occurring in the City Storage Premises and/or Mission Plaza:

(a) If the damage is limited solely to the City Storage Premises and the City Storage Premises can be made tenantable with all damage repaired within six (6) months from the date of damage or destruction, then the EDC shall be obligated to repair or restore the same and shall proceed diligently to do so; provided, however, that the EDC shall have no obligation to repair or restore improvements installed in the City Storage Premises by the City except to the extent that the EDC realizes insurance proceeds, if any, sufficient for such purposes and for all other restoration and repair purposes.

(b) If portions of Mission Plaza outside the boundaries of the City Storage Premises are damaged or destroyed (whether or not the City Storage Premises are also damaged or destroyed) and the City Storage Premises and Mission Plaza can both be made tenantable with all damage repaired within six (6) months from the date of damage or destruction, and provided that the EDC determines that it is economically feasible, then the EDC shall be obligated to do so; provided, however, that the EDC shall have no obligation to repair or restore improvements installed in the City Storage Premises by the City except to the extent that the EDC realizes insurance proceeds, if any, sufficient for such purpose and for all other restoration and repair purposes.

(c) If neither subsection (a) nor (b) above applies, the EDC shall notify the City within thirty (30) days after the date of such damage or destruction and either the City or the EDC may terminate this City Storage Premises Lease within thirty (30) days after the date of such notice; provided, however, that the EDC shall have the right to elect to reconstruct Mission Plaza and the City Storage Premises.

(d) The proceeds from any insurance paid by reason of damage to or destruction of Mission Plaza or any part thereof, insured by the EDC, shall belong to and be paid to the EDC subject to the rights of any beneficiary of any deed of trust which constitutes an encumbrance.

(e) Notwithstanding the foregoing, the EDC shall have no obligation to rebuild the City Storage Premises in the event of damage or destruction of the City Storage Premises occurring during the last year of the City Storage Premises Lease Term.

Section 3-12. Entry by the EDC. The EDC may enter the City Storage Premises at reasonable hours to: (a) inspect the same; (b) determine whether the City is complying with all of its obligations hereunder; (c) supply janitorial service and any other service to be provided by the EDC to the City hereunder; (d) post notices of non-responsibility; or (e) make repairs to any adjoining space or utility services or make repairs, alterations or improvements to any other portion of Mission Plaza; provided, however, that all such work shall be done as promptly as reasonably possible and so as to cause as little interference to the City as reasonably possible. The City hereby waives any claim for damages for any injury or inconvenience to or interference with the City's business, any loss of occupancy or quiet enjoyment of the City Storage Premises, and any other loss occasioned by such entry. The EDC shall at all times have and retain a key with which to unlock all of the doors in, on, or about the City Storage Premises. The EDC shall have the right to use any and all means which the EDC may deem proper to open such doors in an emergency in order to obtain entry to the City Storage Premises, and no entry to the City Storage Premises obtained by the EDC by any of such means shall under any circumstances be construed or deemed

to be a forcible or unlawful entry into, or a detainer of, the City Storage Premises or an eviction, actual or constructive, of the City from the City Storage Premises, or any portion thereof.

Section 3-13. Default and Remedies.

(a) Events of Default. In addition to any other event specified in this City Storage Premises Lease as an event of default, the occurrence of any one or more of the following events (“City Events of Default”) shall constitute a breach of the City Storage Premises Lease by the City: (a) vacation or abandonment of the City Storage Premises for a continuous period in excess of ten (10) business days; (b) failure by the City to pay any sum when and as the same becomes due and payable if such failure continues for more than ten (10) days after notice thereof from the EDC; (c) failure by the City to perform or observe any other obligations of the City hereunder if such failure continues for more than ten (10) days after notice thereof from the EDC, unless such default cannot reasonably be cured within such ten (10) day period and the City shall within such period commence with due diligence and dispatch the curing of such default, and, having so commenced, shall thereafter prosecute or complete with due diligence and dispatch the curing of such default; (d) the making by the City of a general assignment for the benefit of creditors, or the admission of its inability to pay its debts as they become due or the filing of a petition, case or proceeding in bankruptcy, or the adjudication of the City bankrupt or, insolvent, or the filing of a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, or the filing of an answer admitting or failing reasonably to contest the material allegations of a petition filed against it in any such proceeding, or the seeking or consenting to or acquiescence in the appointment of any trustee, receiver or liquidator of the City or any material part of its properties; (e) if within ninety (90) days after the commencement of any proceeding against the City seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such proceeding shall not have been dismissed, or if, within ninety (90) days after the appointment without the consent or acquiescence of the City, of any trustee, receiver or liquidator of the City or of any material part of its properties, such appointment shall not have been vacated; or (f) if this City Storage Premises Lease or any estate of the City hereunder shall be levied upon under any attachment or execution and such attachment or execution is not vacated within ten (10) days.

(b) EDC’s Remedies. If a City Event of Default shall occur, the EDC at any time thereafter may give a written termination notice to the City, and on the date specified in such notice (which shall be not less than six (6) days after the giving of such notice), the City’s right to possession shall terminate and this City Storage Premises Lease shall terminate, unless on or before such date all arrears of sums payable by the City hereunder (together with interest thereon at the rate set forth in subsection (c) below) and all costs and expenses incurred by or on behalf of the EDC hereunder shall have been paid by the City and all other breaches of this City Storage Premises Lease by the City at the time existing shall have been fully remedied to the satisfaction of the EDC. Should the EDC terminate this City Storage Premises Lease pursuant to the provisions of this Section, the EDC shall have all the rights and remedies of a landlord provided by Section 1951.2 of the California Civil Code or any successor code section.

(c) Interest. Every payment due hereunder from the City to the EDC which shall not be paid within ten (10) days after the same shall have become due and payable, shall bear interest at the rate of ten percent (10%) per annum, or at the highest rate legally permitted, whichever is

less, from the date that the same became due and payable until paid, whether or not demand be made therefor.

(d) Lease Continues Until Termination. Even though the City has breached this Lease and abandoned the City Storage Premises, the City Storage Premises Lease shall continue in effect for so long as the EDC does not terminate the City's right to possession, and the EDC may enforce all its rights and remedies under this Agreement. Acts of maintenance or preservation or efforts to re-let the City Storage Premises or the appointment of a receiver upon initiative of the EDC to protect the EDC's interest under this Agreement shall not constitute a termination of the City's rights to possession.

(e) Remedies Cumulative. The remedies provided for in this City Storage Premises Lease are in addition to any of the remedies available to the parties hereto at law or in equity by statute or otherwise.

(f) Waiver. The failure of the EDC to exercise its rights in connection with any breach or violation of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained.

Section 3-14. Holding Over. If the City shall remain in possession after the expiration or sooner termination of the City Storage Premises Lease, all of the terms, covenants and agreements hereof shall continue to apply and bind the City so long as the City shall remain in possession insofar as the same are applicable, except that if the City remains in possession without the EDC's written consent, the City shall pay a monthly rent in the amount of \$3,000.00 increased by the percentage change in the CPI from the date of execution of this City Storage Premises Lease, and the City shall indemnify the EDC against any and all claims, losses and liabilities for damages resulting from failure to surrender possession. If the City remains in possession of the City Storage Premises with the EDC's written consent, such tenancy shall be from month to month, terminable by either party on not less than thirty (30) days written notice.

Section 3-15. Surrender of City Storage Premises. At the end of the City Storage Premises Lease Term or upon sooner termination of this City Storage Premises Lease, the City shall peaceably deliver up to the EDC possession of the City Storage Premises, together with all improvements or additions upon or belonging to the same, by whomsoever made, in the same condition as received, or first installed, reasonable wear and tear excepted. The City may, upon the termination of this City Storage Premises Lease, remove all movable partitions of less than full height from floor to ceiling, as well as counters and other trade fixtures installed by the City, repairing any damage caused by such removal. Property not so removed shall be deemed abandoned by the City and title to the same shall thereupon pass to the EDC. Upon request by the EDC, unless otherwise agreed to in writing by the EDC, the City, at its cost, shall remove any or all permanent improvements or additions to the City Storage Premises installed by the City and all movable partitions, counters, and other trade fixtures which may be left by the City and repair any damage resulting from such removal.

Section 3-16. Relocation of City Storage Premises. The EDC shall have the right to relocate the City Storage Premises to another part of Mission Plaza on the following terms and conditions:

(a) The physical relocation of the City Storage Premises shall be accomplished by the EDC at its cost.

(b) The EDC shall give the City at least sixty (60) days' notice of the EDC's intention to relocate the City Storage Premises.

(c) The physical relocation of the City Storage Premises shall take place on a weekend, if practicable, and shall be accomplished as quickly as reasonably practicable.

(d) All reasonable actual costs incurred by the City as a result of the relocation shall be paid by the EDC.

(e) The parties shall immediately execute an amendment to this Agreement identifying the relocated City Storage Premises.

ARTICLE 4 - MISCELLANEOUS

Section 4-1. Notices. All notices and demands which may or are required to be given by either party to the other hereunder shall be in writing and shall be deemed to have been fully given if personally delivered or when deposited in the United States mail, certified or registered, postage prepaid, and addressed as follows:

City: City of San Pablo
13831 San Pablo Avenue, Bldg. 1
San Pablo, CA 94806
Attention: City Manager

EDC: San Pablo Economic Development Corporation
13830 San Pablo Avenue, Suite D
San Pablo, CA 94806
Attention: Executive Director

Section 4-2. Captions. The captions and headings of the Articles and Sections in this Agreement are for convenience only and shall not in any way limit or be deemed to construe or interpret the terms and provisions hereof.

Section 4-3. Time of Essence. Time is of the essence of this Agreement and the respective leases set forth herein and of all provisions hereof.

Section 4-4. Attorneys' Fees. In the event of any action or proceeding brought by either party against the other under this Agreement, each side shall be responsible for its own attorney's fees and costs, regardless of the outcome of the action.

Section 4-5. Governing Law. This Agreement and the respective leases set forth herein shall be construed and enforced in accordance with the laws of the State of California.

Section 4-6. Entire Agreement. The terms of this Agreement are intended by the parties as a final expression of their agreement with respect to such terms as are included herein and may not be contradicted by evidence of any prior or contemporaneous 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 proceedings, if any, involving this Agreement.

Section 4-7. Invalidity. If any provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and be enforced to the full extent permitted by law.

Section 4-8. Authority. Each of the persons executing this Agreement on behalf of the EDC do hereby covenant and warrant that the EDC is a duly authorized and existing entity, that the EDC has full right and authority to enter into this Agreement, and that each of the persons signing on behalf of the EDC are authorized to do so. Each of the persons executing this Agreement on behalf of the City do hereby covenant and warrant that the City is a duly authorized and existing entity, that the City has full right and authority to enter into this Agreement, and that each of the persons signing on behalf of the City are authorized to do so.

Section 4-9. No Representations or Warranties. Neither the City nor the City's agents or attorneys have made any representations or warranties with respect to the EDC Office Premises, City Hall or this Agreement, except as expressly set forth herein, and no rights, easements or licenses are or shall be acquired by the EDC by implication or otherwise. Neither the EDC nor the EDC's agents or attorneys have made any representations or warranties with respect to the City Storage Premises, Mission Plaza or this Agreement, except as expressly set forth herein, and no rights, easements or licenses are or shall be acquired by the City by implication or otherwise.

Section 4-10. Amendments. This Agreement and the respective leases set forth herein may not be altered, changed, or amended except by an instrument signed by both parties hereto.

Section 4-11. Independent Contractor. It is expressly understood and agreed by the Parties that the EDC, while providing services pursuant to this Agreement or leasing the EDC Office Premises, is an independent contractor and not an employee of the City. The EDC is solely responsible for the means and methods by which it provides any services pursuant to this Agreement. The EDC is solely responsible for all matters relating to the payment of its employees, including compliance with social security, withholding tax and all other laws and regulations governing such matters. The EDC is solely responsible for its own acts and those of its agents and employees during the EDC Office Premises Lease Term. The EDC agrees that it will not represent, at any time or in any manner, that the EDC is an employee of the City or that EDC employees are City employees.

IN WITNESS WHEREOF, the City and the EDC have executed this Lease Agreement on the dates set forth below and this Lease Agreement shall be effective as of the latter of such dates.

Dated: _____

CITY OF SAN PABLO, a California municipal corporation

By _____
Matt Rodriguez, City Manager

Approved as to form:

Attorney for the City of San Pablo

Attest:

Patricia Ponce, City Clerk

Dated: _____

SAN PABLO ECONOMIC DEVELOPMENT CORPORATION, a California nonprofit public benefit corporation

By _____
Leslay Choy, Executive Director

Approved as to form:

Attorney for the San Pablo EDC

EXHIBIT A

MAP OF CITY HALL SHOWING EDC OFFICE PREMISES

[TO BE INSERTED]

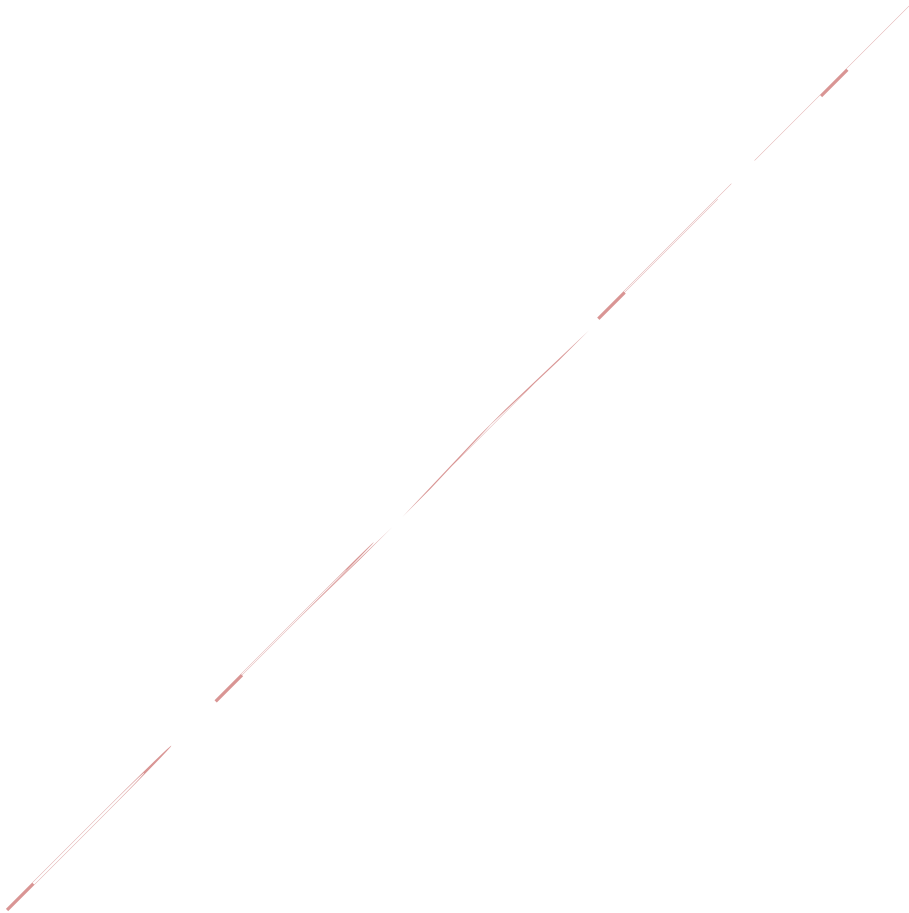


EXHIBIT B

MAP OF MISSION PLAZA SHOWING CITY STORAGE PREMISES

[TO BE INSERTED]

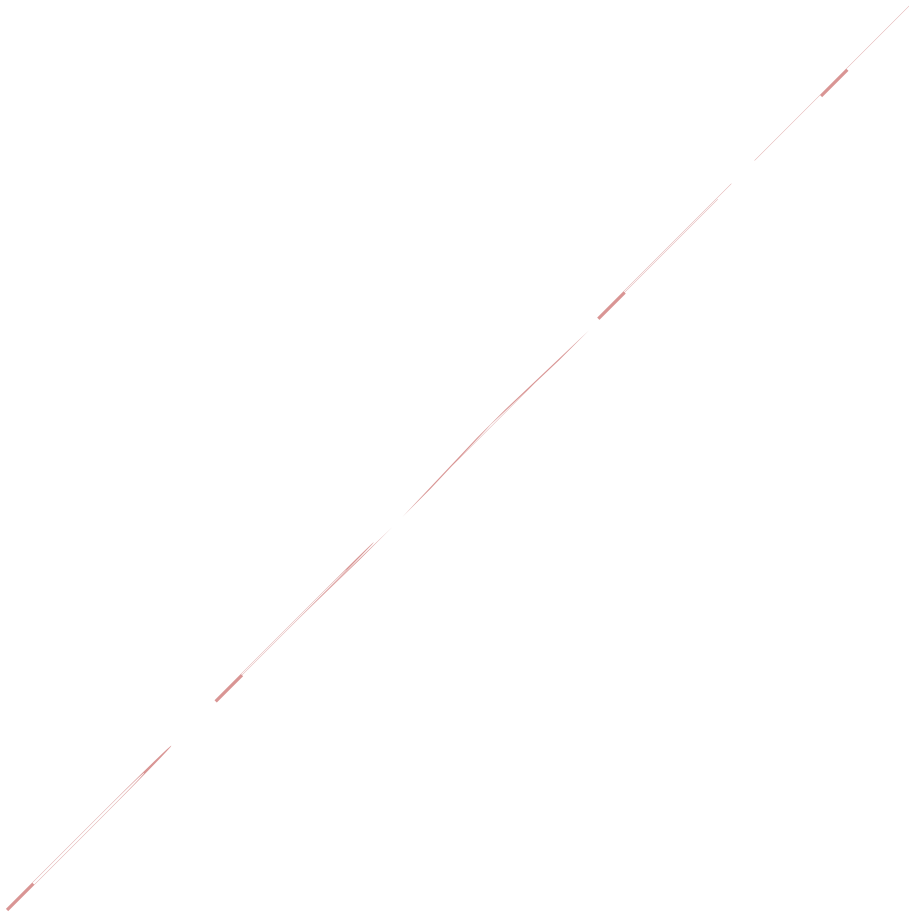


EXHIBIT C

FORM OF MEMORANDUM OF EDC OFFICE PREMISES LEASE

RECORDING REQUESTED BY, AND
WHEN RECORDED, RETURN TO:

CITY OF SAN PABLO
13831 San Pablo Avenue, Bldg. 1
San Pablo, CA 94806

EXEMPT FROM RECORDING FEES
PER GOVERNMENT CODE §27383

(Space above this line for Recorder's use)

MEMORANDUM OF LEASE
(EDC Office Premises Lease)

This Memorandum of Lease is entered into as of _____, 2019, by and between the CITY OF SAN PABLO, a California municipal corporation (the "City"), and the SAN PABLO ECONOMIC DEVELOPMENT CORPORATION, a California nonprofit public benefit corporation (the "EDC") with respect to that certain lease (the "EDC Office Premises Lease") dated as of _____, 2019, between the City and the EDC.

Pursuant to the EDC Office Premises Lease, the City agreed to lease to the EDC, and the EDC agreed to lease from the City, a portion (the "EDC Office Premises") of the premises known as City Hall located at _____, San Pablo, California. City Hall and the EDC Office Premises are more particularly described in Exhibit A, attached hereto.

The EDC Office Premises Lease is for a period of twenty (20) years commencing on January 1, 2020, and ending on December 31, 2039. The City may terminate the EDC Office Premises Lease at any time during the term thereof by giving written notice to the EDC no later than one year prior to termination.

This Memorandum of Lease incorporates herein by this reference all of the terms and provisions of the EDC Office Premises Lease as though fully set forth herein. This Memorandum of Lease is solely for recording purposes and shall not be construed to alter, modify, amend or supplement the EDC Office Premises Lease of which this is a memorandum.

IN WITNESS WHEREOF, the City and the EDC have executed this memorandum by persons thereunto duly authorized as of the date first above written.

CITY OF SAN PABLO, a California municipal corporation

By _____
Matt Rodriguez, City Manager
[signature to be notarized]

Approved as to form:

Attorney for the City of San Pablo

Attest:

Patricia Ponce, City Clerk

SAN PABLO ECONOMIC DEVELOPMENT CORPORATION, a California nonprofit public benefit corporation

By _____
Leslay Choy, Executive Director
[signature to be notarized]

Approved as to form:

Attorney for the San Pablo EDC