

County of Santa Clara

Facilities and Fleet Department


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Date: December 18, 2020

To: Board of Supervisors
Jeffrey V. Smith, County Executive

From: Jeffrey D. Draper, Director of Facilities and Fleet

DocuSigned by:

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Subject: Off-Agenda Report relating to 455 O'Connor Avenue Lease (Child Advocacy Center)

At a Special Meeting of the Child and Family Services Committee on November 23, 2020, at the request of Supervisor Chavez, the Committee directed the Administration to provide an off-agenda report outlining the Child Advocacy Center (CAC) Lease, Joint Venture (JV) Partnership Agreement, tenant profile data for 455 O'Connor Avenue, and planning status for the O'Connor Hospital Campus. The following report outlines the lease agreement, the Joint Venture Agreement, tenant profile data related to this building, and planning status of the O'Connor Hospital Campus.

CAC Lease Agreement

On June 2, 2020, the Board of Supervisors approved a ten-year Lease Agreementⁱ, including two-seven year options, with O'Connor Health Center (OCH1) for the lease of 10,582 square feet of medical office space at 455 O'Connor Avenue. 455 O'Connor Avenue is a multi-tenant medical zoned office building, totaling approximately 52,000 square feet situated on a 74,000 +/- square foot parcel(s) and is located .03 miles from the O'Connor Hospital Campus (OCH). This lease will serve as the new home for the CAC, the purpose of which is to coordinate and co-locate services for child victims of sexual assault and abuse at a single location. Construction is progressing, and occupancy and move-in is scheduled to occur between January and April 2021.

Joint Venture Agreement

Effective with the Verity Asset Purchase Agreement, the County was designated as the substituted limited partner in the 455 JV Partnership Agreement, accepting all terms and conditions of the JV Partnership Agreement.

The joint venture between Verity's predecessor, O'Connor Hospital and Toeniskoetter & Breeding, Inc. Development, a California corporation, was formed on January 31, 1996 for a 50 year term, to acquire, develop, construct, lease and engage in business activities related to it. This is a for profit venture.

Board of Supervisors: Mike Wasserman, Cindy Chavez, Otto Lee, Susan Ellenberg, S. Joseph Simitian
County Executive: Jeffrey V. Smith

As a limited partner, the County has a 75% interest in the Joint Venture, known as OCH1ⁱⁱ, with Toeniskoetter & Breeding, Inc serving as General Partner (GP). The GP manages the daily business operations of the partnership, i.e., leasing, property management, partnership reports, etc. If during the term, the GP elected to sell the asset, the County as limited partner has a Right of First Offer prior to dissolution of the partnership.

Profile: Building Tenancy- Options/Limitations to locate another clinic at 455 O'Connor

The three-story multi-tenant medical office building is currently 99% leased and occupied by physician practitioners and related medical services, including County suites. The site is bound by Highway 880 to the west, the OCH campus to the northeast, and a mix of medical and residential south and east. Excluding the County lease, the table below summarizes the building leases:

455 O'Connor Leases*

Tenant	Suite	Leased Sq.Ft	Term	Options
Sleep Medicine	110	2,267	7/31/2022	1-5 yr
Aesthetic & Refractive Surge	180	1,776	7/31/2021	None
Savco Pharmacy	190	1,316	12/31/2026	None
Indian Health	200	6,516	11/30/2022	1-5 yr
Stanford Healthcare	210	5,999	11/30/2023	None
Chase Lay	270/280	3,443	9/30/2026	2-5 yr
Genesis Medicus	300	1,873	5/31/2028	None
Southbay Retina	310	2,013	6/30/2025	1-5 yr
Daniel Lee	320	3,589	5/31/2029	1-5 yr
Dr(s) Hurwitz & Raju	350	2,064	M-T-M	None
Horizon Vision Center	360	2,180	10/31/2024	None
Jame Lilja	370	3,237	8/31/2023	2-3 yr
Mama Bay/Nalwa	390	1,416	7/31/2022	None

* Table does not include
County leases

Lease Use: The 455 O'Connor lease restricts the premises to use as a child advocacy center, medical offices, and general offices incidental to the center.

JV Partnership: The General Partner has full management control of the partnership with the Limited Partner (County) interest passive.

OCH Master Planning Status:

The OCH is comprised of a hospital which has been added to five times over 52 years starting in 1953, with the last addition completed in 2005; a medical building constructed in 1951; a boiler plant/laundry construction in 1953 with a 1981 addition; and a linear accelerator facility constructed in 1983ⁱⁱⁱ. Work is currently underway to comply with a state mandate to seismic retrofit the 1953 building, and this work is scheduled for completion in June 2022. OCH campus repairs and attention to deferred maintenance items are being prioritized.

A master plan will need to be undertaken to understand the future growth and program needs for this campus. Facilities Planning will request funding approval for this through the Fiscal Year 2022 Capital Improvement Plan.

cc: Chief Board Aides

Miguel Marquez, Chief Operating Officer

James R. William, County Counsel

Megan Doyle, Clerk of the Board of Supervisors

Mary Ann Barrous, Agenda Review Administrator

ⁱ Lease Attached

ⁱⁱ Partnership Abstract Attached

ⁱⁱⁱ O'Connor Aerial Attached

AMENDED AND RESTATED LEASE

This Amended and Restated Lease Agreement (“**Lease**”) is entered into by and between the COUNTY OF SANTA CLARA, a political subdivision of the State of California (“**County**” or “**Tenant**”) and O’CONNOR HEALTH CENTER 1 (“**Landlord**”) a California limited partnership, whose address is c/o Toeniskoetter Development, Inc, 1960 The Alameda, San Jose, California, 95126. The “**Effective Date**” of this Lease shall be the last date signed by all Parties on the signature page hereto. As referred to herein, County and Landlord are each a “**Party**” to this Lease and collectively the “**Parties**” to this Lease.

RECITALS

- A. Landlord is the owner of certain real property and all structures, parking areas and improvements thereon located at 455 O’Connor Drive, San Jose, California, including that certain building consisting of approximately 50,697 rentable square feet (the “**Building**”), APN’s 274-59-063 and 274-59-064 (collectively, the “**Property**”).
- B. Landlord and Tenant (as successor-in-interest to the original tenant) are Parties to the following: (i) that certain Lease dated October 23, 2013, as amended and assigned by that certain Lease Assignment, Assumption, Amendment and Landlord Consent, for Suite 100, dated May 1, 2018, and that certain Assignment and Assumption of Leases dated March 1, 2019 (the “**2019 Assignment**”); (ii) that certain Lease dated May 12, 2017, as amended and assigned by that certain Lease Assignment, Assumption, Amendment and Landlord Consent, for Suite 150, dated May 1, 2018, and the 2019 Assignment; and (iii) that certain Lease dated May 12, 2017 and that certain Lease Assignment, Assumption, Amendment and Landlord Consent, for Suite 170, dated May 1, 2018, as amended and assigned by the 2019 Assignment (collectively, the “**Original Leases**”).
- C. Landlord and Tenant desire to combine the Leases into one Lease and make certain amendments thereto as set forth in this Lease.
- D. Tenant desires to lease the Premises for use as government office space, as authorized by Cal. Gov. Code § 25353.

NOW THEREFORE, in consideration of the foregoing, and of other good and valuable consideration, the Parties agree that, from and after the Commencement Date, the Original Leases are hereby terminated and the following shall be the agreement of the Parties with respect to the Premises, as follows:

- 1. **Grant of Lease; Premises.**
 - a. Lease. Landlord leases to Tenant and Tenant leases from Landlord the Premises in its entirety, for Tenant’s exclusive use and control. Tenant shall be entitled to the quiet enjoyment and use of the Premises at all times during the Term.

- b. Premises. The Premises shall be deemed to consist of a total of 10,582 Rentable Square Feet (RSF), with Suite 100 consisting of 1,164 RSF in the location shown on Exhibit A (“**Suite 100**”), Suite 150 consisting of 5,432 RSF in the location shown on Exhibit A (“**Suite 150**”), and Suite 170 consisting of 3,986 RSF in the location shown on Exhibit A (“**Suite 170**”).
- c. Common Areas. The term “Common Area(s)” shall mean all areas and facilities within the Building and the exterior areas of the Property provided and designated by Landlord for the general use and convenience of Tenant and other tenants and occupants of the Building, including common corridors, stairwells, elevators, restrooms, parking areas and sidewalks. The Premises shall be deemed to include a non-exclusive right to use the Common Area and Tenant’s exclusive right to use 2 reserved parking spaces in the underground parking garage for the Building. Tenant shall abide by the reasonable rules and regulations promulgated, from time to time, by Landlord for the Common Areas and Property. Landlord shall not have any obligation, however, to monitor the use of Tenant’s reserved parking spaces.

2. **Term.**

- a. Term. The term of this Lease is for ten (10) years (“**Initial Term**”), commencing on the later of the Effective Date or delivery of the Premises to Tenant as required in Section 4 below (the “**Commencement Date**”).
- b. Extended Term. Provided that an Event of Default does not exist at the time of exercise, Tenant shall, in Tenant’s sole and absolute discretion, have the option to extend the Term of this Lease for two (2) separate periods of seven (7) years each, on the same terms and conditions as stated in this Lease, except for adjustments in Base Rent (if any) as more fully described in Section 3.b. below (each of which may be referred to as an “**Extended Term**”; the “**Term**” shall mean the Initial Term together with any exercised Extended Term). Each Extended Term may be exercised by notice from Tenant to Landlord given at least one hundred eighty (180) days prior to the end of the then-existing Term. Except as stated in this Section 2.b., no action, agreement or approval by either Party is necessary or required for the Lease to extend under the terms contained herein.
- c. Holdover. Tenant shall have the option to hold possession of the Premises on a ninety-day, periodic basis after the expiration of the Term upon the same terms and conditions of this Lease. In the event Tenant remains in possession of the Premises after the expiration of the Term, either party may terminate the periodic tenancy by giving ninety (90) days’ prior notice to the other for any or no reason. If Tenant remains in possession of all or any part of the Premises after the expiration of the Term, without the express written consent of Landlord, such tenancy shall be month-to-month only and shall not constitute a renewal or extension for any further term. In such event, Base Rent shall be increased to an amount equal to one hundred twenty-five percent (125%) of the Base Rent payable during the last month of the Term, and any other sums due under this Lease shall be payable in the amount

and at the times specified in this Lease. Such month-to-month tenancy shall be subject to every other term, condition, and covenant contained herein. Notwithstanding the foregoing provisions, Tenant shall have the right to hold over possession of the Premises for up to three (3) months from the expiration of the Term if Tenant provides Landlord with at least three (3) months prior written notice of Tenant's intention to so holdover possession of the Premises. In such event, for such three-month period only, Tenant shall pay Base Rent at a rate equal to one hundred ten percent (110%) of the Base Rent in effect for the last month of the Term, and such holdover shall be subject to every other term, condition, and covenant contained herein. Any further holdover of the Premises by Tenant after the expiration of such three-month period, if applicable, shall be subject to holdover rent at the rate of one hundred twenty-five percent (125%) of the Base Rent payable for the last month of the Term.

d. Tenant Obligations at Termination. Upon expiration of the Term or other termination of the Lease, the Tenant shall surrender the Premises in compliance with the following terms:

- i. Tenant shall return the Premises to Landlord in good, clean condition and repair, ordinary wear and tear and damage by casualty excepted, free of all personal property, debris and garbage.
- ii. All trade fixtures, removable partitions, WiFi systems, electronic and security devices and equipment (including cameras), telecommunications or data cabling or other removable items made or installed within the Premises by either Tenant or Landlord, and paid for by Tenant (collectively, "Tenant's Personal Property"), are and shall remain the property of Tenant and shall be removed by Tenant at Tenant's expense at the end of the Term, except as otherwise mutually agreed to by Landlord and Tenant. Any Alterations made to the Premises by Tenant shall be removed by Tenant at the end of the Term if Landlord had previously notified Tenant in writing at the time Landlord approved such Alterations that Tenant would be required to remove Alterations at the end of the Term. Tenant will be responsible to repair any damage to the Premises caused by the installation and/or removal of Tenant's Personal Property and any such Alterations.

3. Rent.

- a. Base Rent. Starting with the month in which the Commencement Date occurs**, Tenant shall pay Landlord "**Base Rent**" in the amounts set forth in the table below. Base Rent shall be due on or before the fifth (5th) day of each calendar month during the Term to Landlord at the address stated in Section 14 below. In the event the Event the Commencement Date does not occur on the first day of a calendar month, Base Rent shall be prorated for the number of days in such first calendar month and shall be due with the Base Rent due for the first full calendar month of the Term.

TIME PERIOD	RENT PER SQ. FT	MONTHLY RENT	ANNUAL RENT
1-12	\$2.75	\$ 29,100.50	\$ 349,206.00
13-24	\$2.83	\$ 29,973.52	\$ 359,682.18
25-36	\$2.92	\$ 30,872.72	\$ 370,472.65
37-48	\$3.00	\$ 31,798.90	\$ 381,586.82
49-60	\$3.10	\$ 32,752.87	\$ 393,034.43
61-72	\$3.19	\$ 33,735.46	\$ 404,825.46
73-84	\$3.28	\$ 34,747.52	\$ 416,970.23
85-96	\$3.38	\$ 35,789.94	\$ 429,479.33
97-108	\$3.48	\$ 36,863.64	\$ 442,363.71
109-120	\$3.59	\$ 37,969.55	\$ 455,634.62

**In the event the Commencement Date has not occurred on or before the thirtieth (30th) day after the Expected Substantial Completion Date (as defined in Exhibit B), Base Rent shall be abated one (1) day for each day after such 30th day that the Commencement Date has not occurred but only to the extent the delay is not due to a Tenant Delay or a Force Majeure Delay (as defined in Exhibit B). For example, if the Expected Substantial Completion Date is determined to be July 1, 2020, and the requirements for the Commencement Date are satisfied on September 1, 2020, and there are ten (10) days attributable to Tenant Delays, Tenant shall be entitled to twenty-two (22) days of abated rent.

- b. Base Rent During an Extended Term. For any Extended Term, Tenant will pay Base Rent equal to the Fair Market Rent for such Extended Term; provided, however, monthly Base Rent for such Extended Term shall not be less than the Base Rent for the month immediately preceding the applicable Extended Term.
 - i. If Tenant exercises an option to extend the Term pursuant to Section 2.b. above, then within thirty (30) days of the exercise of said option, Landlord shall send Tenant a notice setting forth the proposed Base Rent for the applicable Extended Term along with supporting documentation showing a justification for the proposed Fair Market Rent determination. Within fifteen (15) days of receipt of the proposed Base Rent, Tenant will notify Landlord in writing as to whether Tenant accepts or does not accept such determination. If not accepted, then Tenant shall have the right to withdraw its exercise of the option to extend or alternatively require the Parties to undertake the process set forth in (ii) below.
 - ii. Fair Market Rent determination. “**Fair Market Rent**” shall mean the fair market rental value of the Premises as of the commencement of the applicable Extended Term, taking into consideration the uses permitted

under this Lease, the quality, size, design and location of the Premises, and the rent for comparable medical office buildings within a ten (10) mile radius.

1. In the event Tenant does not accept Landlord's proposed Base Rent, set forth in i. above, Landlord and Tenant shall meet at a mutually agreeable time and place, not later than fifteen (15) days after Landlord's receipt of Tenant's notice not to accept, to attempt to resolve the disagreement (the "**Consultation Period**").
2. If, within the Consultation Period, Landlord and Tenant cannot reach agreement on a Fair Market Rent, each Party shall select, hire and pay for their own appraiser to determine Fair Market Rent. Each such appraiser shall arrive at a determination of Fair Market Rent and submit their conclusions to Landlord and Tenant no later than thirty (30) days from the expiration of the Consultation Period.
3. If only one appraisal is submitted within the requisite time period, it shall be deemed as Fair Market Rent for the applicable Extended Term. If both appraisals are submitted within such time period and the two appraisals so submitted differ by less than ten percent (10%) of the higher appraisal, the average of the two shall be deemed the Fair Market Rent for the applicable Extended Term. If the two appraisals differ by ten percent (10%) or more, the appraisers shall immediately select a third appraiser who shall, within thirty (30) days after its selection, make and submit to Landlord and Tenant a determination of Fair Market Rent for the applicable Extended Term. If the third appraisal is not between the two original appraisals, then the third appraisal shall be averaged with the closer of the two original appraisals and the result shall be the Fair Market Rent for the applicable Extended Term, or if the third appraisal is between the two original appraisals the third appraisal shall be the Fair Market Rent for the applicable Extended Term. The parties shall share equally in paying for the cost of the third appraisal.
4. All appraisers shall be members of the American Institute of Real Estate Appraisers with not less than ten (10) years of experience appraising office and commercial properties in Santa Clara County.

c. Operating Expenses. In addition to Base Rent, Tenant shall pay to Landlord, as Additional Rent, Operating Expenses.

- i. Tenant shall pay to Landlord on or before the fifth (5th) day of each calendar month during the Term an amount reasonably estimated by Landlord to be the monthly amount attributable to Operating Expenses (the "**Estimated Monthly Expense**"). The Estimated Monthly Expense may be adjusted by Landlord providing thirty (30) days written notice to Tenant of the adjusted Estimated Monthly Expense. Landlord estimates that Operating Expenses

are currently \$11,220 per month.

- ii. The term "**Operating Expenses**" shall mean Tenant's Pro-rata Share of all commercially reasonable costs and disbursements which Landlord shall pay or become obligated to pay in connection with the maintenance and repair of the Property (including those items set forth in Section 9 below), Real Estate Taxes, and Insurance Expenses. "**Tenant's Pro-rata Share**" shall mean 20.87%.
- iii. The term "**Real Estate Taxes**" shall mean all taxes, rates, and assessments, general or special, levied or imposed with respect to the land, the Property including all Improvements and Alterations constructed thereon (including all taxes, rates and assessments, general or special, levied or imposed for school, public betterment and/or general or local Improvements), but shall not include Landlord's general net income taxes, estate taxes, inheritance taxes, and documentary transfer taxes, and any tax penalties incurred as a result of Landlord's negligence, inability or unwillingness to pay Real Property Taxes when due or any taxes for which Landlord is not required to pay due to Tenant's tax-exempt status.
- iv. "**Insurance Expenses**" shall mean premiums for any insurance obtained by Landlord pursuant to Section 7.b. and any deductibles payable in connection with such insurance, subject to the provisions of Section 3.c.v. below.
- v. Notwithstanding anything to the contrary in the Lease, in no event shall Operating Expenses include: (i) costs occasioned by fire, acts of God, or other casualties, or insurance deductibles related to casualty or damage except for the portion of deductibles related to casualty or damage occurring during the Term in an amount not to exceed ten thousand dollars \$10,000 per occurrence, or by the exercise of the power of eminent domain; (ii) costs for which Landlord has a right of reimbursement from others; (iii) costs to correct any construction defect in the Premises, or construction or repair costs to comply with any CC&R's, underwriter's requirement or law applicable to the Premises on the Commencement Date or costs arising from the gross negligence or willful misconduct of Landlord; (iv) depreciation, amortization or other expense reserves; (v) interest, charges and fees incurred on debt payments, on mortgages and rent with respect to ground leases; (vi) costs incurred in connection with Premises Hazardous Materials except as required to be paid by Tenant under Section 15; (vii) any repair or maintenance pertaining to the structure of the Building (including the structural walls, slabs, floors, the roof structure); (viii) a management fee in excess of five percent (5%) of Base Rent; (ix) the cost of any capital repair or replacement, excepting only an amortized portion of such capital expenses for the relevant period of the Operating Expenses charge based on the useful life of such capital expense, amortized in accordance with generally accepted accounting principles, (x) costs associated with any

damage or repairs necessitated by the gross negligence or willful misconduct of Landlord or Landlord's employees, agents, contractors or invitees; and (xi) any late payment penalties or fees assessed on overdue payments for expenses Landlord is responsible for paying. In addition, controllable Operating Expenses for any year after the first full year of this Lease shall not exceed 105% of such Operating Expenses for the prior year. For purposes of this Lease, "controllable Operating Expenses" shall mean all Operating Expenses other than Real Property Taxes, Insurance Expenses, and utilities.

- vi. Within one hundred twenty (120) days after the expiration of each calendar year included in the Term, Landlord shall make a determination of the actual Operating Expenses for such year. Landlord shall submit to Tenant a written statement, certified by Landlord, in sufficient detail for verification by Tenant and a summary showing Operating Expenses on a line item basis by category ("**Statement**"), which Statement shall include the amount of actual Operating Expenses for such calendar year compared to estimated Operating Expenses paid by Tenant. Within thirty (30) days after delivery of such Statement, including any Statement delivered after the expiration or termination of this Lease (provided Tenant shall not be responsible to pay any Statement provided more than two years after the expiration or termination of this Lease), Tenant shall pay to Landlord the difference, if any, between the amount paid by Tenant as estimated Operating Expenses and the amount owed by Tenant for the actual Operating Expenses for such calendar year. If Tenant's payment of the estimated Operating Expenses was greater than the amount owed by Tenant of the actual Operating Expenses, then Landlord shall credit such amount against the next due installments of Rent or, at Tenant's election, pay the same to Tenant all within thirty (30) days after Tenant's request. Notwithstanding the foregoing, Tenant may give Landlord written notice of its intent to inspect, examine and audit Landlord's records pertaining to Operating Expenses for the calendar year covered by such Statement ("**Audit Notice**"). Tenant shall have the right, upon delivery of an Audit Notice to Landlord within 180 days after receipt of the Statement, to inspect, audit and/or copy Landlord's books, records and accounts pertaining to Operating Expenses for the calendar year covered by such Statement, and Landlord shall make such books, records and accounts available to Tenant and its agents, and accountants for review during regular business hours at Landlord's principal place of business. Any overpayment or underpayment of Operating Expenses revealed by Tenant's audit shall be adjusted within thirty (30) days after Tenant delivers written notice of such overpayment or underpayment to Landlord. In the event such an audit reveals an overpayment by Tenant of more than 5% of actual Operating Expenses, Landlord shall reimburse Tenant for Tenant's out of pocket costs for such audit. Unless Tenant takes written exception to any Operating Expenses reflected in any Statement from Landlord within 180 days after receipt of

such Statement, such Statement shall be considered as final and accepted by Tenant.

- d. Additional Rent. The term “**Additional Rent**” may be used to mean Operating Expenses and/or any other amounts due to Landlord from Tenant under this Lease except for Base Rent. The term “**Rent**” may be used to mean Base Rent and/or Additional Rent.
- e. Late Charge. Tenant acknowledges that late payment by Tenant to Landlord of Rent and other charges provided for under this Lease will cause Landlord to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult or impracticable to fix. Therefore, if any installment of Rent or any other charge due from Tenant is not received by Landlord within five (5) days of becoming due, then Tenant shall pay to Landlord an additional sum equal to five percent (5%) of the amount overdue as a late charge; provided, however, that in no event shall Landlord assess a late charge with respect to the first late payment of Rent made during any consecutive twelve (12) month period, unless such Rent is not paid within five (5) days after written notice from Landlord to Tenant of such delinquency. The parties agree that this late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of the late payment by Tenant.
- f. Security Deposit. None.

4. **Delivery of the Premises and Tenant Improvements.**

- a. Delivery. Landlord shall deliver the Premises to Tenant “broom clean”, in good working condition, with the Tenant Improvements Substantially Complete (all as defined in Exhibit B attached hereto), and in compliance with applicable laws. In the event Tenant provides Landlord with written notice that any of the foregoing elements of the Premises are not in good working condition or in compliance with law within ninety (90) days after the Commencement Date, then Landlord, at its cost, shall complete such required repair as soon as practical following receipt of such notice.
- b. Tenant Improvements. Landlord shall construct the Tenant Improvements in accordance with the terms set forth in the Work Letter attached hereto as **Exhibit B**.

Tenant acknowledges that, as Tenant is in possession of the Premises pursuant to the Original Leases and may continue to occupy portions of the Premises during the construction and/or installation of the Tenant Improvements, there may be some disruption of Tenant’s business as a result of such work. Landlord and Tenant agree to cooperate with each other to minimize any interference that such work may cause to the conduct of Tenant’s business and to minimize any interference that Tenant’s continued occupancy may cause to the completion of the Tenant Improvements. Landlord shall not have any liability to Tenant, however, for any disruption or inconvenience that such work may cause to Tenant’s business and there shall be no reduction or

abatement of any rent (including operating expenses) payable under the Original Leases as a result of any such disruption or inconvenience, even if Tenant is prevented from using all or any portion of the Premises during the construction of the Tenant Improvements. The Tenant Improvements shall be completed during normal business hours and Tenant shall be solely responsible for moving or relocating, at Tenant's expense, any of Tenant's furniture, equipment or other personal property which must be removed or relocated to complete the Tenant Improvements.

- c. As-Is. Except as otherwise set forth in this Lease, Tenant shall accept the Premises from Landlord "as is".

5. Permitted Use.

The Premises may be used as a child advocacy center for the County of Santa Clara, a medical office and other general offices and uses incidental thereto. Tenant shall not use the Premises for any other purpose without the prior written consent of Landlord. Notwithstanding the foregoing, the Premises may not be used by any of the following agencies, departments or programs of the County of Santa Clara (or any other governmental or quasi-governmental entity to whom the Lease may be assigned), other than in connection with the child advocacy center or in a manner incidental to a primarily medical office or non-client facing general office: animal care and control, alcohol and drug treatment, department of correction, medical examiner-coroner, mental health services, probation department, office of the sheriff, social service agency, unemployment services or welfare services.

6. Alterations; Signage.

- a. Definition. "**Alterations**" shall mean any improvement, alteration, replacement, repair or addition made to or installed in the Premises during the Term, not including the Tenant Improvements.
- b. Authority. Subject to the provisions of this Section 6, Tenant may make Alterations to the Premises necessary for the accommodation of Tenant's uses. Tenant shall notify Landlord of any material Alteration Tenant elects to make, including a written description of the Alterations, prior to the start of work.
- c. Approval of Plans for Alterations. All Alterations exceeding \$50,000 in costs (in each instance) or which will affect the structural elements of the Building or the plumbing, electrical, HVAC and/or fire and life safety systems serving the Premises, shall first be approved by Landlord, which approval will not be unreasonably withheld, delayed or denied. Landlord shall notify Tenant in writing, concurrently with Landlord's approval of any Alterations, whether Tenant will be required to remove such Alterations from the Premises at the expiration of the Term and restore such portions of the Premises to their condition existing as of the Commencement Date. If Landlord's consent is not required for any Alterations, then Landlord reserves the right to require Tenant to remove such Alterations from the Premises at the expiration of the Term or surrender such

Alterations with the Premises at the expiration of the Term.

- d. Landlord's Cooperation. Landlord shall cooperate with and assist Tenant in every reasonable way in Tenant's efforts to obtain all governmental consents, approvals, permits or variances which may be required for the performance of any construction permitted under the terms of this Lease, including Landlord's joinder in any application for any such consent, approval, permit or variance where joinder therein by the owner of the Premises is required by law.
- e. Performance by Tenant or Landlord. Tenant shall have the option (i) to undertake and perform Alterations on its own behalf using a licensed contractor approved by Landlord, or (ii) request that Landlord perform Alterations through Landlord's agent, vendor, and/or contractor. Landlord's consent to such licensed contractor for any Alterations shall not be unreasonably withheld by Landlord. In the event Tenant uses Tenant's own contractor, Tenant shall be responsible for making certain that Tenant's contractor has adequate workers compensation and liability insurance as would be required by Landlord for the level of Alterations required. In the event Tenant requests and Landlord agrees to perform any certain Alterations through Landlord's agent, vendor, and/or contractor ("Landlord Alterations", as defined in Exhibit B), then such Alterations shall be constructed by Landlord pursuant to the Exhibit B attached hereto. Landlord shall not charge Tenant an administrative or overhead fee or for profit associated with any Alterations project.
- f. Liens. Tenant shall keep the Building and the Property free from any liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of Tenant and hereby indemnifies and holds Landlord harmless from all liability and cost, including reasonable attorneys' fees and costs, in connection with or arising out of any such lien or claim of lien. Tenant shall cause any such lien that is imposed to be released of record by payment or posting of a proper bond acceptable to Landlord within thirty (30) days after written request by Landlord. Tenant shall give Landlord written notice of Tenant's intention to perform work on the Premises which might result in any claim of lien at least ten (10) days prior to the commencement of such work to enable Landlord to post and record a Notice of Nonresponsibility. If Tenant fails to so remove any such lien within the prescribed thirty (30) day period, then Landlord may do so at Tenant's expense and Tenant shall reimburse Landlord for such amounts upon demand. Such reimbursement shall include all costs incurred by Landlord including Landlord's reasonable attorneys' fees with interest thereon at the Interest Rate if not paid within thirty (30) days after Landlord's demand therefor.
- g. Signage. Landlord shall provide Tenant, at Landlord's expense, with Building-standard signage at the entrance to the Premises and on the monument sign for the Building, and a listing in the Building directory. Tenant shall have no right to maintain any Tenant identification sign in any other location in, on or about the Building or the Property, and shall not display or erect any other Tenant identification sign, display or other advertising material that is visible from the

exterior of the Building. All costs associated with the maintenance and repair of Tenant's signage shall be paid by Tenant unless included in Operating Expenses.

7. Insurance and Indemnification.

- a. Tenant Insurance.** Tenant agrees that it shall, during the Term of this Lease, and at its own expense, keep its contents, any personal property located on the Premises, and any Alterations to the Premises made by Tenant fully insured against loss or damage by fire or other casualty, under a policy of standard all risk or special form property insurance including, at Tenant's option, flood coverage. Valuation shall be on a replacement cost basis. In addition, Tenant shall maintain in full force and effect a policy of commercial general liability insurance providing coverage against claims for bodily injury, personal injury and property damage based upon, involving or arising out of the use and occupancy of the Premises. Such insurance shall be on an occurrence basis providing coverage in an amount not less than \$2,000,000 per occurrence and not less than \$3,000,000 general aggregate. Tenant's policy shall name Landlord and its property manager as additional insureds and shall be primary and non-contributing with any similar insurance maintained by Landlord. The policy shall not contain any intra-insured exclusions as between insured persons but shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of Tenant's indemnity obligations under this Lease. Tenant does hereby release and waive on behalf of itself and its insurer by subrogation or otherwise, all claims against Landlord on account of any damage to Tenant's personal property or the property of others under its control to the extent that such loss or damage is insured against under any property insurance policy then in effect or would be insured against under a standard ISO special form causes of loss, CP 0030, policy of insurance regardless of whether such loss or damage shall have resulted in whole or in part from the negligence of Landlord, its agents, employees or contractors. As an alternative to obtaining the insurance coverage required herein, Tenant may elect to self-insure for any of the risks that would be covered by such insurance so long as the County of Santa Clara is the tenant in possession of the Premises. Any election by Tenant to self-insure shall not limit any indemnification obligations of Tenant under this Lease and shall be treated as if Tenant actually carried a policy of the required insurance, e.g., the waiver of subrogation provisions herein shall apply to any such self-insurance. If Tenant assigns this Lease, the assignee shall not be entitled to provide self-insurance for any of the insurance required under this Section 7.a. If Tenant elects to self-insure, Tenant shall so notify Landlord of Tenant's election. Otherwise, prior to the Commencement Date Tenant shall provide Landlord with a certificate or certificates of insurance evidencing the insurance coverage required herein.
- b. Landlord Insurance.** Landlord agrees that it shall, during the Term of this Lease, keep the Premises and the Building insured in sufficient amounts against loss or

damage by fire and other casualty commonly covered by a standard all risk or special form policy of property insurance including, at Landlord's option flood and/or earthquake insurance. In addition, at Landlord's option, Landlord shall maintain a policy of rent loss insurance with loss payable to Landlord covering all Rent payable under this Lease for a period of 12 months from the date of loss. Valuation for any all risk or similar insurance shall be on a replacement cost basis. Landlord does hereby release and waive on behalf of itself and its insurer by subrogation or otherwise, all claims against Tenant on account of any fire or other casualty insured against whether or not such fire or other casualty shall have resulted in whole or in part from the negligence of Tenant. Landlord shall maintain commercial general liability insurance covering the Property. Landlord's liability insurance coverage shall be not less than Three Million Dollars (\$3,000,000) combined single limit per occurrence for injury or property damage. Upon the request of Tenant, Landlord shall furnish a certificate substantiating the fact that Landlord has taken out the insurance herein set forth for the Term with an insurance carrier(s) with an A.M. Best financial rating of not less than A-:VII and authorized to do business in the State of California.

- c. Subject to the waiver in Section 7.b., Tenant shall indemnify, defend, and hold harmless Landlord, its partners, officers, agents and employees from and against any and all damage, loss, liability or expense including attorneys' fees and legal costs (collectively, "**Claims**") suffered directly or by reason of any claim, suit or judgment brought by or in favor of any person or persons for damage, loss or expense due to, but not limited to, bodily injury and property damage sustained by such person or persons which arises out of, is occasioned by or in any way attributable to (i) the use or occupancy of the Premises by Tenant, (ii) the acts or omissions of Tenant, its agents, employees, licensees, invitees, or any contractors brought onto the Premises or the Property by Tenant, or (iii) any breach or default of this Lease by Tenant, except to the extent any such Claims arise from the gross negligence or willful misconduct of Landlord, its agents, employees, or contractors. Subject to the waiver in Section 7.a., Landlord shall indemnify, defend, and hold harmless Tenant, its officers, agents and employees from any Claims, arising out of, or in connection with the sole negligence or willful misconduct of Landlord or Landlord's Representatives. Each respective Party's indemnification obligation shall include all costs, attorney's fees, expenses and liabilities incurred in defending the other party against any such claim, action or proceeding, which defense the indemnitor shall provide with counsel reasonably satisfactory to the indemnitee. The indemnitee shall have the right to approve legal counsel providing its defense and such approval shall not be unreasonably withheld. The indemnitor shall reimburse the indemnitee for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the indemnitor contests its obligation to indemnify, defend and hold harmless the indemnitee under this Lease and does not prevail in that contest. It is the intent of the parties to this Lease to provide the broadest possible coverage for the indemnitee. The Parties' obligations under this Section shall survive the termination or expiration of this Lease.

8. Utilities; Taxes.

- a. All utilities or services for the Premises which are separately metered to the Premises as of the Commencement Date shall be registered in the name of Tenant and Tenant shall pay directly for the costs of all such utilities or services. Any utilities which are furnished to the Premises but are not separately metered to the Premises, or separately charged to Tenant by the providers thereof, shall be paid by Landlord, and Tenant shall reimburse Landlord for such charges to the extent the same are Operating Expenses. In no event shall Tenant be entitled to any abatement of Rent as a result of any failure or interruption of any utilities or services, nor shall Landlord be liable to Tenant for any such failure or interruption of utilities or services unless such failure or interruption was caused by the willful misconduct of Landlord, its agents, or employees; provided, however, notwithstanding anything to the contrary in this Lease, in the event the Premises or any portion thereof is rendered untenantable and Tenant ceases the operation of its business within the Premises or portion thereof due to any failure or interruption of utilities or services or lack of access to the Premises (and such untenantability is not due to condemnation or casualty [which shall be governed by Sections 12 and 13] or due to the act or omission of Tenant), and such interruption or failure of utilities or services or lack of access is due to (i) the negligence or willful misconduct of Landlord or is within Landlord's reasonable ability to correct, and such interruption or failure of utilities or services or lack of access continues for more than one (1) business day, Base Rent and Operating Expenses (or a portion thereof commensurate with the untenantable portion of the Premises) shall abate starting on the date the Premises (or portion thereof) became untenantable and ending on the date that any such utilities or services to the Premises and/or access to the Premises is restored, (ii) circumstances outside Landlord's reasonable control to prevent or remedy, Base Rent and Operating Expenses (or a portion thereof commensurate with the untenantable portion of the Premises) shall abate starting on the thirtieth (30th) day after the Premises (or portion thereof) became untenantable and ending on the date that any such utilities or services to the Premises and/or access to the Premises is restored, or (iii) governmental orders that prohibit the conduct of business in the Premises (which prohibition is not specific to Tenant's failure to comply with applicable laws or regulations), fifty percent (50%) of Base Rent (or a portion thereof commensurate with the untenantable portion of the Premises) shall abate starting on the date the Premises (or portion thereof) became untenantable and ending on the date any such order ceases or is terminated.
- b. Tenant to pay all taxes, if any, associated with Tenant's personal property. Landlord shall pay all Real Estate Taxes when due.

9. Maintenance and Repairs.

- a. Landlord's Maintenance and Repair. Landlord shall, subject to and in accordance with the terms of this Lease and without demand, repair and maintain the following items in good tenantable condition at all times during the Term on a routine, as needed, and scheduled basis: doors (excluding any special security doors, safes, or similar facilities), fire protection services; the roof, roof membrane, and roof coverings; exterior and interior paint; exterior and interior walls; all interior and exterior electrical wiring, pipes, conduit and structural support; the parking areas, pavement, landscaping, sprinkler systems, sidewalks, driveways, curbs; and lighting systems, glazing, flooring, plumbing, water pipes, hot water heater, fire extinguishers, lighting (including, but not limited to, bulbs, tubes, fixtures, lens covers, ballasts, emergency lights, security lights and exterior lights), heating, ventilating and air conditioning units (excluding any supplemental units installed by Tenant), life/health/safety systems and bathroom/toiletry systems and dispensers.
- b. Pesticides. All lawn or landscaping maintenance and all pest mitigation practices shall comply with Tenant's Integrated Pesticide Management Ordinance B28, as amended from time to time.
- c. Timing of Maintenance. All maintenance and repair work requested by Tenant shall be performed by or caused to be performed by Landlord in a timely fashion and in accordance with the time frames set forth on Exhibit D ("**Maintenance and Repairs Response Timelines**") attached hereto and the following:
 - i. Emergency. Maintenance, repair and/or replacement work determined to be an Emergency by Tenant and Landlord, shall be scheduled, arranged and paid for by Landlord in accordance with the response times more particularly identified or defined in Exhibit D and with Tenant's advance knowledge and consent. If Tenant is unable to reach Landlord (or Landlord's agent), after Tenant makes reasonable active efforts to notice Landlord, and Landlord is unreachable or non-responsive, then within three (3) hours of commencement of notification efforts during normal business hours (and 6 hours of commencement of notification outside of normal business hours), Tenant may arrange for said emergency maintenance, repair, and/or replacement work and bill Landlord for the reasonable costs incurred by Tenant to complete such work.
 - ii. Urgent. Maintenance, repair, and/or replacement work determined to be Urgent by Tenant and Landlord, shall be scheduled, arranged and paid for by Landlord in compliance with the response times more particularly identified or defined in Exhibit D and with Tenant's advance knowledge and consent. If Tenant is unable to reach Landlord (or Landlord's agent), after Tenant makes reasonable active efforts to notice Landlord, and Landlord is unreachable or non-responsive, then within three (3) business days of commencement of notification efforts, Tenant may arrange for said urgent maintenance, repair, and/or replacement work and bill Landlord for

the reasonable costs incurred by Tenant to complete such work.

- iii. Routine. Maintenance, repair, and/or replacement work determined to be Routine by Tenant and Landlord, shall be scheduled, arranged and paid for by Landlord in compliance with the response times more particularly identified or defined in Exhibit D and with Tenant's advance knowledge and consent. Maintenance, repair, and/or replacement work determined to be Routine may be performed during Tenant's hours of operation.
- d. Scheduled Preventative Maintenance. Scheduled preventive maintenance, repair, and/or replacement work shall be performed by Landlord (or Landlord's agent), and shall be scheduled, arranged with Tenant's advance knowledge a minimum of five (5) business days in advance of any preventive maintenance, repair, replacement, or improvement. Preventive maintenance, repair, replacement work or improvement which would disrupt Tenant's operation and use of the Premises or any portion thereof shall not be performed during Tenant's hours of operation if reasonably possible
- e. Maintenance, Monitoring and Testing of Life/Health/Safety Systems. Landlord shall perform annual maintenance, monitoring, and testing of all Life/Health/Safety Systems, in accordance with best industry practices, including but not limited to: emergency lighting, fire alarm systems, fire extinguishers, smoke detectors, and all mechanical systems. Landlord shall provide to Tenant a written report of the most recent maintenance and testing within thirty (30) days of Tenant's written request.
- f. Lighting. Landlord shall furnish, maintain, and repair all light fixtures, including but not limited to the prompt replacement of all extinguished ballasts, light bulbs and/or tubes at all times during the Term. Landlord shall also dispose of all extinguished light bulbs and/or tubes in accordance with the standards set forth in the California Code of Regulations (CCR) Title 22, Chapter 23, as amended or replaced from time to time (Universal Waste Management) and other applicable standards.
- g. Exterior. Landlord shall with specific regard to exterior maintenance and repair of the Premises, complete the following:
 - i. Landscaping. Landlord shall furnish and perform all routine and as needed landscaping maintenance, repair and replacement work.
 - ii. Parking Lot. Landlord shall furnish and perform routine and as needed parking lot sweeping, maintenance and repair, cleaning, re-striping, and re-surfacing. With specific regard to the re-striping and re-surfacing, Landlord shall re-stripe and re-surface the parking lot once after the fifth year and, thereafter, every successive five (5) year period of the Term.
 - iii. Graffiti Removal. Landlord shall promptly remove all graffiti from the

exterior walls of the Premises and from all signage on an as needed basis and wherever it exists. If Landlord fails to remove any such graffiti within five (5) business days after Tenant's issuance of written notice to Landlord, Tenant may perform, or cause to be performed, removal of said graffiti and bill Landlord for the actual costs thereof. For the purposes of the self-help remedy herein granted, Landlord hereby grants to Tenant the access to the Premises necessary to exercise such remedy.

- h. Pest Control. Landlord shall provide and perform all structural and non-structural pest control services outside the Building. Said pest control services shall be provided on a scheduled basis, at a minimum quarterly. All pest control services shall comply with the provisions of Section 8(a) herein above.
- i. Mechanical System Service. Landlord shall provide the following:
 - i. Employ a licensed heating and air conditioning contractor to inspect service, maintain, repair and replace, as necessary all mechanical systems of the Premises on a regular and consistent basis to maintain the original performance and operation of the systems.
 - ii. Perform annual inspections of all mechanical systems of the Premises, including, but not limited to, the heating, ventilating, and air-conditioning system. Annual inspections shall occur during the months of February or March, in anticipation of the air-conditioning season.
 - iii. Heating, Ventilating, and Air Conditioning (HVAC). Use air filters manufactured in accordance with best industry standards and for use in the specific model of the mechanical system of the Premises and replace said air filters upon occupancy and on a quarterly basis (i.e. every 90 days) starting ninety (90) days from the Effective Date and continuing until the Termination of this Lease. The HVAC system shall be capable of maintaining comfort conditions between 68 and 78 degrees throughout all conditioned areas at all times of the year. The cooling system shall be designed to maintain 76°F inside when the outside temperature is 100°F. The heating system shall be designed to maintain 70°F inside when the outside temperature is 30°F.
 - iv. Provide a copy of the mechanical system service record to Tenant prior to occupancy and, during the Term, each time promptly after Tenant's request.
 - v. Ensure that all inspections, maintenance and repair of the mechanical systems are documented in writing and the inspection, maintenance and repair data shall be available for review within five (5) business days after a written request for such data as stated in Title 8, California Code of Regulations, Section 5142(b), as amended from time to time, and other applicable laws, and a complete report of such inspection, maintenance and

repair date shall be provided within a reasonable amount of time after a written request for such report. These records must be kept for the Term of this Lease.

j. Alarm Services. The Parties acknowledge and agree:

- i. Intrusion Alarm System. Tenant shall maintain and monitor, during the Term of this Lease, any Intrusion Alarm System installed for the Premises.
- ii. Access Control System. Tenant shall maintain, during the Term of this Lease, any Access Control System installed for the Premises. Landlord shall maintain new and existing doors and door hardware including but not limited to: doors, door frames, electric strikes, lever sets or mag-locks, and panic bars.
- iii. Fire Alarm. Landlord shall provide, maintain, install and monitor, during the Term of this Lease, a Fire Alarm System on the core and shell of the Building and the Improvements, in accordance with all applicable laws and fire codes, as amended from time to time. Tenant acknowledges that if it requires any other alarming of any nature whatsoever, Tenant shall provide, maintain, install and monitor such alarm systems.

k. Repair Contact. For those maintenance or repair duties or responsibilities of Landlord under any provision of this Lease, Tenant may notify Landlord or Landlord's designated contacts requesting service when maintenance or repair is needed or required for the Premises.

- i. Repair Contacts. Within ten (10) days after the Commencement Date, Landlord shall designate in writing sources to be called when repairs by Landlord to the Premises are required or needed. Information regarding these sources shall include names, addresses, telephone numbers, fax numbers, and email addresses.
- ii. Emergency/After Hours Repair Contacts. Within ten (10) days after the Commencement Date, Landlord shall designate in writing a list of additional sources to be called or contacted when emergency or after-hours repair to the Premises are required or needed. Said sources shall be contacted in the event Tenant is unable to contact Landlord or Landlord's agent within a reasonable time under the circumstances. This list shall include, as to each source, name, address, telephone number, fax number, and email address.
- iii. Self-Help. In the event Landlord fails, refuses or neglects to make those repairs or replacements for which Landlord is obligated herein, including those identified within the timelines specified in Exhibit D, then Tenant may, in addition to any other remedy Tenant may have, make, or cause to

be made, such repairs and bill Landlord for the reasonable actual cost so incurred plus an administrative fee. Said administrative fee shall not be less than \$500.00 USD, nor greater than a maximum of four percent (4%) of the actual cost incurred, whichever sum is greater. Tenant shall, at its discretion, use its own contractors for such work provided that such contractors are licensed contractors duly qualified to perform the required work.

- l. Tenant-Caused Maintenance and Repair. In the event Tenant requests maintenance and repair work from Landlord and said maintenance and repair work is later determined at the time of repair to be caused by the negligence or willful misconduct of Tenant, Permitted Users, or any of the Tenant Representatives, then Tenant shall reimburse Landlord for the actual amount of said maintenance and repair work (but only to the extent such work directly arises from the negligence or willful misconduct of Tenant, Permitted Users, or any of the Tenant Representatives) within thirty (30) days of Tenant's receipt of a reasonably detailed invoice.
- m. Asbestos. If, in the performance of the construction of the Tenant Improvements, or of any maintenance or Alterations by Landlord or Tenant, it is determined that asbestos-containing materials will have to be removed from the Premises or will be disturbed, then Landlord shall engage the services of a California licensed asbestos contractor for the removal and or abatement of such materials in accordance with law. Any cost and expense which may be caused by the need to hire such asbestos contractor, either for the removal of asbestos-containing materials, or the replacement of such materials, shall be borne solely by Landlord.
- n. Materials Standards. All goods, products and materials supplied or installed in connection with this Lease by or on behalf of either Landlord or Tenant shall be new, suitable for the use intended, free from all defects, in conformance with manufacturer's specifications and warranties, and in compliance with applicable federal, state and local laws upon the date on which they are supplied or installed.

10. Assignment or Subletting.

- a. Tenant's Assignment/Subletting. Tenant may, at its option, license or sublet any portion of or all the Premises or assign this Lease with the consent of the Landlord, which shall not be unreasonably withheld, conditioned or delayed. No subleasing, licensing or assignment by Tenant will release Tenant from the obligations contained herein without the express written consent of Landlord.
- b. Consent. If Tenant desires at any time to sublet the Premises or any portion thereof, or assign this Lease, Tenant shall first notify Landlord of its desire to do so and shall submit in writing to Landlord: (i) the name of the proposed subtenant or assignee; (ii) the nature of the proposed subtenant's or assignee's business to be

carried on in the Premises; (iii) the terms and provisions of the proposed sublease or assignment and a copy of the proposed sublease or assignment containing a description of the subject premises; and (iv) such financial information, including financial statements, as Landlord may reasonably request concerning the proposed subtenant or assignee.

- c. Government Use. Notwithstanding anything to the contrary in this Lease, but subject to the provisions of Section 5, Landlord acknowledges and agrees that County may use the Premises for the performance of public services and to utilize the services of other governmental agencies, contractors or nonprofit organizations as contractors or subcontractors to perform these services on the Premises without requiring County to enter into a sublease or license with such parties and without Landlord's consent. County's authority to allow any such parties to perform these services on the Premises without a lease, sublease or license is authorized pursuant to Section 25227 of the California Government Code.

11. Entry by Landlord or Landlord Representatives.

Upon at least one (1) business day's prior written notice to Tenant (except in case of emergency, where no prior notice shall be required) and subject to Landlord's compliance with Tenant's security regulations and the protection and security of PHI (defined in Section 25.b. below) pursuant to the terms of this Lease, Tenant shall permit Landlord and Landlord's designated agents, employees, assigns, affiliates, managers, officers, directors, contractors and subcontractors (each and together the "**Landlord Representatives**") to enter into and upon the Premises (excluding inside certain secure or restricted areas of the Premises designated by Tenant) at all reasonable times during normal Tenant operating hours Monday through Friday, excluding Tenant holidays, and without any rent abatement or reduction for the following purposes only: (i) inspecting and maintaining the Premises; (ii) making repairs, alterations or additions to the Premises; (iii) erecting additional building(s) and improvements on the land where the Premises are situated or on adjacent land owned by Landlord; (iv) performing any obligations of Landlord under the Lease including remediation of any Premises Hazardous Materials (as defined below) if determined to be the responsibility of Landlord, (v) posting and keeping posted thereon notices of non-responsibility for any construction, alteration or repair thereof, as required or permitted by any law, and (vi) placing "For Sale" signs, and showing the Premises to Landlord's existing or potential successors, purchasers, lenders and tenants (except that Landlord may only show the Premises to potential tenants during the last 12 months of the Lease Term). Landlord shall use commercially reasonable efforts to minimize any disruption of Tenant's use of and access to the Premises as a result of any entry. Tenant shall have the right to have a representative present during any entry by Landlord. Notwithstanding any provision of the use to the contrary, if Landlord's entry materially interferes with Tenant's use of the Premises for more than three (3) business days, then Tenant shall be entitled to an abatement of the Rent for the portion of the Premises so affected. Landlord's written notice shall designate by name, title, address, email and phone number, each Landlord Representative who will be entering the Premises and the reasons for such entry.

12. **Destruction.**

- a. Insured Casualty. If the Premises are damaged or destroyed during the Term by an Insured Casualty, Landlord shall diligently repair or rebuild the damaged or destroyed areas to substantially the condition in which they existed immediately prior to such damage or destruction, provided, however, Landlord shall not be required to (i) expend any funds in excess of the insurance proceeds actually received (or the amount of proceeds that likely would have been received had such insurance been carried) plus the applicable deductible amount for such purpose, (or) repair or rebuild any Alterations to the Premises made by or for Tenant. As used in this Lease, “**Insured Casualty**” means damage or destruction that either (a) is covered by insurance carried by Landlord, or (b) is not covered by insurance solely due to Landlord’s failure to maintain the insurance required to be carried by Landlord pursuant to this Lease.
- b. Uninsured Casualty.
 - i. Minor Damage. If the Premises are damaged by a casualty which is not an Insured Casualty, and reconstruction costs do not exceed five percent (5%) of the total cost immediately prior to the casualty of replacing the Premises as it was constructed, Landlord shall promptly commence and diligently prosecute to completion all work necessary to reconstruct the Premises to a condition substantially equivalent to its condition immediately prior to the casualty.
 - ii. Substantial Damage. If the Premises are damaged by a casualty which is not an Insured Casualty, and reconstruction costs exceed five percent (5%) of the total cost immediately prior to the casualty of replacing the Premises as it was constructed, Tenant or Landlord may elect, but shall not be obligated to elect, to reconstruct the Premises. Landlord shall notify Tenant within forty-five (45) days after such casualty whether or not Landlord elects to perform such reconstruction. If Landlord fails to notify Tenant within such forty-five (45) day period, Landlord shall be deemed to have elected not to perform such reconstruction. Within twenty (20) days after the earlier of (i) Landlord’s election (if Landlord elects not to perform the reconstruction) or (ii) the end of such 45-day period (if Landlord fails to make any election), Tenant shall notify Landlord whether or not Tenant elects to perform such reconstruction. If Tenant fails to give notice to Landlord within such twenty (20) day period, Tenant shall be deemed to have elected not to perform such reconstruction. If neither Party elects to perform such reconstruction, this Lease shall terminate as of the date of such casualty. A Party electing to perform such reconstruction shall promptly commence and diligently prosecute to completion all work necessary to reconstruct the Premises to a condition substantially equivalent to its condition immediately prior to the casualty. In the event Tenant is the

reconstructing Party, Landlord shall contribute up to five percent (5%) of the cost of such reconstruction.

- c. Rent Abatement. Base Rent and Additional Rent shall be abated proportionately during any period in which, by reason of any insured or uninsured casualty which is not a result of Tenant's negligence or willful misconduct, there is interference with the operation of Tenant's business in the Premises, in proportion to the amount of Rentable Area of the Premises that is not usable for Tenant's use due to such interference. Such abatement shall continue for the period commencing with such damage or destruction and ending with the date that is the earlier of the date the business may be fully resumed on the Premises, as reasonably determined by Tenant, or the date Landlord's construction is completed. If Tenant determines that continuation of business is not practical pending reconstruction, Base Rent and Additional Rent due and payable hereunder shall abate until reconstruction is completed.
- d. Termination.
 - i. If Landlord or Tenant becomes obligated or elects to perform reconstruction work under the provisions of this Section 12 (the "**Reconstructing Party**") and does not commence, in a substantial and meaningful way, such reconstruction within ninety (90) days after such obligation accrues or such election is made, the other may, at any time prior to the commencement of such repair or restoration, give written notice to the Reconstructing Party of its election to terminate this Lease on a date not less than thirty (30) days following the giving of such notice. If the other party gives such notice to the Reconstructing Party and such reconstruction is not commenced within thirty (30) days after receipt of such notice, this Lease shall terminate as of the date specified in said notice. If the Reconstructing Party commences the reconstruction within thirty (30) days after receipt of such notice, this Lease shall continue in full force and effect. "**Commence**" as used in this Section shall mean either the unconditional authorization of the preparation of the required plans or the beginning of the actual work.
 - ii. Landlord and Tenant each shall have the right to terminate this Lease if a casualty causing damage to the Premises or Property cannot be repaired within two hundred seventy (270) days.
 - iii. Unless this Lease is terminated pursuant to an express provision of this Section 12, any casualty damage or destruction shall in no way annul or void this Lease and Tenant (to the extent it was operating its business prior to the causality damage or destruction) shall continue the operation of its business during any such period to the extent reasonably practicable from the standpoint of prudent business management. Tenant hereby expressly waives the provisions of California Civil Code Sections 1941 and 1942 and specifically acknowledges that the provisions of this Section 16 are intended

to constitute the parties' express intent with regard to this Lease and the Premises in the event of damage or destruction.

13. Condemnation.

In the event of a condemnation of the Premises or of any portion of the Common Areas which materially affects Tenant's access to the Premises or use of the parking facilities, each of the parties hereto shall have and retain their separate and independent rights for loss, costs, and damages against the condemning authority. Should more than ten percent (10%) of the Premises, or of any other rights be taken so as to render the remaining Premises impractical for use of Tenant (as solely determined by Tenant), and Landlord does not, within a reasonable time, reconfigure the remaining property so that Tenant's usability of the Premises shall be substantially the same (as solely determined by Tenant), then Tenant may terminate the Lease by giving Landlord thirty (30) days' written notice, without additional liability, cost or expense and without the obligation to pay any further Rent. In the event less than all of the Premises are condemned, and the balance remaining after any reconfiguration, may reasonably be devoted to the use of Tenant, and Tenant does not elect to terminate, then the Rent shall thereafter be reduced to the extent that the market rental value of the Premises is reduced by such taking and any reconfiguration.

14. Notice.

Any notices which are required to be given hereunder, or which either Party may wish to give to the other, shall be in writing and may be personally delivered, given by mailing the same by registered or certified mail, or delivered by overnight commercial courier, postage prepaid, addressed as follows:

To TENANT:

County of Santa Clara
Facilities and Fleet Department
2310 N. 1st Street, Suite 200
San Jose, CA 95131
Attention: Property Management

Or to such other place as COUNTY may designate by written notice.

To LANDLORD:

Toeniskoetter Development, Inc.
1960 The Alameda, Suite 20
San Jose, CA 95126
Attn: Asset Manager

Or to such other place as either Party may designate on their own behalf by advance written notice to the other Party. Any notice shall be deemed to have been received on the date of actual delivery for personal delivery, the next business day after depositing with an overnight commercial courier, or three days after depositing notice in the United States mail.

15. **Environmental Liability.**

Landlord represents and warrants that, to the best of Landlord's current, actual knowledge, the Premises is free from and does not contain any regulated hazardous materials, hazardous substances or hazardous waste of any nature, kind, quantity or amount in, on, upon, under, over or within the Premises and/or any of the structures, buildings, equipment, materials or facilities located on or under the Premises (collectively and each referred to as the "**Premises Hazardous Material**" or "**Premises Hazardous Materials**") as of the Effective Date of this Lease, other than any materials, substances or wastes that may have been used, stored or disposed of in, on or from the Premises by Tenant and/or Tenant's predecessors-in-interest ("**Excluded Premises Hazardous Materials**"). If any Premises Hazardous Materials other than Excluded Premises Hazardous Materials exist as of the Effective Date of this Lease, then Landlord shall be solely and exclusive liable and responsible for all liability, claims, damages, lawsuits, actions, enforcement, clean up, penalties, charges, allegations, mitigation, mediation, containment, removal, storage, handling, deaths, injuries, illnesses and all other losses of any kind related to or caused by any and all such Premises Hazardous Materials (collectively and each an "**Environmental Claim**") and shall indemnify, defend and hold harmless Tenant, and each of its agents, representatives, employees, Board of Supervisors, officers, agents and assigns (collectively and each "**Tenant Representatives**") for any and all such Environmental Claim regardless of when or where the Claim is brought.

Tenant agrees to indemnify and hold harmless Landlord from any and all claims, damages, fines, judgments, penalties, costs, liabilities, or losses (including, reasonable attorneys' fees) arising during or after the Term from or in connection with the presence of Premises Hazardous Materials, which are present on the Premises solely as a result of any storage, use, disposal or release of such Premises Hazardous Materials by Tenant, Tenant's agents, employees, or contractors or by Tenant's predecessors-in-interest.

16. **Consequential Damages.**

At no time shall Landlord or Tenant be responsible or liable for any lost profits, lost economic opportunities, punitive damages or any form of consequential damage of any kind or nature resulting from or related to this Lease.

17. **Force Majeure.**

Landlord and Tenant shall be excused for the period of any delay in the performance of any obligations hereunder when prevented from doing so by cause or causes beyond their respective absolute control which shall include, without limitation, all labor disputes, civil

commotion, civil disorder, riot, civil disturbance, war, war-like operations, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulations, orders, moratoriums or controls, fire or other casualty, inability to obtain any material, services or Acts of God (collectively, "**Force Majeure Delay**"; provided, however, in no event shall Tenant be excused from the payment of Rent.

18. Estoppel.

Within ten (10) business days after Landlord's written request, Tenant shall deliver to Landlord a written statement containing the following information, current as of the date of the statement: whether the Lease has been terminated or not; what is the effective date, commencement date and/or rent commencement date of the Lease; what is the current monthly Base Rent and Additional Rent and through what date such amounts have been paid; whether there are any extension or renewal rights or purchase options; whether there is any unpaid tenant improvement allowance or outstanding free rent credits; and whether to Tenant's knowledge Landlord is in default of any terms of the Lease.

19. Subordination.

- a. This Lease is and shall be prior to any encumbrance recorded after the date of this Lease affecting Premises.
- b. If, however, a lender requires that this Lease be subordinate to any such encumbrance, this Lease shall be subordinate to that encumbrance, only if Landlord first obtains from the lender a written agreement that provides the following (or language substantially similar):
 - i. As long as Tenant pays Rent when due under this Lease and no Event of Default has occurred that remains uncured, no foreclosure of, deed given in lieu of foreclosure of, or sale under the encumbrance, and no steps or procedures taken under the encumbrance, shall affect Tenant's rights under this Lease. Tenant's rights under this Lease shall not be disturbed and shall remain in full force and effect for the Term, and Tenant shall not be joined by the holder of any mortgage or deed of trust in any action or proceeding to foreclosure thereunder. All terms and conditions in the Lease shall remain unchanged and in full force and effect.
 - ii. Tenant shall attorn to any purchaser at any foreclosure sale, or to any grantee or transferee designated in any deed given in lieu of foreclosure provided all terms and conditions in the Lease remain unchanged and in full force and effect.

Tenant shall execute the subordination and non-disturbance agreement, in a form reasonably acceptable to Tenant, and any other documents reasonably required by the lender to accomplish the purpose of this subparagraph provided all terms and

conditions in the Lease remain unchanged and in full force and effect. Tenant agrees that a subordination and non-disturbance agreement which is substantially in the form of Exhibit E to this Lease shall be reasonably acceptable to Tenant.

- c. Landlord shall endeavor in good faith to provide Tenant, within thirty (30) days after the Effective Date, a commercially reasonable non-disturbance, subordination and attornment agreement in favor of Tenant from any ground lessors, mortgage holders or lien holders having an interest in or lien against the Property as of the Effective Date. Such non-disturbance agreement shall be in recordable form and may be recorded at Tenant's election and expense.

20. **Defaults.**

- a. Tenant Event of Default. The occurrence of any of the following events (an "**Event of Default**") shall constitute a default and breach of this Lease by Tenant:
 - i. The failure by Tenant to make any payment of Rent or any other required payment, as and when due, and such failure shall not have been cured within ten (10) days after written notice thereof from Landlord; provided, however, than any such notice shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure Section 1161, so long as such notice from Landlord satisfies the statutory requirements for any such notice;
 - ii. Tenant's failure to perform any other term, covenant or condition contained in this Lease and such failure shall have continued for thirty (30) days after written notice of such failure is given to Tenant; provided that where such failure cannot reasonably be cured within said thirty (30) day period, Tenant shall not be in default if Tenant commences such cure within said thirty (30) day period and thereafter diligently pursues all reasonable efforts to complete said cure until completion thereof; or
 - iii. Tenant's assignment of its assets for the benefit of its creditors; the filing of a petition by or against Tenant, where such action is not dismissed within thirty (30) days, seeking adjudication or reorganization under the Bankruptcy Code; the appointment of a receiver to take possession of, or a levy by way of attachment or execution upon, substantially all of Tenant's assets at the Premises.
- b. Landlord Remedies. Upon any Event of Default, Landlord shall have the following remedies, in addition to all other remedies now or hereafter provided by law or equity:

- i. Landlord shall be entitled to keep this Lease in full force and effect and Landlord may enforce all of its rights and remedies under this Lease, including the right to recover Rent and other sums as they become due, plus interest at 10% per annum from the due date of each installment of Rent or other sum until paid; or
- ii. Landlord may terminate Tenant's right to possession by giving Tenant written notice of termination, whereupon this Lease and all of Tenant's rights in the Premises shall terminate. Any termination under this paragraph shall not release Tenant from the payment of any sum then due Landlord or from any claim for damages or Rent accrued.

In the event this Lease is terminated pursuant to this Section 20.b.ii., Landlord may recover from Tenant all damages incurred by Landlord by reason of Tenant's default, including but not limited to: (i) The cost of recovering possession of the Premises; (ii) Expenses of reletting, including necessary renovation and alteration of the Premises; (iii) Reasonable attorneys' fees, any real estate commissions actually paid and that portion of any leasing commission paid by Landlord applicable to the unexpired Term of this Lease; (iv) The worth at the time of award of the unpaid Rent which had been earned at the time of termination; (v) 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 for the same period that Tenant proves could have been reasonably avoided; (vi) 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 for the same period that Tenant proves could be reasonably avoided; and (vii) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform Tenant's obligations under this Lease, or which in the ordinary course of things would be likely to result therefrom.

The "worth at the time of award" of the amounts referred to in subparagraphs (iv) and (v) of this Section 20.b. shall be computed by allowing interest at the rate of 10% per annum. The "worth at the time of award" of the amount referred to in subparagraph (vi) of this Section 20.b. shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%). The term "rent" as used in this paragraph shall include all sums required to be paid by Tenant to Landlord pursuant to the terms of this Lease.

No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies available.

- c. Landlord's Default. In the event of any failure by Landlord to perform any of Landlord's obligations under this Lease, Tenant will give Landlord written notice specifying such default with particularity, and Landlord shall thereupon have thirty (30) days in which to cure any such default. Unless and until Landlord fails to so

cure any default after such notice, Tenant shall not have any remedy or cause of action by reason thereof. If a default by Landlord remains uncured after the expiration of the thirty (30) day period (except for obligations of Landlord which reasonably require greater than thirty (30) days to fulfill, and provided Landlord has initiated performance of any such obligation within such thirty (30) day period and has thereafter diligently acted to fulfill any such obligation), then Tenant shall have the right, as Tenant's sole and exclusive remedies, to either (i) bring an action for damages, or (ii) cure such default and all reasonable sums expended by Tenant in effecting such cure, together with interest thereon (at the rate of 10% per annum) from the date of such expenditure, shall be due and payable by Landlord to Tenant within thirty (30) days of Tenant's written demand accompanied by reasonable documentation substantiating such sums. All obligations of Landlord hereunder will be construed as covenants, not conditions; and all such obligations will be binding upon Landlord only during the period of Landlord's ownership of the Property and not thereafter.

- d. Tenant's Remedy. If, as a consequence of a default by Landlord under this Lease, Tenant recovers a money judgment against Landlord and such judgment is not covered by insurance carried or required hereunder to be carried by Landlord, such judgment shall be satisfied only out of the proceeds of sale received upon execution of such judgment and levied thereon against the right, title and interest of Landlord in the Property and out of Rent or other income from such property receivable by Landlord or out of consideration received by Landlord from the sale or other disposition of all or any part of Landlord's right, title or interest in the Building, and neither Landlord nor Landlord's partners or agents shall be liable for any deficiency.

21. **CASp.**

The Property has not undergone inspection by a Certified Access Specialist ("CASp"). California Civil Code Section 1938 also requires that this Lease contain the following statement:

"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 to correct violations of the construction related accessibility standards within the premises."

In accordance with the foregoing, Tenant, upon at least thirty (30) days' prior written notice to Landlord, shall have the right to require a CASp inspection of the Premises. If Tenant

requires a CASp inspection of the Premises, then Landlord and Tenant shall mutually agree on the arrangements for the time and manner of the CASp inspection during such thirty (30) day period.

22. Warranty of Title.

Landlord represents and warrants to Tenant that Landlord is well seized of and has good title to the Property and has the right to lease the Premises, will defend the title thereto, and will indemnify Tenant against any damage and expense which Tenant may suffer by reason of any lien, encumbrance, restriction or defect in the title to or description herein of the Premises (other than liens, encumbrances or restrictions which are recorded against the Property as of the Effective Date). Landlord shall immediately provide to Tenant a copy of the grant deed which shows title to the Property vested in Landlord within ten (10) business days of Tenant's request.

23. OFAC.

Each Party represents and warrants to the other that: (i) it is not acting, and shall not act, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule or regulation enforced or administered by the federal Office of Foreign Assets Control; and (ii) it is not engaged in this transaction, directly or indirectly, on behalf of, or instigating or facilitating this transaction, directly or indirectly, on behalf of any such person, group, entity, or nation.

24. General Contract Provisions.

- a. Time is of the Essence. Time is of the essence in the performance of obligations under this Lease.
- b. Waiver. The failure of a Party to insist upon strict performance of any of the terms, covenants, or conditions of this Lease shall not be deemed a waiver of any right or remedy that a Party may have, and shall not be deemed a waiver of a Party's right to require strict performance of all terms, covenants, and conditions thereafter, nor a waiver of any remedy for the subsequent breach of any of the terms, covenants, or conditions.
- c. Severability and Governing Law. Any non-material provision of this Lease which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof and such other provisions shall remain in full force and effect. This Lease, and all the rights and duties of the Parties arising from or relating in any way to the subject matter of this Lease, shall be enforced, governed by and construed in accordance with the laws of the State of California (excluding any conflict of laws provisions that would refer to and apply the substantive laws of another jurisdiction). Landlord expressly agrees that any and all disputes,

lawsuits or proceedings arising out of, relating to or in connection with this Lease, including any and all mediation or other alternative dispute resolution proceedings or settlements or negotiations, shall be brought, disputed and litigated only in the Superior Court of the State of California in the County of Santa Clara (and in no other), and Landlord hereby consents to the exclusive personal jurisdiction and venue of said court.

- d. Entire Agreement. It is understood and agreed that there are no oral agreements between the Parties hereto affecting this Lease and this Lease (including all exhibits and addenda) supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements and understandings, if any, between the Parties hereto or displayed by Tenant to Landlord with respect to the subject matter thereof, and none thereof shall be used to interpret or construe this Lease. This Lease and any separate agreement executed by County and Landlord in connection with this Lease and dated of even date herewith (a) contain all of the terms, covenants, conditions, warranties and agreements of the Parties relating in any manner to the rental, use and occupancy of the Premises, and (b) shall be considered to be the only agreement between the Parties hereto and their representatives and agents. This Lease may not be modified, deleted or added to except by a writing signed by the Parties hereto. All negotiations and oral agreements have been merged into and are included herein. There are no other representations or warranties between the Parties other than as set forth in this Lease, and all reliance with respect to representations is based totally upon the representations and agreements contained in this Lease. The Parties acknowledge that (i) each Party and/or its counsel have reviewed and revised this Lease, and (ii) no rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall be employed in the interpretation or enforcement of this Lease or any amendments or exhibits to this Lease or any document executed and delivered by either Party in connection with this Lease. Titles, section or subsection headings shall not be used in construing this Lease.
- e. Warranty of Authority. Each person executing this Lease on behalf of a Party represents and warrants that (i) such person is duly and validly authorized to do so on behalf of the entity it purports to so bind, and (ii) if such Party is a limited liability company, partnership, corporation or trustee, that such limited liability company, partnership, corporation or trustee has full right and authority to enter into this Lease and perform all of its obligations hereunder. Each Party hereby warrants that this Lease is legal, valid and binding upon such Party and enforceable against such Party in accordance with its terms.
- f. Joint and Several; Covenants and Conditions. If Landlord consists of more than one person or entity, the obligations of all such persons or entities shall be joint and several. Each provision to be performed by Landlord hereunder shall be deemed to be both a covenant and a condition.
- g. Waiver of Jury Trial. To the extent permitted by applicable law, the Parties hereto

shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the Parties hereto against the other on any matters whatsoever arising out of or in any way related to this Lease, the relationship of Tenant and Landlord and/or any claim of injury, loss or damage.

- h. Counterparts; Electronic/Digital Signatures. This Lease may be executed in any number of counterparts, and all of such counterparts so executed together shall be deemed to constitute one and the same agreement, and each such counterpart shall be deemed to be an original provided all of the Parties have fully executed the Lease. Unless otherwise prohibited by law or County policy, the parties agree that an electronic copy of this agreement, or an electronically signed agreement, has the same force and legal effect as the agreement executed with an original ink signature. The term “electronic copy of this agreement” refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of the original signed agreement in a portable document format. The term “electronically signed agreement” means the agreement that is executed by applying an electronic signature using technology approved by the County.
- i. No Third-Party Rights. The Parties do not intend to create rights in, or to grant remedies to, any third party as a beneficiary of this Lease or of any duty, covenant, obligation, or undertaking established herein. This Lease shall not be construed as nor deemed to be an agreement for the benefit of any third party or parties, and no third party or parties shall have any right of action herein for any cause whatsoever.
- j. Attorneys’ Fees.
If either party brings any action or legal proceeding for damages for an alleged breach of any provision of this Lease, to recover rent, or other sums due, to terminate the tenancy of the Premises or to enforce, protect or establish any term, condition or covenant of this Lease or right of either party, the prevailing party shall be entitled to recover as a part of such action or proceedings, or in a separate action brought for that purpose, reasonable attorneys’ fees and costs.
- k. Tenant and Landlord warrants and represents that it has had no dealings with any real estate broker or agent in connection with the negotiation of this Lease and that it knows of no real estate broker or agent who is or might be entitled to a commission in connection with this Lease. Landlord and Tenant each agrees to indemnify, defend and hold the other and their respective agents harmless from and against any and all liabilities or expenses, including attorneys’ fees and costs,

arising out of or in connection with claims made by any broker or individual for commissions or fees resulting from the indemnitor's execution of this Lease.

25. County Specific Provisions.

Compliance with Law. Landlord shall comply with all applicable Federal, State, and local laws, regulations, rules, and policies (collectively, "**Laws**") relating to Landlord's ownership and operation of the Property. Without limiting the foregoing, Landlord shall comply with all applicable wage and hour Laws, including, but not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and any Minimum Wage Ordinance enacted by the County or any other jurisdiction in which the Premises are located. In addition, Landlord shall comply with all Laws concerning nondiscrimination and equal opportunity in contracting, including but not limited to: Title VII of the Civil Rights Act of 1964, as amended; Americans with Disabilities Act of 1990; The Rehabilitation Act of 1973 (Sections 503 and 504); California Fair Employment and Housing Act (Government Code Sections 12900 et seq.); California Labor Code sections 1101 and 1102. Landlord shall not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sex or gender identity, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organization affiliations, or marital status in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation, nor shall Landlord discriminate in the provision of services provided under this Lease because of age, race, color, national origin, ancestry, religion, sex/gender, sex or gender identity, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status. Tenant shall comply with all applicable Laws relating to the conduct of Tenant's business and/or Tenant's use and occupancy of the Premises, including without limitation the Americans with Disabilities Act of 1990. The foregoing shall specifically include any Alterations to the Premises and/or the Common Areas which are required by any applicable Laws, including Title 24 of the California Administrative Code and the Americans with Disabilities Act, as result of the specific nature of Tenant's use of the Premises or the construction of the Tenant Improvements or any Alterations to the Premises made by Tenant during the Term of this Lease; provided, however, Landlord shall be responsible for the cost of any Exterior Alteration (as defined in Exhibit B) which may be required in connection with any standard medical, retail or office improvements made to the Premises.

a. Notice of Health Insurance Portability and Accountability (HIPAA) and Patient Privacy Law Compliance.

- i. While accessing the Premises, Landlord acknowledges that it may have direct or incidental access to "Protected Health Information" or "PHI" or contact with patients. For purposes of this section of the Lease, "Protected Health Information" or "PHI" shall have the meaning provided by the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Subparts A and E of Part 164 (the "Privacy Standards") as promulgated by the Department of Health and Human Services ("HHS") pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") (42 U.S.C. Section 1320d, et seq.), California Civil Code

Section 56.20 et seq. and other applicable California laws (each and collectively, the “HIPAA Laws”).

- ii. Within the Premises, Tenant will endeavor to implement reasonable safeguards to protect the PHI from any intentional or unintentional disclosure to third parties in violation of the Privacy Standards by implementing appropriate administrative, technical, and physical safeguards to protect the privacy of PHI, and will endeavor to implement appropriate administrative, technical and physical safeguards to limit incidental disclosures of PHI, including disclosures to Landlord and Landlord Representatives. The parties agree that neither the Landlord nor Landlord Representatives shall need access to, nor shall they use or disclose, any PHI of Tenant. In the event, however, PHI is disclosed to Landlord or Landlord Representatives, either directly or indirectly and regardless of whether the disclosure is inadvertent or otherwise, Landlord agrees to take reasonable steps to maintain, and to require Landlord Representatives to maintain, the privacy and confidentiality of such PHI, including that no PHI will be removed from the Premises by Landlord or Landlord Representatives, and no PHI will be discussed with or otherwise disclosed to any other person or entity. Landlord agrees to immediately notify Tenant upon learning of any disclosure of PHI to Landlord or to the Landlord Representatives. The parties agree that the foregoing does not create, and is not intended to create, a “business associate” relationship between the parties as that term is defined by the Privacy Standards.
- b. California Public Records Act. The County is a public agency subject to the disclosure requirements of the California Public Records Act (“CPRA”). If Landlord’s proprietary information is contained in documents submitted to County, and Landlord claims that such information falls within one or more CPRA exemptions, then Landlord must clearly mark such information “CONFIDENTIAL AND PROPRIETARY,” and identify the specific lines containing the information before providing these documents to County. In the event of a CPRA request for such information or documents, the County will provide notice to Landlord at least five (5) business days prior to the deadline for the request for such CPRA disclosure. If Landlord contends that any documents or information are exempt from the CPRA and wishes to prevent disclosure, Landlord is required, at its sole cost, liability and expense, to obtain a protective order, injunctive relief or other appropriate remedy from a court of law in Santa Clara County and properly serve notice on County of such court-provided remedy at least two (2) business days before the County’s deadline for responding to the CPRA request. If Landlord fails to obtain such court-provided remedy before County’s deadline for responding to the CPRA request, County may disclose the requested information even if marked “CONFIDENTIAL AND PROPRIETARY” without any liability or obligation to Landlord or any third parties.
- c. Conflict of Interest. Landlord represents, warrants and agrees that it shall

comply, and require its agents, representatives, contractors, consultants, sub-consultants and subcontractors to comply, with all applicable (i) requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code section 1090 et. seq., the California Political Reform Act (California Government Code section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations section 18700 et. seq.). Failure to do so constitutes a material breach of this Lease.

- d. County Regulatory Authority. Landlord acknowledges and agrees that County, acting not as Tenant but in its governmental regulatory or enforcement capacity, has certain governmental regulatory or enforcement authorities or police powers over the Premises, Landlord and other third parties and that nothing in this Lease binds the County to exercise any of its discretionary governmental authority in any particular manner nor does this Lease preclude the County from exercising any of its discretionary governmental authority in any manner and for any lawful purpose.
- e. No Smoking; Alcohol; Nutrition.
 - i. Smoking or vaping any substance are prohibited on the Premises.
 - ii. The consumption, sale or distribution of alcohol in any form is prohibited on the Premises.
 - iii. All food and beverages sold or offered for sale on the Premises shall comply with the County of Santa Clara's nutrition standards as amended from time to time.

26. **Right of First Offer to Lease Additional Space.**

Provided an uncured Event of Default under this Lease does not exist at the time of exercise, and subject to the rights that have been granted to any tenants of the Building as of the date of this Lease (the "**Superior ROFO Rights**"), Tenant shall have a right of first offer to lease any space in the Building that becomes available for lease during the Term on the following terms and conditions. If at any time during the Term any space in the Building becomes available for lease, and any tenants with Superior ROFO Rights to such space have elected not to exercise such rights, Landlord shall notify Tenant of (a) the location and approximate size of the space that will be available for lease (the "**First Offer Space**"), (b) the approximate date that the First Offer Space will be available for lease, and (c) the terms and conditions upon which Landlord would be willing to lease the First Offer Space (the "**First Offer Notice**"). Tenant shall have ten (10) days after receipt of the First Offer Notice to notify Landlord in writing of Tenant's desire to lease the First Offer Space on the terms and conditions stated in the First Offer Notice. If Tenant notifies Landlord within such 10-day period of Tenant's desire to lease the First Offer Space on such terms

and conditions, Landlord and Tenant shall, at Landlord's election, enter into a new lease for the First Offer Space on the terms and conditions stated in the First Offer Notice and otherwise on the terms and conditions in this Lease, or enter into an amendment to this Lease, adding the First Offer Space to the Premises, and modifying such terms as are affected by the addition of the First Offer Space. Landlord agrees to bargain in good faith on any terms not stated in the First Offer Notice. If, however, Tenant fails to notify Landlord of Tenant's election to lease the First Offer Space within such 10-day period or, if Landlord and Tenant, through no fault of Landlord, fail to execute a new lease or lease amendment within sixty (60) days after the date of Tenant's notice to Landlord, then Tenant shall be deemed to have waived its right to lease the First Offer Space and Landlord shall have the right thereafter to offer the First Offer Space for lease to any third party on no-less-favorable terms and conditions than those stated in Landlord's Notice without further notice to Tenant. For purposes of this Section 26, no space within the Building shall be deemed to be "available for lease" if Landlord is negotiating with the then current tenant of such space to extend the term of its lease, whether pursuant to an express option to extend set forth in the lease or otherwise.

27. **Exhibits.**

All exhibits referenced in this Lease are incorporated into and made a part of this Lease:

Exhibit A	– Premises
Exhibit B	– Work Letter
Exhibit C	– Green Cleaning Policy Administrative Guidelines
Exhibit D	– Maintenance and Repairs Response Timelines
Exhibit E	– Form of SNDA

////SIGNATURES FOLLOW ON NEXT PAGE////

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28. **Survival.**

The terms of this Lease which by their nature should survive cancelation, expiration or termination of this Lease shall so survive.

IN WITNESS WHEREOF, each Party has executed this Lease as of the date set forth below such Party's signature below:

Tenant:

Landlord:

COUNTY OF SANTA CLARA, a political subdivision of the State of California

O'CONNOR HEALTH CENTER 1, a California limited partnership

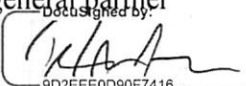

CINDY CHAVEZ
President, Board of Supervisors

By: OCH Forest 1, a California Limited Partnership, its general partner

Date: JUN 02 2020

By: Toeniskoetter Development, Inc.,
Its general partner

~~Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors.~~

By: 
9D2EEE0D90E7416
Brad W. Krouskup
Title: President and CEO

Attest:


MEGAN DOYLE
Clerk of the Board of Supervisors

5/15/2020
Date: _____

APPROVED AS TO FORM AND LEGALITY:

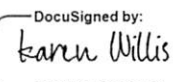
DocuSigned by:

F889A27CD9EB463
Karen M. Willis, Deputy County Counsel

EXHIBIT A

DEPICTION OF PREMISES

455 O'Connor Drive, 1st floor - Premises Suites 100, 150 and 170 *

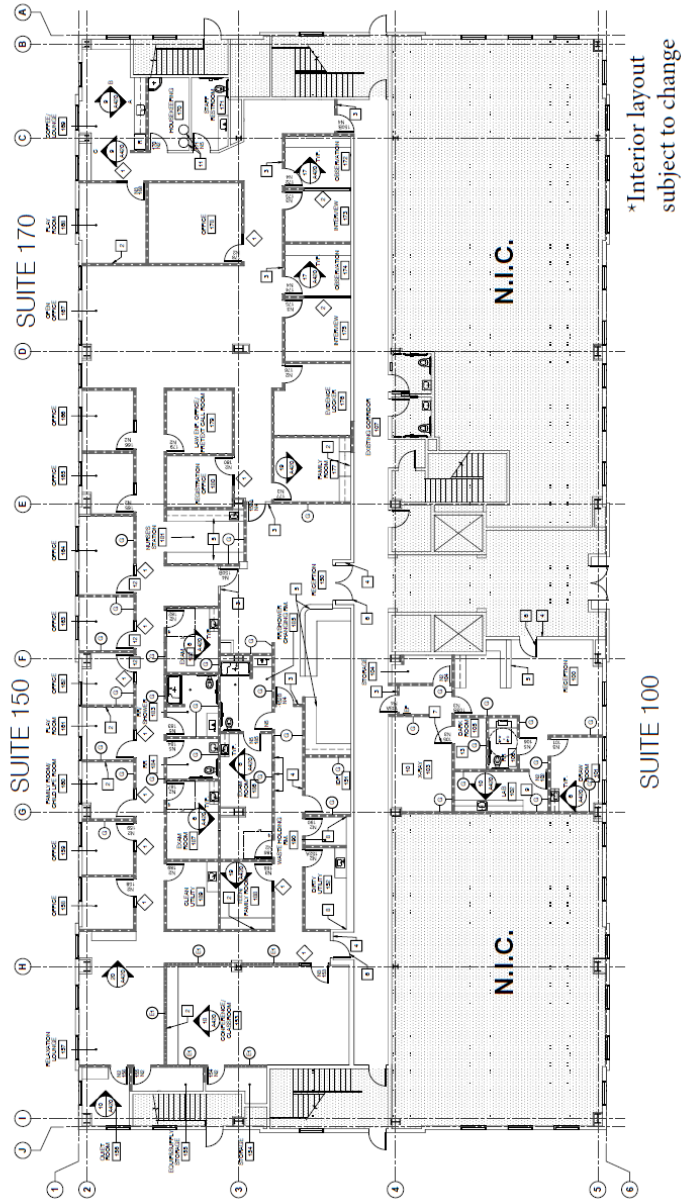


EXHIBIT B

WORK LETTER

CONSTRUCTION OF TENANT IMPROVEMENTS OR ALTERATIONS

Landlord shall construct the Tenant Improvements in accordance with this Exhibit B (this “**Work Letter**”).

The “**Tenant Improvements**” are comprised of the improvements to the Premises described on Exhibit B-1 attached hereto, and any additions to such work requested by Tenant or made in a change order.

In addition, in the event Tenant elects in the future to have Landlord construct any Alterations to the Premises after the Commencement Date, such work shall be referred to as “**Landlord Alterations**” and shall be constructed in accordance with this Work Letter.

The term “**Work**” as used in this Work Letter may refer to any or all of the Tenant Improvements and any Landlord Alterations.

1. PLANS.

- a. Work Description. With respect to the Tenant Improvements, Landlord and Tenant have agreed on a work description which has been incorporated in the Final Design Drawings (defined below).

With respect to any Landlord Alterations done during the Term, Landlord and Tenant shall agree to a description or plan of such Landlord Alterations (a “**Work Description**”).

- b. Schematic Design Drawing. With respect to the Tenant Improvements, Landlord and Tenant have approved the Final Design Drawings prepared by Nelson Architectural Group which are attached as Exhibit B-1.

With respect to any Landlord Alterations, Landlord shall, within twenty (20) days after the Work Description is finalized, work with an architect (the “**Architect**”) to submit to Tenant its schematic design drawings showing the design character and finishing of the Premises (“**Schematic Design Drawing**”).

- The Schematic Design Drawing shall set forth in general the alteration and renovation desires of Tenant.
- Tenant shall furnish Landlord, within five (5) business days after Landlord's request, all information necessary to enable Landlord to complete the Schematic Design Drawing (as defined below).
- Tenant shall review the Schematic Design Drawing and shall notify Landlord, within five (5) business days of receipt of the Schematic Design Drawing, of the matters, if any, in which the drawings do not meet with Tenant's approval; provided, however, that Tenant shall not unreasonably withhold, condition or

delay such approval. The final approved Schematic Design Drawing shall be the ("**Final Design Drawing**").

- c. Construction Schedule. Within ten (10) business days after the Effective Date, Landlord shall provide Tenant with a preliminary project schedule for the design and construction of the Tenant Improvements (the "**Construction Schedule**") to be reviewed and approved by Tenant prior to or concurrently with the approval of the Final Construction Drawings. The Construction Schedule shall be updated by Landlord and Tenant upon completion of the Final Construction Drawings. Each phase of construction shall be completed within the time frame allowed in the Construction Schedule, subject to any Force Majeure Delays or Tenant Delays.

With respect to the construction of the Tenant Improvements, the Construction Schedule shall identify the estimated date when Substantial Completion of the Tenant Improvements will occur (such date, the "**Expected Substantial Completion Date**").

- d. Construction Drawings. Upon approval of the Final Design Drawing, Landlord shall retain engineering consultants (the "**Engineers**") to prepare all plans and engineering drawings relating to the structural, mechanical, electrical, plumbing, HVAC, life safety, and sprinkler work to be completed in connection with the Work.

- The plans and specifications to be prepared by Architect and the Engineers hereunder shall reflect only the improvements in the Final Design Drawing and shall be known collectively as the "**Construction Drawings**". Landlord shall cause Architect and the Engineers to deliver an electronic copy of the Construction Drawings to Tenant for Tenant's review and approval within sixty (60) days after approval of the Final Design Drawing. The Construction Drawings shall set forth the following:

- (i) Architectural design of the space, plans, elevations, sections, material elections and finishes.
- (ii) Mechanical systems: Duct distribution system and diffuser locations.
- (iii) Electrical systems: Floor and reflected ceiling plans showing outlets, type of lighting fixtures, other electrical equipment contemplated and location of panel board and switch gear.

- Landlord's preparation or approval of the Construction Drawings and any other plans or specifications shall not constitute any representation as to the adequacy, efficiency, performance or desirability of any space plan or improvements.

- Tenant shall promptly, but in any event, within ten (10) business days of receipt, approve or disapprove the Construction Drawings in Tenant's reasonable discretion.

- e. Preparation of Final Construction Drawings. Within five (5) business days of Tenant's approval of the Construction Drawings, Landlord shall cause the Architect and the Engineers to finalize the Construction Drawings for submittal to the City of San Jose. The completed Construction Drawings which shall be comprised of a fully

coordinated set of architectural, structural, mechanical, electrical and plumbing working drawings in a form which will allow Landlord to obtain all applicable permits (collectively, the "**Final Construction Drawings**").

- f. Disapprovals. In the event Tenant notifies Landlord of its disapproval of any item for which Tenant is required to approve hereunder, Tenant shall provide Landlord with reasons for such disapproval and/or suggested revisions to address such disapproval within the required time frames. Landlord shall then make such adjustments necessary to address such items and respond to Tenant within the same amount of time originally provided to Landlord for the delivery of such item. Tenant shall again provide its approval or disapproval in the same amount of time originally provide to Tenant for the same.

- 2. **PERMITS AND CHANGES.** After approval by Tenant of the Final Construction Drawings, Landlord shall submit the Final Construction Drawings to the appropriate governmental agencies in order to obtain all applicable building permits. No changes, modifications or alterations in the Construction Drawings or Final Construction Drawings may be made without the prior written consent of Landlord or Tenant, which consent shall not be unreasonably withheld or delayed. In the event Tenant requests any changes to the Construction Drawings or Final Construction Drawings which result in increased Tenant Costs in excess of the Approved Budget (defined below), Landlord shall provide Tenant with a revised Proposed Budget and Tenant shall have five (5) business days of receipt to review and comment on or approve the same. If Tenant does not approve the increase, Landlord shall not be required to make the requested changes to the Construction Drawings or Final Construction Drawings; provided, however, at Tenant's request, Landlord shall use commercially reasonable efforts to work with Tenant to make other revisions to the Construction Drawings or Final Construction Drawings, at Tenant's cost, so that Tenant may obtain the improvements it desires within a budget it can approve. Landlord shall provide Tenant with written notice of any changes to the Construction Drawings or Final Construction Drawings required by any applicable governmental authority, and although Tenant shall not have the right to refuse such changes if required by law, Tenant may elect to revise the scope of the work to avoid such changes if such changes result in the cost of the work exceeding the Approved Budget.

3. **COST, EXPENSES AND PAYMENT.**

- a. Proposed Budget. Concurrently with submission by Landlord to Tenant of the Construction Drawings, Landlord shall additionally provide to Tenant, for Tenant's review and approval, the estimated total costs and expenses for which Tenant is required to pay or reimburse Landlord for the Work, including but not limited to permit fees and architectural and engineering fees and expenses (such estimated and actual costs, may be referred to as the "**Tenant Costs**" and the proposed budget for the Tenant Costs may be referred to as the "**Proposed Budget**"). Landlord shall cause Contractor (defined below) to submit to submit competitive bids from at least three (3) subcontractors for each aspect of the Work to the extent commercially available and shall cause Contractor to utilize the low bid in each case unless Tenant approves use of another subcontractor for such work.

Landlord acknowledges that Tenant has anticipated a total not-to-exceed budget for the Tenant Improvements of \$3,900,000.00 and that Tenant does not have the authority to exceed such amount without approval of its Board of Supervisors. Such budget

includes a reasonable contingency to cover some change orders and unforeseen, but necessary expenses.

- b. Approved Budget. Tenant shall promptly, but in any event, within five (5) business days of receipt, review and comment on or approve the Proposed Budget (the Proposed Budget, when approved by Tenant, the “**Approved Budget**”). In the event a Proposed Budget or a change to an Approved Budget is not approved by Tenant, Tenant shall have the option to change the scope of the Work in an attempt to lower the Tenant Costs.
 - c. Cost of Compliance with Laws. If, as a result of work constructed in accordance with this Work Letter, Landlord is obligated to comply with the Americans With Disabilities Act or any other law or regulation and such compliance requires Landlord to make any improvements or alterations outside the Premises (an “**Exterior Alteration**”) and such Exterior Alteration is required solely due to the unique nature of Tenant’s use of the Premises or Tenant’s unique Alterations (as opposed to alterations which would have needed to be done in connection with any standard medical, retail or office improvements made to the Premises), Tenant shall pay the costs therefor to Landlord as part of the Tenant Costs so long such costs are included in the Approved Budget. Otherwise, Landlord shall be responsible for the cost of the Exterior Alteration(s).
 - d. Payment of Tenant Costs. Tenant shall pay to Landlord an amount equal to the Tenant Costs for the Work. The Tenant Payment shall be made to Landlord on a progress payment basis within fifteen (15) days after receipt of an invoice for the Costs of any Work completed to date and copies of the underlying invoices for the specific costs and expenses incurred by Landlord in connection with such portion of the Work. Progress payment bills will be submitted to Tenant not more frequently than every thirty (30) days following the completion of the Approved Budget.
4. **CONSTRUCTION.** Upon Tenant’s approval of the Final Construction Drawings, the Approved Schedule and the Approved Budget, Tenant shall issue Landlord a “**Notice to Proceed**” in which event Landlord shall commence construction of the Work and diligently pursue completion of such Work in accordance with this Work Letter. Landlord’s receipt of the Notice to Proceed will constitute Tenant’s acknowledgment that the Final Construction Drawings correctly depict the proper layout and design for any and all improvements to the Premises desired by Tenant and the Tenant Cost therefor.
- a. Construction. Landlord shall construct all Work in accordance with the Final Construction Drawings, the Approved Schedule and the Approved Budget. All work called for by the Final Construction Drawings for the Tenant Improvements will be performed by Toeniskoetter Construction, a contractor engaged by Landlord (“**Contractor**”). Landlord shall require any contractor working on the Premises during Tenant’s occupancy of the Premises to take all reasonably necessary measures to minimize any damage, disruption or inconvenience to Tenant and Tenant’s personal property, and Landlord shall require the general contractor to institute an appropriate safety program to ensure the safety and convenience of all affected persons. Dust, noise and other effects shall be controlled and mitigated by Landlord as required by applicable law.

- b. Compliance with Laws. Construction of Work shall be done in accordance with all applicable laws and regulations, including compliance with the Americans with Disabilities Act and all other handicap regulations (collectively the “ADA”) relating to the construction of the Work. Landlord shall require or otherwise set forth in its construction contract with Contractor that Contractor comply in all respects with all laws, regulations, rules, and ordinances, whether city, county, state, or federal, as are, from time to time, applicable to the construction of the Work, including but not limited to all workers’ compensation and wage and hours laws.
- c. Green Building Standards. All Work, including their operation, design and maintenance, shall meet and comply fully with the County of Santa Clara green building and sustainability standards, policies and ordinance code provisions as if they were County buildings and facilities, as amended from time to time, including but not limited to (where applicable to the type of Improvements being made) the County Ordinance Code Sections C3-30 and C3-31; Board of Supervisors Policy Manual Section 7.10 (Energy Efficiency Standards for New Building Designs, Facility Leases, Equipment, and Exploration of Solar Energy and Other Renewable Resources); and, Board of Supervisors Policy Manual Section 7.14 (Green Building Policy for County Government Buildings); however, any reasonably equivalent green building and sustainability standards may substitute for any one or all of the County’s green building and sustainability standards, provided such alternatives are first reviewed and approved by Tenant.
- d. Prevailing Wage. Landlord acknowledges and agrees that Work performed under this Lease may be considered a public work within the meaning of California Labor Code Section 1720 and that the requirements of Section 1771, et. seq. apply to such public work. Landlord has included (and will include) consideration for this obligation in calculating compensation under this Lease, if such prevailing wage requirements are applicable. Landlord is solely responsible and liable for ensuring compliance with all applicable prevailing wage laws. County may at any time, without obligation to do so, audit Landlord to verify whether Landlord is in compliance with prevailing wage laws. Landlord shall cooperate with all such audits, including making available and providing copies, during the period 9:00am to 5:00pm, Monday through Friday, any and all records requested by County to verify compliance promptly upon request, but not later than seventy-two hours after such request.
- e. Substantial Completion. For purposes of the Lease, including for purposes of determining the Commencement Date, the Premises shall be ready for occupancy upon Substantial Completion of the Tenant Improvements. For purposes of this Lease, “**Substantial Completion**” shall occur upon the completion of construction of the Tenant Improvements (or the Landlord Alterations, as the case maybe) pursuant to the Final Construction Drawings and the issuance of a certificate of occupancy or signed effective permit for the Premises is issued (or their substantial equivalent), with the exception of any punchlist items and any tenant fixtures, work-stations, built-in furniture, or equipment to be installed by Tenant. “**Punchlist items**” mean those minor unfinished items of work that do not (i) adversely affect Tenant’s ability to finish or install Tenant’s furnishing or fixtures, and (ii) adversely affect Tenant’s occupancy of the Premises for the conduct of its business therein.

In the event of any Tenant Delays (defined below), Substantial Completion shall be deemed to have occurred on the date Substantial Completion would have occurred but for such Tenant Delays (except to the extent Tenant Delays are caused by Force Majeure Delays). Tenant shall be entitled to complete a final walk through of the Tenant Improvements (or Landlord Alterations, as the case maybe) prior to a determination of Substantial Completion, and within two days of the final walk through, Tenant shall be entitled to generate a punch list of repairs or corrective action that shall be addressed by the Landlord within thirty (30) days of receipt.

- f. Warranty. Landlord shall require Contractor to provide a standard contractor's warranty with respect to the Work for one (1) year from the date of Substantial Completion. Such warranty shall exclude routine maintenance, damage caused by negligence or misuse by Tenant and acts of God. Landlord shall (or shall cause Contractor to) promptly correct any construction defects or other warranty items which Tenant brings to Landlord's or Contractor's attention within the one (1) year warranty period.
- g. Contractor Insurance. Landlord shall cause the Contractor to procure a "Broad Form" liability insurance policy in a minimum amount of Three Million Dollars (\$3,000,000.00). Landlord shall also procure builder's risk insurance for the full replacement cost of the Premises while any Work is ongoing; the cost of such builder's risk insurance shall be included in the Approved Budget.

5. DELAYS.

- a. Tenant Delays. The following each shall be considered a "Tenant Delay" and collectively, "Tenant Delays":
 - Tenant's failure to timely supply information necessary to complete the Schematic Design Drawings (or revisions to such drawings);
 - Tenant's failure to timely approve or disapprove any matter requiring Tenant's approval;
 - modifications, revisions and changes to the Constructions Drawings or Final Construction Drawings that are inconsistent with the Work Description or Schematic Design Drawings, requested by or on behalf of Tenant;
 - orders to halt or delay the work given by or on behalf of Tenant;
 - a breach by Tenant of the Lease which results in a delay in Substantial Completion;
 - any changes in the Work required by applicable laws if such changes are directly attributable to Tenant's use of the Premises or Tenant's specialized tenant improvement(s) (as determined by Landlord);
 - Tenant's request for any materials, finishes or equipment which are not readily available if Landlord has informed Tenant of the delays that will result from selecting any such materials, finishes or equipment and Tenant nonetheless elects to proceed with the selection of such materials, finishes or equipment;

- Any delay in the installation of Tenant's furniture, fixtures or equipment if such delay in installation delays the final inspection of the Premises by the City of San Jose; or
- any other acts or omissions of Tenant, or its agents, or employees which result in an identifiable, documented delay in Substantial Completion of the Premises.

b. Force Majeure. The following shall be considered "**Force Majeure Delays**":

- Strikes or labor disturbances;
- War;
- Fire;
- Earthquake, flood or other natural disaster;
- Unusual and unforeseeable delay not within the reasonable control of Landlord (excluding financial inability) in transportation of materials or equipment and the unavailability of reasonable substitutes therefor;
- Casualties; and
- Governmental action or inaction (including failure, refusal or delay in issuing permits, approvals and/or authorizations) or injunction, permit appeal or court order which either specifically or effectively requires cessation of construction taking place in the Building and/or the Project.

6. **Miscellaneous.**

- Tenant's Representative. Tenant has designated Loretta Smith, Real Estate Agent, and Jeff Draper, Director, each of the County's Facilities and Fleet Department, as its sole representatives with respect to the matters set forth in this Work Letter, and, until further notice to Landlord, each of Tenant's representatives, individually, shall have full authority and responsibility to act on behalf of the Tenant as required in this Work Letter.
- Landlord's Representative. Landlord has designated Brad Krouskup as its sole representative with respect to the matters set forth in this Work Letter, and until further notice to Tenant, Landlord's representative shall have full authority and responsibility to act on behalf of the Landlord as required in this Work Letter.
- Time of the Essence. Unless otherwise indicated, all references herein to a "number of days" shall mean and refer to calendar days. If any item requiring approval is timely disapproved by Landlord, the procedure for preparation of the document and approval thereof shall be repeated until the document is approved by Landlord.
- Incorporation. This Work Letter is and shall be incorporated by reference in the Lease, and all of the terms and conditions of the Lease are and shall be incorporated herein by this reference. Unless otherwise defined herein, capitalized terms included in this Work Letter shall have the same meaning as capitalized terms included in the Lease.

EXHIBIT B-1

**FINAL DESIGN DRAWINGS
[Attached]**

**(PENDING CHANGES AGREED BASED ON REVISED COST ESTIMATE PROVIDED BY
LESSOR, DATED 5/1/2020)**

EXHIBIT C

GREEN CLEANING POLICY ADMINISTRATIVE GUIDELINES

[SEE ATTACHED]

Green Cleaning Policy

Administrative Guidelines

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Section I: Introduction

The County of Santa Clara (County) continues to make strides in the sustainability of its operations and seeks to protect the health and safety of all building employees, occupants and visitors, reduce impacts to the environment and support LEED certification through establishing strong standards on cleaning products and equipment used in County facilities. The County shall follow the County Green Cleaning Policy (adopted by the Board of Supervisors on September 29, 2009, and included as Appendix A) and incorporate these Green Cleaning Administrative Guidelines (Guidelines) to the maximum extent practicable. The County will leverage its purchasing power and relationships with its suppliers and contractors to ensure adherence to the standards set forth in these Guidelines.

The Guidelines are maintained and updated, as needed and as conditions change, by the stakeholder committee delegated by the Office of the County Executive. The Guidelines provide details and guidance on policy implementation, including identification of appropriate certified or recognized standards by nationally-recognized, third party organizations, exemptions, performance standards for equipment, information on safer chemical handling and cleaning procedures, and other pertinent information. All departments are encouraged to utilize safer products for infection disease control such as disinfectants and sanitizers that are devoid of substances that are known to cause cancer, asthma and other serious health effects. Exemptions, as detailed in these Guidelines, are granted if no reasonable green alternatives exist for infectious control or security needs, cost differential between green alternative products and standard products exceeds five percent, and for situational needs.

The standards set forth in these Guidelines apply to all departments that have responsibility for cleaning and custodial work in buildings owned or leased by the County or that manage contracts and vendors that supply cleaning services, to the maximum extent practicable. The Guidelines should be utilized in each department as supplies are used up and new contracts are written.

Section II: Guidelines

A. Preface

The County's Environmentally Preferable Purchasing (EPP) Policy (Board Policy #ADD) stipulates procurement priority for products that minimize waste; conserve energy, water and other natural resources; can be easily reused or recycled; contain recycled content; protect biodiversity; and minimize exposure to toxic chemicals posing a risk to health. These Guidelines build upon the County's EPP policy by providing specific guidelines for purchasing cleaning and building maintenance products and their storage, usage and disposal.

B. Approved Cleaning and Building Maintenance Products

To the furthest extent feasible, all cleaning and floor maintenance products, janitorial paper products, cleaning supplies and equipment used in the interior or exterior of County facilities by the Clean and Green Services Staff or third-party contractors should meet the sustainability criteria listed below. These criteria meet the requirements established by LEED 2009 Existing Buildings: Operations and Maintenance (EBOM) IEQ Credit 3.3: Green Cleaning: Purchase of Sustainable Cleaning Products and Materials. These products include, but are not limited to, general purpose cleaners, glass cleaners, non-disinfecting restroom cleaners, disinfectants, bio-enzymatic cleaners, hard floor cleaners, carpet cleaners, floor polish and strippers, specialty cleaners, odor control products, hand soaps and hand sanitizers.

i. Sustainable Certification/Recognition Criteria

All cleaners (except antimicrobial cleaning products), floor care products, hand soaps and sanitizers and janitorial paper products, shall be certified by a nationally recognized, third-party certifying organization or recognition program (either **Green Seal** or **UL**, formerly known as EcoLogo, for their respective product category or recognized by **EPA's Design for the Environment (DfE) Safer Products**) or the products must be approved by the County as equal. Products may gain or lose certifications as new certification categories are developed and criteria for current categories are updated according to new information. The County shall incorporate these changes with each new procurement contract or more frequently, if appropriate.

Currently certified low-toxicity cleaning and building maintenance products include:

<u>Certification</u>	<u>Cleaning and Maintenance Products</u>
Green Seal GS-08	Cleaning Products for Household Use
Green Seal GS-37	Industrial and institutional cleaners
Green Seal GS-40	Industrial and institutional floor care products (floor finish and finish strippers)
Green Seal GS-41	Industrial and institutional hand cleaners
UL 2784 formerly known as EcoLogo CCD-104	Hand cleaners and hand soaps
UL 2783 formerly known as EcoLogo CCD-170	Instant hand sanitizing products
UL 2792 formerly known as EcoLogo CCD-110	Cleaning and degreasing compounds
UL 2798 formerly	Digestion additives for cleaning and odor control

known as EcoLogo CCD-112	
UL 2791 formerly known as EcoLogo CCD-113	Drain or grease traps additives
UL 2796 formerly known as EcoLogo CCD-115	Odor control additives
UL 2759 formerly known as EcoLogo CCD-146	Hard surface cleaners
UL 2777 formerly known as EcoLogo CCD-147	Hard floor care products (finishes and strippers)
UL 2795 formerly known as EcoLogo CCD-148	Carpet and upholstery care

<u>Certification</u>	<u>Janitorial Paper Products</u>
Green Seal GS-01	Sanitary paper products: bathroom and facial tissue, paper towels, napkins and toilet seat covers for both institutional and industrial uses
Green Seal GS-09	Paper towels and napkins (note: this standard is being merged into GS-01)
UL 175 formerly known as EcoLogo CCD-082	Toilet tissues
UL 175 formerly known as EcoLogo CCD-086	Hand towels

Green Seal Certification: Green Seal is a national independent non-profit organization that uses science-based programs to certify products that pass their strict standards.

www.greenseal.org

Standards: <http://www.greenseal.org/GreenBusiness/Standards.aspx>

Certified Products: <http://www.greenseal.org/FindGreenSealProductsAndServices.aspx>

EcoLogo Certification: EcoLogo is a Canadian-based independent third party organization that certifies products using its stringent scientifically relevant criteria.

www.ecologo.org

EcoLogo Standards: <http://ecologo.org/en/criteria/>

EcoLogo Certified Products: <http://ecologo.org/en/greenproducts/>

UL: Underwriters Laboratories (UL) is an independent safety science organization that establishes safety standards and certifies products based on stringent scientific criteria.

<http://www.ul.com/global/eng/pages/offerings/businesses/environment/services/ELmark/index.jsp>

US EPA Design for the Environment (DfE) Recognition:

The US Environmental Protection Agency (EPA) has developed a Safer Product Labeling Program that screens consumer and institutional cleaners to ensure that they do not contain ingredients that can cause cancer, reproductive harm, asthma, or other harmful impacts to human health or the environment. Products with the DfE label have been evaluated by EPA scientists to ensure they meet DfE's criteria.

www.epa.gov/dfe/

DfE's criteria: <http://www.epa.gov/dfe/pubs/projects/gfcp/index.htm#Standard>.

DfE-Recognized products: <http://www.epa.gov/dfe/pubs/projects/formulat/formpart.htm>.

**** If the cleaning product required for your department's needs is not certified by a nationally-recognized third-party certifying organization (i.e., Green Seal or EcoLogo) or recognized by DfE or approved by the County as equal, then, to the extent that is feasible, select a product that does NOT contain any of the County's list of Ingredients to Avoid in APPENDIX B.***

ii. Disinfectants and Sanitizers:

As of May 2013, there are very few surface disinfectants and sanitizing products that are approved by independent third-party organizations such as Green Seal, EcoLogo and EPA. Nevertheless, County employees can select surface disinfectants and sanitizers that use hydrogen peroxide, citric acid, or lactic acid as the "active ingredient" rather than chemicals known to cause asthma (such as chlorine bleach and quaternary ammonium compounds) or cancer (such as Ortho-phenylphenol).

Oxivir TB (a pre-diluted formulation) and Oxivir Five 16 (a concentrate) are two safer disinfecting alternatives (that contain hydrogen peroxide). Disinfectants and sanitizers should be used on pre-cleaned surfaces, where appropriate.

Green Seal's recently adopted GS-53 standard, which covers a wide-range of Specialty Cleaning Products, requires disinfecting and sanitizing products to be EPA-registered for efficacy and to meet a host of other environmental and health criteria. Notably, products certified under this standard may not

contain carcinogens such as ortho-phenylphenol, a disinfectant) or asthmagens/respiratory sensitizers such as chlorine bleach or quaternary ammonium chloride compounds (quats). EcoLogo has established CCD-166 (Disinfectants and Disinfectant Cleaners), which is an older standard (2007) that requires products to be a registered pesticide in Canada and meet some environmental and health criteria, while not prohibiting all quats. Some of the EcoLogo-certified disinfectants contain asthma-safe “active ingredients” such as hydrogen peroxide and thymol. EPA’s Design for the Environment (DfE) Program has “recognized” some sanitizers and disinfectants that contain citric acid, another asthma-safe pesticidal ingredient.

iii. Exemptions:

Exemptions are approved when green alternative products do not meet the department’s performance requirements, if the cost differential between green alternative products and standard products exceeds 5 percent, or for situational need. Exemptions are considered during any review process of updating the Guidelines and requests for new exemptions initiate a review process. In general, Departments are responsible for following these guidelines and for describing their need for an exemption, the product(s) for exemption, the intended use and locations for its use and any other pertinent data. It is the intention of the policy that implementation of this policy be governed by each department. The Procurement Department shall utilize these guidelines, including exemptions, in informing cleaning supply purchasing contracts and any custodial services contracts.

The following exemptions are requested by specific departments; however, exemptions are automatically granted if other departments require similar products for similar needs.

1. Parks:

Santa Clara County Parks and Recreation Department requires an exemption for the following:

- a. Sodium hypochlorite (5% to 15% concentration solutions): for purposes of disinfection of areas affected by rodent infestation to protect employees and the public from possible Hanta virus infection. Current Department protocol is to thoroughly disinfect standing rodent fecal debris piles or deceased rodent carcasses found in County Parks buildings, restroom breezeways, employee residences and public facilities with a 10% sodium hypochlorite solution, completely saturating the contaminated articles. Employee shall apply using appropriate personal protective equipment (PPE) and follow established procedures to handle, mix and apply safely using hand sprayers. Once contaminated debris has been fully saturated, area shall be vacated and ventilated while disinfection shall be allowed to occur over several hours to overnight at which point 10% sodium hypochlorite saturated rags or the Department HEPA vacuum shall be employed to fully bag or vacuum material for proper disposal by the Department Environmental Health and Safety Officer. A final wipe of areas cleaned of bulk debris shall be provided with the 10% sodium hypochlorite solution before the decontaminated areas can be returned to service

and the contaminated spaces reoccupied. Employees shall conduct all work in appropriate PPE and the area shall not be reoccupied until thoroughly ventilated with fresh air and all residuals of cleaning solutions have dried completely.

- b. Quaternary ammonium chloride compounds (product names and formulations vary between vendors and routine equivalent product substitution by Procurement): for HIV, hepatitis and other infectious disease control in public restrooms frequented by homeless and transient populations and often fouled by blood and body fluids not properly directed to sinks or toilets. These compounds remain the preferred disinfectant due to effectiveness and rapid nature of disinfection allowing the facility to be returned to service as lines form and public demands for access increase. They also provide significant user (employee) and public safety even on contact with treated surfaces and the absence of harmful fumes in poorly ventilated public park restroom facilities. Routine review of green chemical alternates will occur for consideration of phasing out these exempted products when equally safe and effective green chemistry becomes available.

In the absence of any NEW or additionally discovered rodent infestation or contamination of the cleaned area, future cleaning of the cleaned area can be conducted using green approved materials in accordance with the Green Cleaning policy and associated Administrative Guidelines.

2. Health and Hospital Systems

Santa Clara County Health and Hospital Systems (including Valley Medical Center and Valley Health Center associated clinics) require an exemption for the following:

- a. Sodium hypochlorite (5.25%-6.15%): Sodium hypochlorite is used in a 1:10-1:100 dilution for purposes of disinfection of the environment when contamination with blood and body fluids occurs. Current Health and Hospital policies require the use of bleach in situations where there has been a spill of blood or bloody body fluids or in cleaning the environment of patients with spore forming diseases, such as C. difficile. This product has a broad spectrum of anti-microbial activity, is inexpensive and fast acting. Employees are trained in the safe mixing, handling, and use of this product. Personal protective equipment is to be used at all times.
- b. Quaternary ammonium chloride compounds (product names and formulations vary between vendors and routine equivalent product substitution by Procurement): for routine environmental cleaning in health care settings, such as floors, furniture and walls. These products can also be used safely for non –critical devices and equipment that contact intact skin, such as blood pressure cuffs. These compounds remain the preferred surface disinfectant due to their rapid nature of disinfection and their bacteriocidal activity. They provide significant user (employee) and patient safety even when contact with treated surfaces occurs. Employees are trained in the safe mixing, handling and use of this product. Personal protective equipment is to be used at all times.

3. Office of the Sheriff and Probation Department

Santa Clara County's Office of the Sheriff and Probation Department require an exemption for the following:

Security Exemption: The Office of the Sheriff and the Probation Department have specific needs related to security regarding cleaning supplies utilized by the offenders that are detained in their facilities. An exemption is automatically granted if security criteria (i.e. non greasy) cannot be met by products that meet the sustainable certification/recognition criteria or approved as equal to the green-certified products.

iv. Additional Purchasing Criteria

In addition to sustainable certification criteria listed above, if all other specifications, including costs, are equal, preference in purchasing will be given to cleaning products that:

- Have other favorable attributes (e.g., fragrance-free, dye-free, contain "take back" provisions, chlorine-free, etc.)
- Are concentrated formulations that do not have an open container; instead concentrates should be designed to work with a dispensing system that automatically dilutes the concentrates and does not enable workers to become directly exposed to concentrated solutions.
- Are low in salinity (High salinity in chemicals may negatively affect water quality, especially in treated recycled water, where high saline levels have adverse effects on certain plants.)
- Are locally produced or made in the USA.
- Promote sustainability through use of cleaners that contain plant-based ingredients, particularly those that are USDA Biobased Certified; see <http://www.biopreferred.gov/bioPreferredCatalog/faces/jsp/catalogLanding.jsp>. Note: it is critical that biobased products first meet other health and environmental protection criteria.
- Are manufactured using clean energy and/or carbon offsets.

C. Cleaning Equipment Guidelines

As required in LEED 2009 Existing Buildings: Operation & Maintenance (EBOM), IEQ Credit 3.4: Green Cleaning- Sustainable Cleaning Equipment, all new powered equipment used by employees or contractors at buildings owned or operated by the County shall:

- 1) Be ergonomically designed to minimize vibration, noise and user fatigue.
- 2) Come equipped with safeguards such as rollers or bumpers to reduce potential damage to building surfaces.
- 3) Operate at a sound level of less than 70 decibels (dBAs) for electric/battery-powered

equipment and less than 90 dBAs for propane powered equipment.

- 4) If battery operated, use environmentally preferable gel batteries.
- 5) Vacuum equipment and carpet extractors shall be certified by the Carpet and Rug Institute (CRI) "Seal of Approval" Testing Program.
- 6) Buffers and other electric/battery powered floor polishing equipment shall be equipped with vacuums, guards and/or other devices for capturing fine particulates.
- 7) Automated scrubbing machines shall be equipped with variable-speed feed pumps and on-board chemical metering to optimize the use of cleaning fluids, or only uses tap water with no added cleaning products.
- 8) If propane-powered, meet California Air Resources Board (CARB) or Environmental Protection Agency (EPA) standards for specific engine size and come equipped with high-efficiency, low-emission engines with catalytic converters and mufflers.

Additional janitorial supply criteria:

- 1) Janitorial disposable gloves shall be latex-free and PVC-free.
- 2) Microfiber supplies (mops, towels, sponges) are encouraged.

Section III: Chemical Safety Procedures

*Note: This is not a comprehensive chemical safety procedure list

The following protocols have been established to mitigate the risks, leaks, spills, or mismanagement and shall be incorporated into the formal training of all custodial staff:

A. Labels and Safety Data Sheets (SDSs)

***Safety Data Sheets are formerly known as Material Safety Data Sheets (MSDSs)**

- Follow all chemical labels and SDS warnings and use products only as directed.
- Employees should not use unlabeled containers or chemical products of unknown properties. Products missing or having unreadable labels shall be reported to Janitorial Supervisor.

B. Personal Protective Equipment (PPE) and Safety Controls

- All janitorial staff shall wear protective gloves and/or safety glasses as directed on the product label or SDS.
- Staff shall wear safety shoes for appropriate PPE when operating or moving heavy equipment.
- Staff shall inform supervisor if additional proper PPE is needed.

- Chemical application shall always be directed away from the body, especially the eyes and mouth. Whenever possible, spray chemical into microfiber cloth.
*If using disinfectants, follow directions in instructions and use appropriately.
- Staff shall not eat or drink near any cleaning chemicals and always wash hands after using chemicals.
- Staff shall never smell, inhale or taste the contents of a chemical container to determine its contents.

C. Cleaning with Chemicals

- Staff shall only use products they have been trained to use.
- Staff shall inform their supervisor if unable to get proper equipment to clean with the chemicals provided.
- Cleaning chemical residue should be properly removed so that building occupants will not be overexposed to chemicals.
- Staff shall always wash hands after using chemicals.
- Staff shall use only the minimum amount necessary to thoroughly clean.

D. Chemical Mixing and Storage

- Chemical products shall never be mixed with each other.
- When filling a secondary container bottle with a cleaning product, only the initial product shall be used to refill that container.
- Dilute with water only where required.
- Dilute properly; do not use more chemicals than recommended by manufacturer.
- All chemical containers are to be securely covered and stored away from flames or intense heat.
- Products shall never be brought home or openly stored for an extended period of time.
- Aerosol cans, if used, shall never be punctured or collapsed and disposed of in accordance with label instructions.
- Chemicals shall not remain in mop buckets or open containers unattended.
- Make sure all caps are secure when returning chemicals to rack or closet.
- Do not store chemicals above eye level.
- Do not store food or drinks around chemicals (no food or water may be kept on janitor cart).
- All chemicals must be stored in a manner that limits opportunities for accidental spills, leaks and other mishaps.

E. Chemical Safety and Emergency Procedures

- Report all chemical spills to a manager or supervisor immediately and refer to instructions on SDS for proper spill cleanup and disposal.

- If any product comes into contact with any body part, flush immediately with lots of water. Follow first-aid instruction on the label or SDS and call 911 or Poison Control hotline if needed. Employees shall report all incidents to appropriate manager.
- Employees shall be informed of locations of eyewash stations, if available.

Section IV: Pest Management and Pesticide Use

All pest management shall fall under the requirements listed within the Santa Clara County Ordinance Code relating to Integrated Pest Management and Pesticide Use (Ordinance No. NS-517.70).

Section V: Hand-Hygiene Strategies

- Hand soap should not contain antimicrobial agent unless it is needed to meet health codes and/or other regulations.
- Hand free dispenser should be used for janitorial paper products to avoid sharing of a manual paper towel levers.
- Hand hygiene will be covered as part of regular safety training schedule.
- Reminder posters should be posted in lavatories and in relevant areas (sink in kitchen and break-rooms, above waste bins, etc).
- Use of personal hand sanitizers at individual's desk/cubicle can be encouraged. General fund buildings managed by Facilities & Fleet can request for Greenwipes for their department so staff can ensure their work spaces are sanitized.

Section VI: Staff Training

- All janitorial staff shall be properly trained in the use, maintenance and disposal of cleaning products, cleaning equipment and packaging.
- All janitorial staff shall be trained on new equipment and chemicals prior to initial use.
- All janitorial staff shall understand SDS sheets for cleaning products. SDSs should be available in languages of custodial staff and be available in a non-locked location.
- New products shall be addressed during bi-weekly safety meetings to ensure that all staff are informed on their application and potential hazards.

Section VII: Entryway and Exterior Walkways

The following is required in new and existing buildings that are certified or becoming certified as LEED buildings and is encouraged in other County owned and operated buildings. Entryway floor mats prevent contamination of building interiors by trapping contaminants at the door and can result in enhanced indoor air quality and less frequent cleaning of entry areas. They can also prevent premature wearing of flooring or carpet. LEED requires floor mats placed at all exterior points of entry. For

public/main building entrances, floor mats consisting of a minimum 10 linear feet of length should be used. Maintenance of mats should include a minimum once per month cleaning.

Section VIII: Safe Removal and Disposal of Unwanted Chemicals

Cleaning chemicals shall be used completely in the process of cleaning to minimize waste and disposal fees. In cases where chemicals are identified to be too toxic for continued use, the proper protocol must be taken to safely remove and dispose of unwanted chemicals. The designated Departmental Environmental Health and Safety Compliance Specialist or Coordinator shall be the point of contact for safe removal and disposal of unwanted chemicals. Depending on the amount and types of cleaning supplies, the County Hazardous Waste Contractor or County's Conditionally Exempt Small Quantity Generator (CESQG) Program will be the designated vendor for disposal.

Appendix A: Green Cleaning Policy

The County of Santa Clara seeks to protect the health and safety of all building employees, occupants and visitors, reduce impacts to the environment and support LEED certification through establishing strong standards on cleaning products and equipment used in County facilities.

The Green Cleaning Policy applies to all departments that have responsibility for cleaning and custodial work in buildings owned or leased by the County or that manage contracts and vendors that supply cleaning services.

All cleaning products used within County-owned or operated facilities shall be certified by a nationally-recognized, third-party, certifying organization or the products must be approved by the procuring department as equal to the green-certified products, unless green products are unavailable, not cost-effective or not practicable. Exemptions may additionally be granted to meet the needs of infectious disease control and security.

The Green Cleaning Policy is supported by Administrative Guidelines that detail purchasing and handling of green cleaning products and equipment, provide information on best practices, identify exemptions and note chemicals to avoid. The Office of the County Executive shall delegate responsibility for maintaining the Guidelines and facilitating a stakeholder committee, with representatives of departments that have responsibility for custodial staff or contracts and other interested parties, to update the Guidelines and grant exemptions, as needed.

As supplies are reordered and new contracts written, the practices and processes outlined in the Administrative Guidelines should be utilized or incorporated to the maximum extent possible to meet the objectives of this policy.

Appendix B: Ingredients to Avoid

The County should not purchase cleaning products that contain ingredients that threaten the environment unless proved indispensable for infectious disease control requirements or are the least-toxic product ingredients that currently exist for a specific application. These potentially harmful ingredients include, but are not limited to, those that are known to cause cancer, birth defects or other reproductive or developmental harm, asthma (particularly through respiratory sensitization) or damage to the nervous or endocrine systems. The County should also avoid chlorinated organic compounds, phthalates, perfluorinated compounds, highly acidic or alkaline products [pH ranges from 0 (most acidic) to 14 (high alkaline)], anti-microbial hand soaps, persistent, bioaccumulative and toxic chemicals (PBTs).

Products to avoid include those that contain artificial scents and dyes, packaged in aerosol containers, pH less than 2 or greater than 11.5 (according to Green Seal GS-37) and that require hazardous waste disposal.

Specific chemicals to avoid (which are found in some cleaning and building maintenance products) that meet the criteria above include, but are not limited to, the following:

- *Ammonia* (a respiratory sensitizer)
- *Ammonium hydroxide* (a respiratory sensitizer sometimes found in glass cleaners, oven and grill cleaners, disinfectant cleaners, etc.)
- *2-Butoxyethanol* ("butyl", a chemical that can be rapidly absorbed through skin and is harmful to kidneys, liver, and blood; found in some glass cleaners and degreasers)
- *Dibutyl phthalate* (a reproductive toxin found in some floor and car waxes)
- *Ethyl benzene* (carcinogen found in some graffiti removers; note: xylene typically contains ethyl benzene)
- *Ethylene glycol and diethylene glycol solvents* (can be easily absorbed through the skin and cause harm to kidneys, liver, blood and central nervous system)
- *Formaldehyde* (a carcinogen and respiratory sensitizer found in a wide variety of cleaning and building maintenance products)
- *Heavy metals that are highly persistent, bioaccumulative and toxic, including lead, mercury and cadmium* (including compounds containing these metals)
- *Methylene chloride* (a carcinogen found in some graffiti removers)
- *Monoethanolamine* (a respiratory sensitizer found in some floor polish removers, oven cleaners, degreasers, graffiti removers and glass cleaners)
- *Naphthalene* (a PBT and carcinogen found in some moth balls)
- *N-methyl pyrrolidone* (a reproductive toxin found in some graffiti removers)
- *Nonylphenol ethoxylate and other alkyl phenol ethoxylates* (endocrine disruptors found in a wide variety of cleaners and detergents)
- *Ortho-phenylphenol* (a carcinogen found in some disinfectants and air fresheners)
- *Para-dichlorobenzene* (a carcinogen found in urinal blocks/screens, moth balls)

- *Perchloroethylene* (a carcinogen found in drycleaning solvents, spot removers)
- *Perfluorinated compounds* (persistent toxic chemicals added to some stain-resistant carpet cleaners and toilet bowl cleaners marketed as containing “Teflon”)
- *Pine oil* (a skin sensitizer added to cleaners as a scent, sanitizer or disinfectant)
- *Quaternary ammonium chloride compounds* (respiratory sensitizers found in some disinfectants and sanitizers) including: ¹
 - Alkyl dimethyl benzyl ammonium chlorides
 - Benzalkonium chloride
 - Benzyl C10-16 alkyl dimethyl chlorides
 - Dialkyl methyl benzyl ammonium chloride
 - Dodecyl dimethyl benzyl ammonium chlorides
 - Lauryl Dimethyl Benzyl Ammonium Chloride
- Rosin and Tall Oil (respiratory sensitizers)
- *Sodium hypochlorite* (respiratory sensitizer found in “chlorine bleach” and many other disinfectants and sanitizers) ²
- *Tetrafluoroethane* (a potent greenhouse gas found in some air dust cleaners)
- Tetrafluoroethylene (a carcinogen and potent greenhouse gas found in some air dust cleaners)
- Thyme oil (a respiratory sensitizer, and Thymol, a dermal sensitizer, found in some surface and hand sanitizers)
- *Toluene* (a reproductive toxin found in some graffiti removers)
- *Trichloroethane* (a carcinogen found in some graffiti removers, degreasers and cleaning solvents)
- *Triethanolamine* (a respiratory sensitizer that can be found in some oven and grill cleaners, degreasers, graffiti removers, and floor strippers)
- Triclosan and Tricloban (a persistent toxic chemicals found in many antibacterial hand soaps and hand sanitizers)
- Xylene (a chemical compound that contains ethyl benzene, a carcinogen; xylene is found in some graffiti removers, degreasers and cleaning solvents)

*For health and safety information for an existing cleaning product used at one of the County’s facilities, please refer to its SDS (Safety Data Sheet, formerly MSDS).

- 1 Quaternary ammonium chloride compounds (product names and formulations vary between vendors and routine equivalent product substitution by Procurement) are exempt for infectious control and disinfection purposes.
- 2 Sodium hypochlorite solutions (in standard 5% and 15% formulations) are exempt for infectious control and disinfection purposes.

Appendix C: Resources for Hazardous Chemical Identification

A. Carcinogenicity

1. State of California Environmental Protection Agency, Office of Environmental Health Hazard Assessment (OEHHA) California Proposition 65 (Safe Drinking Water and Toxic Enforcement Act of 1986) Chemicals Known to the State to Cause Cancer or Reproductive Toxicity

Source: http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html

2. US Environmental Protection Agency (EPA), National Center for Environmental Assessment, Integrated Risk Information System (IRIS) Database

Source: http://www.epa.gov/ncea/iris/search_human.htm

3. US National Institutes of Health, National Institute of Environmental Health Sciences, National Toxicology Program (NTP), Report on Carcinogens (ROC)

a. Known to be Human Carcinogens

b. Reasonably anticipated to be Human Carcinogens

Source: <http://ehis.niehs.nih.gov/roc>

4. National Institute for Occupational Safety and Health (NIOSH) Carcinogen List

Source: <http://www.cdc.gov/niosh/topics/cancer/npotocca.html>

B. Endocrine Disruptors

1. Endocrine Society, Endocrine-Disrupting Chemicals, an Endocrine Society Scientific Statement

Source: http://www.endo-society.org/journals/ScientificStatements/upload/EDC_Scientific_Statement.pdf

2. US National Library of Medicine National Institutes of Health, Endocrine disrupting chemicals: a new and emerging public health problem? By C. L. Acerini and I. A. Hughes

Source: <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2083052/>

C. Mutagenicity

1. Japan International Center for Occupational Safety and Health (JICOSH), List of Mutagenic Chemicals

Source: <http://www.jniosh.go.jp/icpro/jicosh-old/english/topics/mutagenicchemicals/mutagenicchemicals.html>

D. Neurotoxins

Neurotoxicant Screening List. Chemicals listed in the article below are potential Red List chemicals. Precautionary avoidance is warranted.

Grandjean, P & PJ Landrigan. 2006. "Developmental neurotoxicity of industrial chemicals." *The Lancet*, v.368: 2167-2178. List of 201 Chemicals known to be neurotoxic in humans.

E. Persistent, Bioaccumulative and Toxic (PBT) Substances

1. US Environmental Protection Agency (EPA), Toxics Release Inventory (TRI) Program, "TRI PBT Chemical List"

Source: http://www.epa.gov/triinter/trichemicals/pbt%20chemicals/pbt_chem_list.htm

2. US Environmental Protection Agency (EPA), Persistent Bioaccumulative and Toxic (PBT) Chemical Program, Priority PBT Profiles

Source: <http://www.epa.gov/opptintr/pbt/pubs/cheminfo.htm>

3. United Nations Environment Program (UNEP), Stockholm Convention Secretariat Stockholm Convention on Persistent Organic Pollutants (POPs)

Source: For the list of 12 POPs under the convention, see:

<http://chm.pops.int/Convention/12POPs/tabid/296/language/en-US/Default.aspx>

F. Reproductive/Development Toxicity

1. State of California Environmental Protection Agency, Office of Environmental Health Hazard Assessment (OEHHA) California Proposition 65 (Safe Drinking Water and Toxic Enforcement Act of 1986), Chemicals Known to the State to Cause Cancer or Reproductive Toxicity

Source: http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html

2. European Commission, REACH - Registration, Evaluation, Authorization and Restriction of Chemicals

Source: http://ec.europa.eu/enterprise/sectors/chemicals/reach/index_en.htm

3. US National Institutes of Health, National Institute of Environmental Health Sciences, National Toxicology Program (NTP), Center for the Evaluation of Risks to Human Reproduction. Expert Panel Reports & Monographs on Reproductive and Developmental Toxicity. Review monographs to identify chemicals of high concern.

Source: <http://cerhr.niehs.nih.gov/chemicals/index.html>

G. Very Persistent and very Bioaccumulative (vPvB) Substances

1. European Union vPvB list (vPvB's are included in the PBT list). See European Union, European Chemicals Bureau, European Chemical Substances Information System

(ESIS)

Source: <http://ecb.jrc.it/esis/index.php?PGM=pbt>

H. Chemical Database

1. Substitute It Now List Database

Source: <http://w3.chemsec.org/>

I. EPA Priority Chemicals and Metals

<http://www.epa.gov/wastes/hazard/wastemin/priority.htm>

Appendix D: Green Cleaning Resources

1. Green Seal

www.greenseal.org

2. Underwriters Laboratories (UL)

<http://www.ul.com/global/eng/pages/>

Formerly known as EcoLogo

www.ecologo.org

3. Design for the Environment – US EPA

www.epa.gov/dfe/

4. Responsible Purchasing Network

www.responsiblepurchasing.org

5. Practice Greenhealth

www.practicegreenhealth.org

6. U.S. EPA's Database of Environmental Information for Products and Services

Contract and Policy Language.

<http://yosemite1.epa.gov/oppt/eppstand2.nsf/Pages/DisplayAisle.html?Open&Hardware%20Store&Cleaning%20Supplies%20and%20Equipment&Type=1>

Appendix E: Additional LEED Credit Attainment Guidelines

The following guidelines are not required by the Santa Clara County Green Cleaning Administrative Guidelines (SCC GCAG), but are additional recommendations for facilities seeking additional LEED Existing Buildings: Operation & Maintenance (EBOM), Indoor Environmental Quality (IEQ) Credits. The guidelines below are summaries and the individual facility should consult with their LEED consultant should they decide to pursue LEED EBOM IEQ Credits or to utilize green cleaning as an innovation credit for LEED: New Construction.

I. Documentation and Record Keeping

As recommended in the LEED Existing Buildings: Operation & Maintenance (EBOM), Indoor Environmental Quality (IEQ) Prerequisite and many other of its credit requirements, documentation of cleaning products, equipment, and activities shall be maintained and updated. Guidelines are stated below.

1. All EBOM IEQ Credits require a frequency log of floors specific maintenance (coat, paint, clean, replacement, repair, and etc.) or any other types of activities (disposal, removal, terminate, and etc.), chemicals, and equipment. Dates and if possible, times, shall be included in log. More specially:
 - a. A log of powered cleaning equipment with record of all purchase and maintenance activities among the equipment. The log will contain date of purchase, date of repair/replacement, type of repair/replacement, product used for replacement, cost for replacement/repair, and other maintenance activities shall be kept in order to demonstrate new equipment are in compliance policies and guidelines (EBOM, IEQ Credit 3.3 and 3.4).
 - b. A log of cleaning chemicals and its usages in all cleaning that includes the chemical, volume, and concentration being used and stored in the facility. It is strongly recommended to include the manufacturer's safety data sheets (SDS) with full disclosure of ingredients (EBOM, IEQ Credit 3.1).
2. According to EBOM IEQ Credit 3.1 a log to identify appropriate cleaning staff(s) at the facility including their delegated responsibilities, contact information, time and date of work.
3. According to EBOM IEQ Credit 3.1, a log of all staff training activities including date, time, purpose of training, participants, and duration of training should be kept and maintained.
4. According to EBOM IEQ Credit 3.5, a log of maintenance practices in accordance to entryway (interior and exterior) shall be developed, documented, recorded, and a cleaning frequency log shall be kept and updated. Maintenance practices of entryway include general cleaning and unscheduled appointments maybe such as bad weather events.

II. Other LEED Existing Buildings: Operation & Maintenance, Indoor Environmental Quality Credit Guidelines:

1. The Santa Clara County Green Cleaning Administrative Guidelines (SCC GCAG) has high performance cleaning program potential, but for LEED 2009 Existing Buildings: Operation & Maintenance (EBOM), Indoor Environmental Quality (IEQ) Credit 3.1 to be awarded, this high performance program shall be implemented in at least 90% of the desired project facility.
2. According to LEED 2009 EBOM, IEQ Prerequisite, occupant feedback and continuous improvement to evaluate new technologies, procedures and processes must be provided.

3. As required in LEED 2009 EBOM, IEQ Credit 3.2, effectiveness of the custodial performances and facility cleanliness shall be determined through an audit process. Facilities seeking this credit can refer to Association of Physical Plant Administrators' (APPA) "Custodial Staffing Guidelines" for more detailed requirements for the audit process.
4. In addition to SCC GCAG Guideline Section V, a scheduled maintenance and safety staff training for the staff within the facility shall be developed, implemented, documented, and recorded in order to comply with LEED 2009 Existing Buildings: Operation & Maintenance (EBOM), IEQ Credit 3.1. Facilities & Fleet offers bi-weekly safety training.

III. Staffing Plan

As required in LEED 2009 Existing Buildings: Operation & Maintenance (EBOM), IEQ Credit 3.1, an appropriate staffing plan must be implemented. Recommendations for delegation of responsibilities that the County could adopt are:

- Delegate a staff as a log or record keeper of all logs or records dealing with cleaning products, equipment, or activities within the project facility. This includes chemical reporting, equipment reporting, maintenance or other activities reporting, staff records and information log, occupants' feedbacks log, and any other custodial administrative duties for the facility.
- Provide an appropriate number of staff for custodial activities for the facility and list his/her possible duties within the facility. This includes delegation of appropriate log-updates to appropriate staff member(s).
- Although all custodial personnel are trained in hazardous materials basic knowledge, a designated response coordinator is recommended to be the individual contact for emergencies within the facility.

IV. Calculation & Documentation of Approved Cleaning and Building Maintenance Products

In addition to purchasing sustainable certified products (as mentioned above in Section II.B.i.), additional requirements must be met in order for the County to attain LEED 2009 Existing Buildings: Operation & Maintenance (EBOM), IEQ Credit 3.3. In order to be awarded a point within this criterion:

- Records/logs of janitorial products purchases during the performance period shall be kept and updated. The records/log shall contain these elements and/or something similar to:
 - Date of purchase, product of purchase, purchase entity, quantity, product type/category, cost per item, sustainability criteria that the product has met, whether there are additional documentation of the product (material safety data sheets, County's log for chemical usage, other chemical safety information that pertain to the product, and etc.), total value, and percentage of total purchase value.
- Paper copy or electronic copy of safety data sheets (SDS) or other information on the cleaning product and materials used in within that facility shall be kept and updated.
- 30% of the total annual purchase shall meet one of the sustainability criteria in regards to products listed in Section II.B.i. above. This will be used to determine if total annual purchase of

these sustainable products meets a 30% (by cost) of product purchased meets at least one of the sustainably certified products.

An example calculation table according to LEED 2009 Existing Building: Operation & Maintenance (EBOM), IEQ Credit 3.3 (as shown on page 444 of LEED Reference Guide for Green Building Operations & Maintenance) is posted below.

Total cost of cleaning materials and products, disposable janitorial paper products and trash bags								\$1,000	
Date of Purchase	Item Purchased	Purchasing Entity	Product Category	Sustainability Criteria Met	Cost per Item	Quantity Purchased	Product Documentation	% of Total Purchase Value	Value
2/24/2004	Brand X green bathroom cleanser	Jones Property Mgmt	Cleaning product	GS-37	\$10	25	Yes	25%	\$250
2/24/2004	Brand Y recycled toilet tissue	Initech	Janitorial paper, trash bags	EC CCD-082	\$2	150	No	30%	\$300
Total sustainable purchase								\$550	
Sustainable purchases as percentage of total purchases								55%	
The project team has provided documentation from project manufacturers or suppliers that verify products compliance with the specified sustainability criteria for the following percentage of the purchased value of the sustainable purchases listed above. (must provide verification for at least 20% to comply)								45%	

Appendix G: SCC Environmentally Preferable Purchasing Policy

ENVIRONMENTALLY PREFERABLE PURCHASING POLICY

I. Purpose

The County of Santa Clara (the “County”) recognizes that the products and services it purchase have human health, environmental, economic and social impacts and it is committed to sustainability through purchasing products and services that will enable it to meet its current needs without compromising the ability of future generations to meet their own needs.

II. Goals

The County desires to purchase products and services that:

- Have a lesser or reduced effect on human health and the environment when compared to competing products and services that serve the same purpose;
- Reduce the County’s consumption of resources;
- Conserve water and other natural resources;
- Preserve biodiversity;
- Minimize the release of greenhouse gases into the environment;
- Improve indoor and outdoor air quality;
- Promote zero waste;
- Advance extended producer responsibility by purchasing from suppliers who offer “take-back” services for their products and packaging at the end of their useful life;
- Minimize exposure to toxic chemicals that pose risks to human health;
- Reduce the impact of packaging and transportation;
- Maximize energy efficiency and the use of renewable energy;
- Meet or exceed sustainability standards established by federal, state and local governments and independent third party organizations;
- Are remanufactured, are refurbished and/or contain recycled content, particularly post-consumer material; and
- Are offered by suppliers who demonstrate in their business practices a commitment to the goals set forth in this policy.

Products and services that meet the goals set forth above are referred to herein as “Environmentally Preferable Products and Services.”

III. Policy

The County shall purchase Environmentally Preferable Products and Services, unless they (1) are not available with reasonable competition, (2) are not available within a reasonable time frame, (3) are not cost-effective or (4) do not perform as required for the County’s intended use.

All County departments and employees shall comply with the terms of this policy and shall use their best efforts to achieve the goals set forth herein.

Nothing in this policy shall be construed as requiring any department or employee to terminate an existing contract to comply with this policy.

IV. Implementation

The County shall establish a team to assist with the implementation of this policy (the "EPP Team"). The EPP Team shall be comprised the Director of Procurement, the Director of Department of Agriculture and Environmental Management, the Director of the Department of Facilities and Fleet Services, the Chief Executive Officer of the Santa Clara Valley Health and Hospital System and County Counsel, or their respective designees. The County Executive may require the participation of additional departments, in its discretion. The directors or designees, as applicable, shall actively participate as part of the EPP Team to ensure that the County complies with this policy.

(A) The EPP Team shall:

- (1) Formulate a plan to implement this policy;
- (2) Identify Environmentally Preferable Products and Services;
- (3) Develop product-related administrative guidelines;
- (4) Consult with County departments concerning opportunities to purchase Environmentally Preferable Products and Services; and
- (5) Prepare and submit to the Board of Supervisors an annual report summarizing the implementation of this policy during the previous year; policy related goals for the following year; and recommended changes, if any, to the policy or its implementation.

(B) The Director of Procurement shall:

- (1) Collaborate with County departments in the development and evaluation of technical and performance specifications of Environmentally Preferable Products and Services;
- (2) Include Environmentally Preferable Products and Services specification in County solicitations and evaluation criteria, unless they (1) are not available with reasonable competition, (2) are not available within a reasonable time frame, (3) are not cost-effective or (4) do not perform as required for the County's intended use;
- (3) Develop and implement a strategy to educate suppliers about the policy; and
- (4) Communicate to suppliers and requirements set forth in this policy with respect to all Environmentally Preferable Products and Services supplied tin connection with the performance of any contractual obligations with the County.

(C) County Departments shall:

- (1) Include Environmentally Preferable Products and Services specification in County solicitations and evaluation criteria, unless they (1) are not available with reason competition, (2) are not available within a reasonable time frame, (3) are not cost-effective or (4) do not perform as required for the County's intended use;

- (2) Comply with the product related administrative guidelines developed by the EPP Team;
- (3) Comply with this policy with respect to all products and services purchase, irrespective of the method of acquisition;
- (4) Collaborate with the Director of Procurement to fulfill the purpose of this policy;
- (5) Identify one or more liaisons to support the EPP Team to fulfill the purpose of this policy
- (6) Facilitate departmental use of Environmentally Preferable Products and Services through internal training, information dissemination, development of internal procedures, and other means;
- (7) Require liaisons and/or appropriate staff to attend and participate in product-specific end user group meetings and environmentally preferable purchasing trainings;
- (8) Participate in the identification, selection and pilot testing, if necessary, of Environmentally Preferable Products and Services; and
- (9) Provide feedback to the EPP team regarding technical and performance specifications, availability and cost of Environmentally Preferable Products and Services.

Appendix F: Green Cleaning Administrative Guidelines Revision History

<u>Date</u>	<u>Revision</u>	<u>Committee Review (Name, Dept, Title)</u>
07/03/2013	Original	<p><u>DOC:</u></p> <ul style="list-style-type: none"> ❖ James Darnell, Sheriff's Correctional Sergeant <p><u>FAF:</u></p> <ul style="list-style-type: none"> ❖ Jill Boone, Sustainability Manager ❖ Brenda Bronze, Janitor Supervisor ❖ Macario Gaming, Janitor Supervisor ❖ Joanne Yee, Sustainability Analyst <p><u>HHS:</u></p> <ul style="list-style-type: none"> ❖ Stephen Cattivera, Janitor Supervisor ❖ Jim Ikeda, Capital Projects Mgr. ❖ Nancy Johnson, Infection Control Nurse Mgr. ❖ Thomas McClung, Dir of Resource Management. ❖ Trinh Pham <p><u>Parks:</u></p> <ul style="list-style-type: none"> ❖ Bill Grimes, Envir Hlth Sfty Comp Spc Wsa ❖ Steve McClendon, Park Field Support Mgr <p><u>Procurement:</u></p> <ul style="list-style-type: none"> ❖ Leslie Harper, Contracts Specialist. ❖ Long Zhang, Manager <p><u>SSA:</u></p> <ul style="list-style-type: none"> ❖ Barbara Henderson, Central Service Mgr ❖ Brenda Johnson, Admin Support Officer
11/13/2013	#1 (Appendix E, Underwriters Laboratories added in Appendix D, and Hand Hygiene Strategies)	<p><u>FAF:</u></p> <ul style="list-style-type: none"> ❖ Thai-Chau Le, Student Sustainability Intern

EXHIBIT D

MAINTENANCE AND REPAIRS RESPONSE TIMELINES

Maintenance Response Timelines (Estimated)		
Type of Problem	Landlord Response to Notification	Landlord Commencement & Completion Time*
Emergency Situations:		
Life, health, Safety Security & Environmental Issues Security Door, Security Gate Repairs Server Room HVAC Issues Alarms (non-Tenant system) Utility Services Disruption ** Water Intrusions Sewage Back-up, Restroom Overflows Break-Ins or Vandalism Other Emergency Repairs	3 Hours during normal business hours; 6 hours outside of normal business hours	6 -24 Hours
Urgent Situations:		
Life, Health, Safety, Security & Environmental Issues HVAC in employee workspace: Non-Functional or Thermal Comfort Elevators Other Urgent Repairs	6 Hours during normal business hours; 12 hours outside of normal business hours	72 Hours
Routine:		
Life, Health, Safety, Security & Environmental Issues Lighting Non-Functional Sinks/Toilets General Plumbing Door/Gate Repairs (non-security) General Electrical General Mechanical Walls/Surfaces/Graffiti Carpet/Flooring (including tears, ripples, trip hazards) Odors and Noises Landscaping Other Routine Repairs	24 Hours during normal business hours; 72 hours outside of normal business hours	1-14 Days

*The completion times stated herein are estimated and subject to availability of staffing, parts and labor. Additionally, the completion times may be amended/changed/extended by mutual written agreement by parties.

**Completion times for utility service disruption are dependent upon the local utility provider.

EXHIBIT E
FORM OF SNDA

Recording requested by
and when recorded return to:

Loan No. _____

**SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this “**Agreement**”), made this ____ day of _____, 20____, by, between and among _____, a California limited liability company (“**Landlord**”), County of Santa Clara, a political subdivision of the State of California, (“**Tenant**”) and _____, a _____ (“**Lender**”).

WHEREAS, Landlord and Tenant have entered into that certain Lease dated _____, 2020 (the “**Lease**”) whereby Tenant agreed to lease from Landlord certain premises located in Santa Clara County, California and more fully described on Exhibit A hereto and incorporated herein (the “**Leased Premises**”); and

WHEREAS, Lender has agreed to grant a loan to Landlord (the “**Loan**”) which Loan is to be secured by a deed of trust or mortgage, including the Leased Premises (the “**Mortgage**”), by an Assignment of Landlord’s interest in all leases, rents, profits and contracts for such property (the “**Assignment of Leases**”).

WHEREAS, Tenant has requested that Lender agree not to disturb Tenant’s possessory rights in the Leased Premises if Lender should foreclose its Mortgage provided that Tenant is not in default under the Lease and further provided that Tenant attorns to Lender or the purchaser at any foreclosure sale or to any party who takes a deed in lieu of foreclosure; and

WHEREAS, Lender is willing so to agree on the terms and conditions hereafter provided.

NOW THEREFORE, in consideration of the mutual promises herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord, Tenant and Lender covenant and agree as follows:

1. The Lease and Tenant's leasehold estate created thereby, including all rights under the Lease, shall be and are completely and unconditionally subject and subordinate to the lien of the Mortgage and to all the terms, conditions and provisions thereof, to all advances made to or to be made thereunder, to any renewals, extensions, modifications or replacements thereof, and to any subsequent mortgage with which the Mortgage may be spread and/or consolidated.
2. No representations, warranties or covenants, either in oral or in writing, have been made by Landlord or Tenant other than those contained in the Lease or Lease Amendments more fully described in the Estoppel Certificate, of even date herewith, and which have been provided to Lender.
3. Tenant agrees that it will attorn to and recognize any purchaser at a foreclosure sale under the Mortgage, any person or entity who acquires the real property of which the Leased Premises form a part by deed in lieu of foreclosure, and the successors and assigns of such purchaser, as its Landlord for the unexpired balance (and any extensions, if exercised) of the term of the Lease upon the same terms and conditions set forth in the Lease.
4. In the event that it should become necessary to foreclose the Mortgage, Lender agrees for itself and its successors in interest and for any other person acquiring title to the Property through a foreclosure, that Lender or such acquiror will not disturb Tenant's possession under the Lease so long as tenant is not in default under any of the terms, covenants, or conditions of the Lease beyond all applicable notice and cure periods. For purposes of this agreement, a "foreclosure" shall include (but not be limited to) a sheriff's or trustee's sale under the power of sale contained in the Mortgage, the termination of any superior lease of the Property and any other transfer of the Landlord's interest in the Property under peril of foreclosure, including, without limitation to the generality of the foregoing, an assignment or sale in lieu of foreclosure.
5. In the event that Lender or any other party shall succeed to the interest of Landlord under the Lease, or otherwise becomes entitled to and takes possession of the Property, Lender, or any subsequent owner, shall not be:
 - A. Liable for any act or omission of any prior landlord (including Landlord); or
 - B. Liable for the return of any security deposit unless such security deposit has been received by Lender; or
 - C. Subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord); or
 - D. Bound by any rent or additional rent which Tenant might have paid for more than the current month to any prior landlord (including Landlord); or
 - E. Bound by any amendment, modification, financial settlement or termination of the Lease or by any waiver of any material term of the Lease made without Lender's written consent; or
 - F. Obligated to reimburse Tenant for any costs which arise from the failure to have the Premises completed and ready for occupancy within the time requirements if any by the Lease; or

G. Obligated or liable with respect to the construction and completion of any improvements for tenant's use and occupancy.

6. Tenant shall not pay an installment of rent or any part thereof more than thirty (30) days prior to the due date of such installment.
7. Tenant agrees to give Lender, by registered mail, a copy of any notice of default served upon the Landlord, provided that prior to such notice Tenant has been notified in writing (by way of Notice of Assignment of Rents and Leases or otherwise) of the address of such Lender. This Agreement shall constitute notice to Tenant of Lender's address as set forth below. Tenant further agrees that if Landlord shall have failed to cure such default within the time provided for in the Lease, then the Lender, if it elects to cure such default, shall have an additional (30) days within which to cure such default . If within such thirty (30) days, Lender has commenced and is diligently pursuing the remedies necessary to cure such default (including but not limited to commencement of foreclosure proceedings, if necessary to effect such cure), the Lease shall not be terminated while such remedies are being so diligently pursued provided any action necessary to cure such default does not exceed an additional thirty (30) days.
8. After notice is given to Tenant by Lender, pursuant to the Assignment, that the rentals under the Lease should be paid to Lender, Tenant shall pay to Lender, or in accordance with the directions of Lender, all rentals and other monies due and to become due to Landlord under the Lease, and Landlord hereby expressly authorizes Tenant to make such payments to Lender and hereby releases and discharges Tenant of and from any liability to Landlord on account of any such payments.
9. This Agreement shall inure to the benefit of and shall be binding upon Tenant, Landlord and Lender, and their respective heirs, personal representatives, successors and assigns. This Agreement shall be governed by and construed according to the laws of the State of California
10. Where under this document rights and obligations are created between Tenant and Lender, at or subsequent to foreclosure proceedings, "Lender" shall be deemed to include any purchaser at a foreclosure sale or trustee's sale and any purchaser acquiring title through mortgage foreclosure proceedings.
11. Nothing contained in this Agreement shall in any way impair or affect the lien created by the Mortgage.

IN WITNESS WHEREOF, the parties hereto cause this Agreement to be duly executed the day and year first above written.

Landlord:

Address:

[NAME]

By: _____

Tenant:

Address:

County of Santa Clara, a political subdivision of
the State of California

By: _____

Its: _____

Lender:

Address:

By: _____

Its: _____

Provision	Section
Partnership Name	Article 2.2
Partnership Principal Office	Article 2.2
General Partner	Preamble
Limited Partner	Preamble
Purpose of Agreement	Article 2
Property	1.28
Project	1.27
Agent For Service of Process	
Effective Date	
Term of Partnership	Article 4
Initial Capital Contributions and Advances	6.1
Capital Balances (as of 12/31/15)	
Mortgate	

Mortgage Balance
Prepayment penalty

Decisions Required LP (OCH) approval 9.9

Terminate GP as property manager Article 10

Removal of General Partner for Cause 11.2

Purchase of GP's Interest. 11.6

Sale of assets

8.1.2 9.1, 9.4,
15.1, 15.2, 15.7

Additional Capital Contributions

Article 6

First Amendment dated 5/28/96

Second Amendment 1/1/99

O'Connor Helath Center 1, A California Limited Partnership
1960 The Alameda, Suite 20, San Jose, CA 95126
O'Connor Forest 1, a California limited Partnership

O'Connor Hospital

- Formation of O'Connor Health Center 1, A California Limited Partnership
- Purpose and character of business of the Partnership shall be to acquire, develop, own, lease, hold for investment, improve, maintain and operate the Project, and to engage in any and all general business activities related to or incidental to such purposes.
- The Partnership shall at all times conduct its business and affairs in a manner which is consistent with Limited Partner's status as a 501 (c)(3) organization and in a manner which does not violate Medicare/Medicaid fraud and abuse or other laws.
- The Project shall be leased to the Limited Partner pursuant to the terms of an Office Lease between the Limited Partner and the Partnership in the form attached hereto as Exhibit D (the "O'Connor Lease") which shall be executed concurrently herewith.

74,210 square feet located on O'Connor Drive and Forest Ave in San Jose, CA APN 274-59-15, 16, 19, 20

52,000 square foot medical office building to be constructed on Property

Brad W. Krouskup, 1960 The Alameda, Suite 20, San Jose, California 95126.

January 31, 1996

Fifty (50) years from the date of filing of the Certificate of Limited Partnership with the California Secretary of State Concurrently with the Construction Loan Closing, LP shall contribute to the Partnership (i) cash up to \$1,500,000.00 (as determined by the General Partner), and (ii) all of its right, title, estate and interest in and to the Property (at an agreed value equal to \$1,250,000.00, subject only to non-delinquent general and special county taxes, exceptions numbered 2-17, 21, and 24 as shown on First American Title Guaranty Company Preliminary Report No. 510146 dated September 6, 1995, and such other exceptions agreed to by the General Partner (the "Permitted Exceptions"). The existing building on A.P.N. 274-59-16 will be removed by the Limited Partner at its expense prior to the contribution of such parcel to the Partnership.

O'Connor Hospital \$862,281. OCH Forest 1 (\$206,986)

10 year term; matures 5/1/2018

Current balance \$5,235,591.21

Any prepay fee is based on the treasuries. We would need to contact the lender to request calculations for payoff quote.

(a) do any act in contravention of this Agreement; (b) do any act which would make it impossible to carry on the ordinary business of the Partnership; (c) confess a judgment against the Partnership that would make it impossible to carry on the business of the Partnership; (d) possess Partnership property, or assign the GP's rights in specific Partnership property, for other than a Partnership purpose; (e) terminate the Partnership; (f) amend this Agreement (except as provided in Article 12 (Bankruptcy, Dissolution or Withdrawal of LP) or section 13.2 (Sale of LP Partnership Interest) or 13.5(Admission of Additional LPs)); (g) admit a person as a GP or LP (except as provided in section 13.2 (Sale of LP Partnership Interest) or 13.5(Admission of Additional LPs)); (h) except as provided in section 15.7 (Right of First Offer), sell all or any portion of the Project; (i) obtain financing or refinancing secured by the Project (except any acquisition and development loan obtained by the Partnership, the construction loan for the Project, and the take-out permanent loan, so long as such loan(s) do not exceed at any time \$7,950,000 (originally \$7,800,000.00) in the aggregate); (j) incur any unsecured indebtedness in excess of \$200,000.00); (k) change the nature of the Partnership business; (l) except as provided in Article 10 (Compensation), cause the Partnership to enter into contracts between the Partnership and the GP or an affiliate of the GP pursuant to section 9.7 (Contracts with Partnership); (m) incurring by the Partnership of any expenses to the extent such expenses in the aggregate exceed the total amount (and not the line item amounts) set forth in the project and operating budgets adopted pursuant to sections 9.13 (Project Budget) and 9.14 (Operating Budget).

The GP shall submit to the LP, for its approval, (1) the final plans, specifications and drawings for the Project, and any material modifications thereto, which approval shall be required before the GP shall have the authority to proceed with the construction of the Project, and (2) the identity of, and the proposed use by, proposed tenants or subtenants of Project premises, which approval shall be required before the GP executes a lease between the Partnership and such tenant or subtenant.[NOTE: Section 9.9 and 9.10 contains references to the Ethical Religious Directives of the Catholic Church which should be removed by amendment]

LP may terminate property management agreement between the Partnership and the GP at any time, with or w/o cause, upon thirty (30) days' prior written notice

GP may be removed from the Partnership only by the vote of the LP upon default in the performance of obligations as GP, provided that the GP (i) shall have received written notice from the LP of such default, (ii) shall not have commenced cure or remedy such default within 10 days; and (iii) shall not have pursued any corrective action to completion in a reasonable time.

If LP's determine to purchase GP's share after a Terminating Event (Section 11.1), the LP and Terminated Partner shall agree upon a purchase price for the TP's Partnership interest within 30 days. The purchase price shall be paid within 6 months. If the parties cannot agree to a purchase price, then the purchase price will be determined under Section 11.7 (Appraisal Procedure)

GP has full and exclusive discretion and full power and authority to sell the real estate and personal property of the Partnership (Section 9.1). Only GP's signature is required to effectuate the sale of the assets (Section 9.4). Sale of all, or substantially all, of the Partnership Assets would be considered a dissolving event which would require dissolution of the Partnership (15.1). A proposed sale of Partnership assets would trigger the LP's Right of First Offer, allowing OCH the opportunity to purchase the assets at the same terms and condition as the proposed sale to a third party (Section 15.7). OCH would have 30 day to exercise its option and resulting purchase consummated within 60 days thereafter. Section 8.1.2 governs the allocation of profits and losses arising from sales and Section 15.2 would govern the liquidation and distribution of Partnership assets should the sale of the assets constitute a dissolving event.

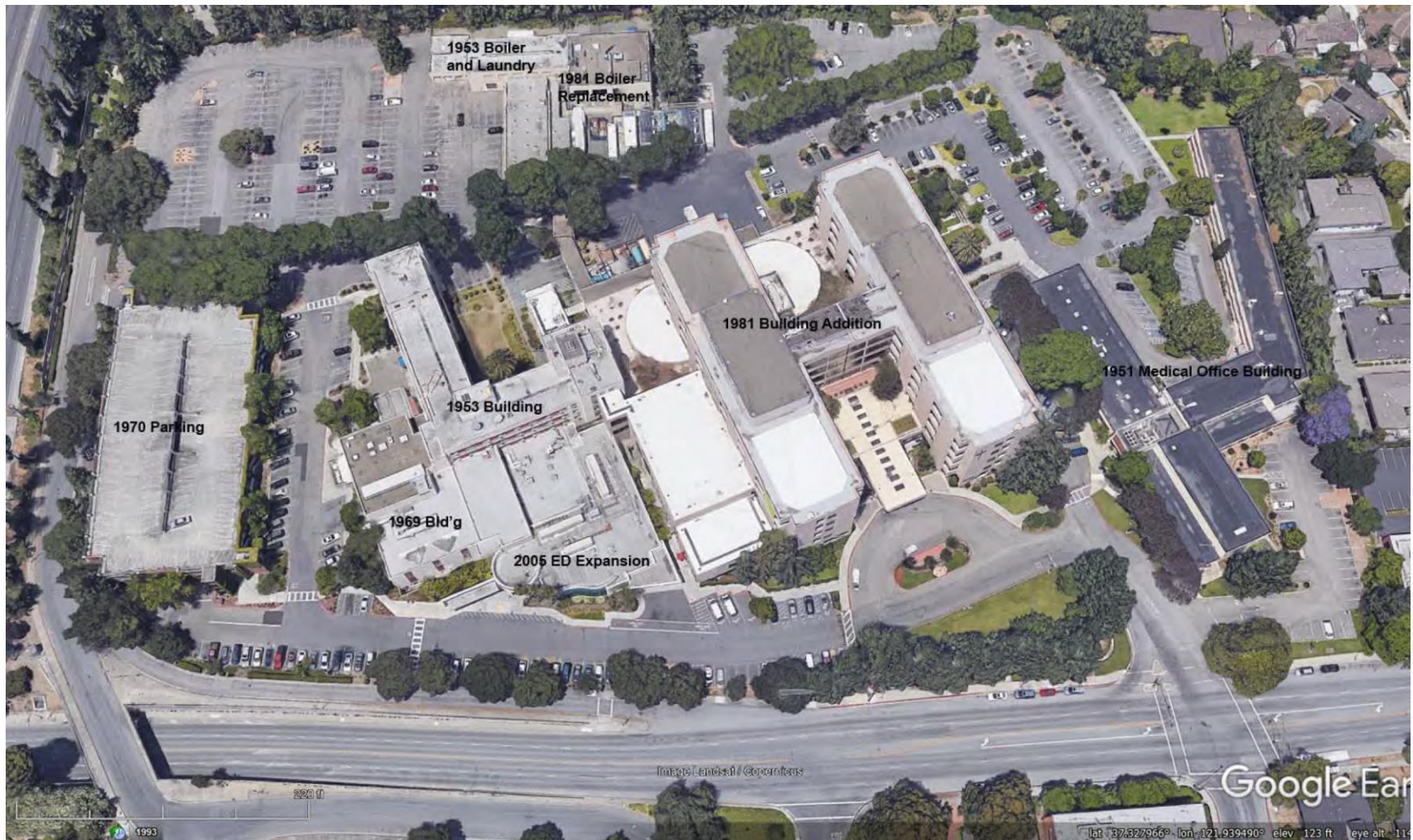
If unanimously agreed upon by all the partners, shall be contributed 25% by the GP and 75% by LP. Such contributions to be made within 30 days of the date of agreement by all partners.

Amended Section 9.9(i) to increase loan amount to \$7,950,000 (originally \$7,800,000)

This amendment (1) confirmed the following: LP Adjusted Invested Capital as of 1/1/99 is \$2,750,000; LP's Adjusted Invested Additional Capital as of 1/1/99 is \$1,258,655; amount of accrued but unpaid Preferred Return due to LP as of 1/1/99 is \$19,107; and (2) added Section 6.1(e) the Partnership Agreement as follows: Remove these three leases from being treated as part of the "O'Connor Lease" for purposes of section 6.1 (e) , provided, however, that upon expiration of each lease, the portions shall again be treated as covered by the "O'Connor Lease" for purposes of section 6.1 (e): (1) Medical Office Lease, dated as of November 14, 1997, as amended, for 8,814 rentable/7,869 usable square feet. (2) Medical Office Lease, dated October 1, 1998, as amended, for 3,986 rentable/3,559 usable square feet. (3) Medical Office Lease to be entered into for 5,432 rentable/4,850 usable square feet for sports medicine use.



Toeniskoetter & Breeding, Inc. Development, a
California corporation signs as the General
Partner.



Aerial of the O'Connor Hospital Campus