



OROVILLE CITY COUNCIL

Council Chambers
1735 Montgomery Street

SPECIAL MEETING JUNE 24, 2014 5:00 P.M. – 7:00 P.M. AGENDA

ROLL CALL

Council Members Andoe, Berry, Bunker, Pittman, Simpson, Vice Mayor Wilcox, Mayor Dahlmeier

PLEDGE OF ALLEGIANCE

RECOGNITION OF INDIVIDUALS WHO WISH TO SPEAK ON AGENDA ITEMS

This is the time the Mayor will invite anyone in the audience wishing to address the Council on a matter that is on the agenda to state your name and the agenda item on which you wish to speak. When that item comes up on the agenda, you will be asked to step to the podium, repeat your name for the record, and make your presentation or ask questions regarding the agenda item. Following your remarks, Council and/or staff may respond to your comments or questions. **Presentations are limited to three minutes per person.** Under Government Code Section 54954.3 the time allotted for presentations may be limited.

CONSENT CALENDAR

1. **AMENDMENT TO THE SUPPLEMENTAL BENEFITS FUND IMPLEMENTATION AGREEMENT WITH STATE OF CALIFORNIA DEPARTMENT OF WATER RESOURCES – staff report**

The Council may consider an amendment to the Supplemental Benefits Fund Implementation Agreement between the City of Oroville and the State of California Department of Water Resources, extending the term through July 20, 2015. (**Bob Marciniak, SBF Program Specialist**)

Council Action Requested: **Adopt Resolution No. 8224 – A RESOLUTION OF THE OROVILLE CITY COUNCIL AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE AN AMENDMENT TO THE SUPPLEMENTAL BENEFITS FUND IMPLEMENTATION AGREEMENT BETWEEN THE CITY OF OROVILLE AND THE STATE OF CALIFORNIA DEPARTMENT OF WATER RESOURCES, EXTENDING THE AGREEMENT THROUGH JULY 20, 2015 – (Agreement No. 1688-5).**

2. **LEASE AGREEMENT WITH PETALUMA ECUMENICAL PROPERTIES TO UTILIZE A PORTION OF THE CENTENNIAL CULTURE CENTER – staff report**

The Council may consider a Lease Agreement to allow Petaluma Ecumenical Properties (PEP Housing) to utilize a portion of the Centennial Cultural Center located at 1931 Arlin Rhine Memorial Drive, Oroville, for

approximately three (3) months. (Donald Rust, Director of Community Development)

Council Action Requested: **Adopt Resolution No. 8225 – A RESOLUTION OF THE OROVILLE CITY COUNCIL AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE A LEASE AGREEMENT WITH PETALUMA ECUMENICAL PROPERTIES FOR RENT OF 620 SQ. FT. OF OFFICE SPACE AT THE CENTENNIAL CULTURAL CENTER LOCATED AT 1931 ARLIN RHINE MEMORIAL DRIVE, OROVILLE – (Agreement No. 3070).**

SPECIAL BUSINESS

3. 2014/15 GENERAL FUND BUDGET WORKSHOP INCLUDING POTENTIAL PERSONNEL ACTIONS - attachments

The Council will review the General Fund budget for fiscal year 2014/15, including potential personnel actions.

Council Action Requested: **Review the 2014/15 preliminary General Fund budget and direct staff, as necessary.**

CLOSED SESSION

1. Pursuant to Government Code section 54957.6, the Council will meet with Labor Negotiators and City Attorney to discuss labor negotiations for the following represented groups: Oroville City Employee's Association, Oroville Fire Fighter's Association, Oroville City Confidential Association, and Oroville Mid-Manager's Association.
2. Pursuant to Government Code Section 54957(b), the Council will meet with the City Administrator and City Attorney to consider the appointment, employment, evaluation of performance, discipline, and/or dismissal of a public employee related to the following position: Assistant Fire Chief.
3. Pursuant to Government Code Section 54957(b), the Council will meet with Labor Negotiators, City Attorney and Director of Public Safety to consider the appointment, employment, evaluation of performance, discipline, and/or dismissal of a public employee related to the following position: Assistant Chief of Police.
4. Pursuant to Government Code Section 54957(b), the Council will meet with Labor Negotiators, City Attorney and Director of Public Safety to consider the appointment, employment, evaluation of performance, discipline, and/or dismissal of a public employee related to the following position: Director of Finance.
5. Pursuant to Government Code section 54956.9(b), the Council will meet with the City Administrator and the City Attorney regarding potential litigation – one case

HEARING OF INDIVIDUALS ON NON-AGENDA ITEMS

This is the time the Mayor will invite anyone in the audience wishing to address the Council on a matter not listed on the agenda to step to the podium, state your name for the record and make your presentation. **Presentations are limited to 3 minutes.** Under Government Code Section 54954.2, The Council is prohibited from taking action except for a brief response by the Council or staff to a statement or question relating to a non-agenda item.

ADJOURNMENT

The meeting will be adjourned to a regular meeting of the Oroville City Council to be held on Tuesday, July 1, 2014 at 5:00 p.m.

**OROVILLE CITY COUNCIL
STAFF REPORT**

TO: MAYOR AND CITY COUNCIL MEMBERS

**FROM: RANDY MURPHY, CITY ADMINISTRATOR
BOB MARCINIAK, SBF PROGRAM SPECIALIST**

**RE: AMENDMENT TO THE SUPPLEMENTAL BENEFITS FUND
IMPLEMENTATION AGREEMENT WITH THE STATE OF
CALIFORNIA DEPARTMENT OF WATER RESOURCES**

DATE: JUNE 24, 2014

SUMMARY

The Council may consider an amendment to the Supplemental Benefits Fund Implementation Agreement between the City of Oroville and the State of California Department of Water Resources, extending the term through July 20, 2015.

DISCUSSION

The City approved and executed the Settlement Agreement with the Department of Water Resources (DWR) for the relicensing of the Oroville Dam on March 24, 2006. The Project Supplemental Benefits Fund (SBF) is included in the Settlement Agreement as Appendix B, and provides funding in the amount of \$61,270,000. The City and DWR agreed that their intent in establishing the Project Supplemental Benefits Fund is to allow the benefits of the Oroville Dam to be extended into the local communities. The City of Oroville is the designated Fund Administrator for the performance of all such administrative duties required to ensure the orderly and efficient operation of the Fund.

The City approved and executed the Department of Water Resources (DWR) Standard Agreement with a term of July 21, 2006 through July 20, 2011 for the initial planned disbursements of Appendix B totaling \$8,070,000. It had been anticipated that DWR's FERC license approval would be made during that time period. As of July 16, 2013, the license approval remains pending and DWR has requested that the City approve an extension of the Standard Agreement with a new term of July 21, 2006 through July 20, 2015, which will cover the remaining available funds up to the originally approved total of \$8,070,000.

(Note: Amendment 3, approved, January 3, 2012, by the California Department of General Services provides for an annual transfer of \$100,000 by January 10th of each subsequent year beginning in 2012 until acceptance by DWR of a new license for the Oroville Facilities. The \$100,000 transfers are advances against the remaining \$4,135,000 that will be transferred as a lump sum to the Fund

Administrator (City of Oroville) upon acceptance by DWR of a new license for the Oroville Facilities with terms and conditions that are consistent with and substantially similar to the provisions set forth in the Settlement Agreement).

FISCAL IMPACT

There is no fiscal impact. City activities related to Supplemental Benefits Funding are 100% funded by SBF.

RECOMMENDATION

Adopt Resolution No. 8224 – A RESOLUTION OF THE OROVILLE CITY COUNCIL AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE AN AMENDMENT TO THE SUPPLEMENTAL BENEFITS FUND IMPLEMENTATION AGREEMENT BETWEEN THE CITY OF OROVILLE AND THE STATE OF CALIFORNIA DEPARTMENT OF WATER RESOURCES, EXTENDING THE TERM THROUGH JULY 20, 2015 – (Agreement No. 1688-5).

ATTACHMENTS

Resolution No. 8224
Agreement No. 1688-5
DWR Agreement Number 4600007302
DWR Amendments 1, 2, 3, 4, and 5

**CITY OF OROVILLE
RESOLUTION NO. 8224**

A RESOLUTION OF THE OROVILLE CITY COUNCIL AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE AN AMENDMENT TO THE SUPPLEMENTAL BENEFITS FUND IMPLEMENTATION AGREEMENT BETWEEN THE CITY OF OROVILLE AND THE STATE OF CALIFORNIA DEPARTMENT OF WATER RESOURCES, EXTENDING THE TERM THROUGH JULY 20, 2015

(Agreement No. 1688-5)

NOW THEREFORE, be it hereby resolved by the Oroville City Council as follows:

1. The Mayor is hereby authorized and directed to execute an amendment to the Supplemental Benefits Fund Implementation Agreement with the State of California Department of Water Resources extending the time period of the Agreement until July 20, 2015. A copy of the Agreement is attached hereto as Exhibit "A."

2. The City Clerk shall attest to the adoption of this Resolution.

PASSED AND ADOPTED by the Oroville City Council at a regular meeting on June 24, 2014, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Linda L. Dahlmeier, Mayor

APPROVED AS TO FORM:

ATTEST:

Scott E. Huber, City Attorney

Randy Murphy, City Clerk

STATE OF CALIFORNIA
STANDARD AGREEMENT AMENDMENT
 STD. 213 A (Rev. 6/03)

CHECK HERE IF ADDITIONAL PAGES ARE ATTACHED 3 Pages

AGREEMENT NUMBER	AMENDMENT NUMBER
4600007302	5
REGISTRATION NUMBER	

1. This Agreement is entered into between the State Agency and Contractor named below:
STATE AGENCY'S NAME
Department of Water Resources
CONTRACTOR'S NAME
City of Oroville
2. The term of this Agreement is **July 21, 2006** through **July 20, 2015**
 This Agreement shall not become effective until approved by the Department of General Services.
3. The maximum amount of this Agreement after this amendment is: **\$8,070,000.00**
Eight Million Seventy Thousand and No Cents
4. The parties mutually agree to this amendment as follows. All actions noted below are by this reference made a part of the Agreement and incorporated herein:
 - A. STD 213, Original Contract, Amendment 3, Section 2, hereby amended: Extend the termination date by one year, from July 20, 2014 to July 20, 2015. The term of this agreement begins on July 21, 2006 and terminates on July 20, 2015.
 - B. Exhibit D, Special Terms and Conditions for Department of Water Resources, (DWR 9546 (Rev 3/14) is replacing the previous version dated October 2012.
 - C. All other terms and conditions of Agreement 4600007302, including Amendments 1, 2, 3, and 4, shall remain the same.

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

CONTRACTOR		CALIFORNIA Department of General Services Use Only
<small>CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.)</small>		
<small>BY (Authorized Signature)</small>	<small>DATE SIGNED (Do not type)</small>	
		
<small>PRINTED NAME AND TITLE OF PERSON SIGNING</small>		
Linda Dahlmeier, Mayor		
<small>ADDRESS</small>		
1735 Montgomery Street Oroville, California 95965		
STATE OF CALIFORNIA		
<small>AGENCY NAME</small>		
Department of Water Resources		
<small>BY (Authorized Signature)</small>	<small>DATE SIGNED (Do not type)</small>	
		
<small>PRINTED NAME AND TITLE OF PERSON SIGNING</small>		
David R. Duval, Chief, Division of Operations and Maintenance		
<small>ADDRESS</small>		
1416 Ninth Street, Room 605-1 Sacramento, California 95814		

**EXHIBIT D—Special Terms and Conditions for
Department of Water Resources
(Local Public Entities - Payables)**

1. **RESOLUTION OF DISPUTES:** In the event of a dispute, Contractor shall file a "Notice of Dispute" with the Director or the Director's Designee within ten (10) days of discovery of the problem. The State and Contractor shall then attempt to negotiate a resolution of such claim and, if appropriate, process an amendment to implement the terms of any such resolution. If the State and Contractor are unable to resolve the dispute, the decision of the Deputy Director of Business Operations shall be final, unless appealed to a court of competent jurisdiction.

In the event of a dispute, the language contained within this agreement shall prevail over any other language including that of the bid proposal.
2. **PAYMENT RETENTION CLAUSE:** Ten percent of any progress payments that may be provided for under this contract shall be withheld per Public Contract Code Section 10346 pending satisfactory completion of all services under the contract.
3. **RENEWAL OF CCC:** Contractor shall renew the Contractor Certification Clauses or successor documents every (3) years or as changes occur, whichever occurs sooner.
4. **AGENCY LIABILITY:** The Contractor warrants by execution of this Agreement, that no person or selling agency has been employed or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the State shall, in addition to other remedies provided by law, have the right to annul this Agreement without liability, paying only for the value of the work actually performed, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.
5. **POTENTIAL SUBCONTRACTORS:** Nothing contained in this Agreement or otherwise shall create any contractual relation between the State and any subcontractors, and no subcontract shall relieve the Contractor of its responsibilities and obligations hereunder. The Contractor agrees to be as fully responsible to the State for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor's obligation to pay its subcontractors is an independent obligation from the State's obligation to make payments to the Contractor. As a result, the State shall have no obligation to pay or enforce the payment of any moneys to any subcontractor.
6. **SUBCONTRACTING:** "Should it be necessary to subcontract for supplemental services or specialists, the Contractor shall obtain prior written consent from DWR. If the subcontracts total more than \$50,000 or 25% of the total contract, whichever is less, then the Contractor must certify that the subcontractor has been selected by the Contractor pursuant to a bidding process requiring at least three bids from responsible bidders or pursuant to the procedures set forth in Government Code Section 4525 et seq., as applicable. If Contractor is unable to obtain three competitive bids or three Statement of Qualifications, Contractor shall submit a written explanation to DWR. DWR will then decide whether to seek authorization to allow Contractor to proceed with the proposed subcontract. Contractors shall assure that all administrative fees for subcontracts are reasonable considering the services being provided and the oversight required. Contractor shall only pay overhead charges on the first \$25,000 for each subcontract."

7. COMPUTER SOFTWARE: For contracts in which software usage is an essential element of performance under this Agreement, the Contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this contract for the acquisition, operation or maintenance of computer software in violation of copyright laws.
8. REPORT OF RECYCLED CONTENT CERTIFICATION: In accordance with Public Contract Code Sections 12200-12217, et seq. and 12153-12156, et seq. the contractor must complete and return the form DWR 9557, Recycled Content Certification, for each required products to the Department at the conclusion of the services specified in this contract. Form DWR 9557 is attached to this Exhibit and made a part of this contract by this reference.
9. REIMBURSEMENT CLAUSE: If applicable, travel and per diem expenses to be reimbursed under this contract shall be at the same rates the State provides for unrepresented employees in accordance with the provisions of Title 2, Chapter 3, of the California Code of Regulations. Contractor's designated headquarters for the purpose of computing such expenses shall be:
10. TERMINATION CLAUSE: The State may terminate this contract without cause upon 30 days advance written notice. The Contractor shall be reimbursed for all reasonable expenses incurred up to the date of termination.
11. CONTRACTOR COOPERATION DURING INVESTIGATION: Contractor agrees to cooperate fully in any investigation conducted by or for DWR regarding unsatisfactory work or allegedly unlawful conduct by DWR employees or DWR contractors. The word "cooperate" includes but is not limited to, in a timely manner, making Contractor staff available for interview and Contractor records and documents available for review.
12. CONFLICT OF INTEREST:
 - a. Current and Former State Employees: Contractor should be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.
 - (1) Current State Employees: (PCC §10410)
 - (a) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
 - (b) No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.
 - (2) Former State Employees: (PCC §10411)
 - (a) For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
 - (b) For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

b. Penalty for Violation:

- (a) If the Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (PCC §10420)

c. Members of Boards and Commissions:

- (a) Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (PCC §10430 (e))

d. Representational Conflicts of Interest:

The Contractor must disclose to the DWR Program Manager any activities by contractor or subcontractor personnel involving representation of parties, or provision of consultation services to parties, who are adversarial to DWR. DWR may immediately terminate this contract if the contractor fails to disclose the information required by this section. DWR may immediately terminate this contract if any conflicts of interest cannot be reconciled with the performance of services under this contract.

e. Financial Interest in Contracts:

Contractor should also be aware of the following provisions of Government Code §1090:

"Members of the Legislature, state, county district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity."

f. Prohibition for Consulting Services Contracts:

For consulting services contracts (see PCC §10335.5), the Contractor and any subcontractors (except for subcontractors who provide services amounting to 10 percent or less of the contract price) may not submit a bid/SOQ, or be awarded a contract, for the provision of services, procurement of goods or supplies or any other related action which is required, suggested, or otherwise deemed appropriate in the end product of such a consulting services contract (see PCC §10365.5).

13. ORDER OF PRECEDENCE: In the event of any inconsistency between the terms, specifications, provisions or attachments which constitute this Contract, the following order of precedence shall apply:

- a) The General Terms and Conditions;
- b) The Std. 213;
- c) The Scope of Work;
- d) Any other incorporated attachments in the Contract by reference

STATE OF CALIFORNIA
STANDARD AGREEMENT

FD 213 (Rev 06/03)

AGREEMENT NUMBER 4600007302
REGISTRATION NUMBER 38601006145110

This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME
Department of Water Resources

CONTRACTOR'S NAME
City of Oroville

The term of this Agreement is: **July 21, 2006 through July 20, 2009**
 This Agreement will not become effective until approved by the Department of General Services.

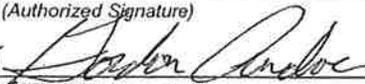
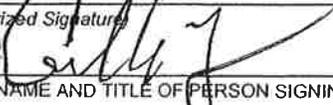
The maximum amount of this Agreement is: **\$ 8,070,000.00**
 Eight Million Seventy Thousand Dollars and No Cents

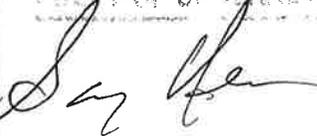
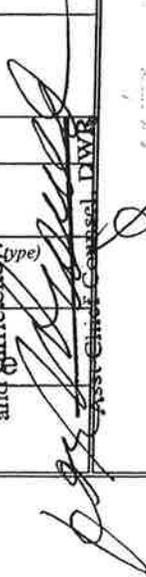
The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement.

Exhibit A – Scope of Work	2 pages
Attachment 1 – Appendix B, Section B100, <u>Project Supplemental Benefits Fund</u>	10 pages
of the “Settlement Agreement for the Licensing of the Oroville Facilities” (Signed 3/21/06)	
Exhibit B – Budget Detail and Payment Provisions	1 page
Attachment 1 – Budget Detail	1 page
Attachment 2 – Cost Sheet	1 page
Exhibit C* – General Terms and Conditions	GTC - 306
Exhibit D – Special Terms and Conditions for DWR (Local Public Entities – Payables) – DWR 9546 (Rev. 3/04)	3 pages
Attachment 1 – Recycled Content Certification Form (DWR 9557 – Rev. 7/06)	2 pages
Exhibit E – Additional Provisions	1 page

Items shown with an Asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto.
 These documents can be viewed at www.ols.dgs.ca.gov/Standard+Language

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

CONTRACTOR	
CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.) City of Oroville	
(Authorized Signature) 	DATE SIGNED (Do not type) 8/21/06
PRINTED NAME AND TITLE OF PERSON SIGNING Gordon Andoe, Mayor	
ADDRESS 135 Montgomery Street Oroville, California 95965	
STATE OF CALIFORNIA	
AGENCY NAME Department of Water Resources	
(Authorized Signature) 	DATE SIGNED (Do not type) 8/31/06
PRINTED NAME AND TITLE OF PERSON SIGNING Carl A. Torgersen, Chief, Division of Operations and Maintenance	
ADDRESS 16 Ninth Street, Sacramento, California 95814	

California Department of General Services Use Only	
	
APPROVED	
SEP 27 2006	
DEPT. OF GENERAL SERVICES	
	
Approved as to legal form and sufficiency Asst. Chief Counsel DWR	
	

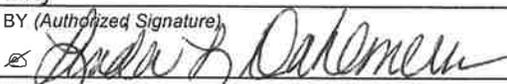
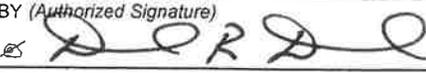
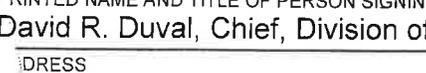
STATE OF CALIFORNIA
STANDARD AGREEMENT AMENDMENT
 STD. 213 A (Rev 6/03)

CHECK HERE IF ADDITIONAL PAGES ARE ATTACHED 6 Pages

AGREEMENT NUMBER	AMENDMENT NUMBER
4600007302	4
REGISTRATION NUMBER	
e P 1001500	

1. This Agreement is entered into between the State Agency and Contractor named below:
 STATE AGENCY'S NAME
Department of Water Resources
 CONTRACTOR'S NAME
City of Oroville
2. The term of this July 21, 2006 through July 20, 2014
 Agreement is This Agreement shall not become effective until approved by the Department of General Services.
3. The maximum amount of this \$8,070,000.00
 Agreement after this amendment is: Eight Million Seventy Thousand Dollars and No Cents
4. The parties mutually agree to this amendment as follows. All actions noted below are by this reference made a part of the Agreement and incorporated herein:
 - A. STD 213, Original Contract, Amendment 3, Section 2, is hereby amended to read: Extend the termination date by one year, from July 20, 2013 to July 20, 2014. The term of this agreement begins on July 21, 2006 and terminates on July 20, 2014.
 - B. Exhibit B, Budget Detail and Payment Provisions, Public Entities, has been amended to reflect the current changes. Exhibit B, Budget Detail and Payment Provisions Interagency Agreements (Rev. 2/13) is replacing the previous version dated August 2011.
 - C. Exhibit D, Special Terms and Conditions for Department of Water Resources (Local Public Entities), (DWR 9546 (Rev 1/13) is replacing the previous version dated December 2010.
 - D. Exhibit D, Attachment 1 Recycled Content Certification Form, (DWR 9557 (Rev 2/13) is replacing the previous version dated January 2009.
 - E. All other terms and conditions of Agreement 4600007302, including Amendments 1, 2 and 3, shall remain the same.

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

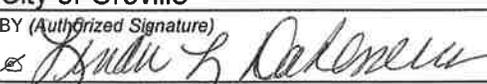
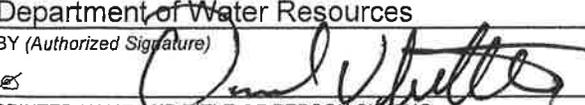
CONTRACTOR		CALIFORNIA Department of General Services Use Only
CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.) <u>City of Oroville</u>		<div style="border: 1px solid black; padding: 10px; width: fit-content; margin: auto;"> <p>APPROVED</p> <p style="font-size: 1.2em;">AUG - 2 2013</p> <p>DEPT OF GENERAL SERVICES</p> </div> <p style="margin-top: 20px;"><i>Kyates</i></p>
BY (Authorized Signature) 	DATE SIGNED (Do not type) <u>7.16.13</u>	
PRINTED NAME AND TITLE OF PERSON SIGNING <u>Linda Dahlmeier, Mayor</u>		
ADDRESS <u>1735 Montgomery Street Oroville, California 95965</u>		
STATE OF CALIFORNIA		
AGENCY NAME <u>Department of Water Resources</u>		<p style="font-size: 0.8em;">Approved as to legal form and sufficiency:</p>  <p style="font-size: 0.8em;">Approved as to legal form and sufficiency:</p>  <p style="font-size: 0.8em;">Approved as to legal form and sufficiency:</p> 
BY (Authorized Signature)	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING <u>David R. Duval, Chief, Division of Operations and Maintenance</u>		
ADDRESS <u>1416 Ninth Street, Room 605-1 Sacramento, California 95814</u>		

CHECK HERE IF ADDITIONAL PAGES ARE ATTACHED 1 Pages

AGREEMENT NUMBER	AMENDMENT NUMBER
4600007302	3
REGISTRATION NUMBER	
eP # 1001500	

1. This Agreement is entered into between the State Agency and Contractor named below:
STATE AGENCY'S NAME
Department of Water Resources
CONTRACTOR'S NAME
City of Oroville
2. The term of this Agreement is July 21, 2006 through July 20, 2013
 This agreement shall not become effective until approved by the Department of General Services.
3. The maximum amount of this \$8,070,000.00
 Agreement after this amendment is: Eight Million Seventy Thousand and No Cents
4. The parties mutually agree to this amendment as follows. All actions noted below are by this reference made a part of the Agreement and incorporated herein:
 - A. Exhibit B, Budget Detail and Payment Provisions (Rev. 08/11) is replacing the previous version dated July 2010.
 - B. Exhibit B, Attachment 1, Budget Detail for Project Supplemental Benefits Fund, I,B, is amended to read:
 - B. The second \$4,135,000 of these funds, as well as any unexpended funds from those made available pursuant to Paragraph I. A., will be distributed as follows:
 - a. \$100,000 will be transferred as a lump sum to the Fund Administrator upon final approval of the amendment, and an additional \$100,000 by January 10 of each subsequent year beginning in 2012 until acceptance by DWR of a new license for the Oroville Facilities with terms and conditions that are consistent with and substantially similar to the provisions set forth in the Settlement Agreement.
 - b. The remaining balance of the \$4,135,000 will be transferred as a lump sum to the Fund Administrator upon acceptance by DWR of a new license for the Oroville Facilities with terms and conditions that are consistent with and substantially similar to the provisions set forth in the Settlement Agreement.
 - C. All other terms and conditions of contract # 4600007302, including Amendment 1 and 2, shall remain the same.

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

CONTRACTOR		CALIFORNIA Department of General Services Use Only
<small>CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.)</small>		
City of Oroville		
<small>BY (Authorized Signature)</small>	<small>DATE SIGNED (Do not type)</small>	
	<u>12.14-11</u>	<div style="border: 2px solid black; padding: 10px; width: fit-content; margin: auto;"> <p style="margin: 0;">APPROVED</p> <p style="margin: 0; font-size: 1.2em;">JAN - 3 2012</p> <p style="margin: 0; font-size: 0.8em;">DEPT OF GENERAL SERVICES</p> </div>
<small>PRINTED NAME AND TITLE OF PERSON SIGNING</small>		
Linda Dahlmeier, Mayor		
<small>ADDRESS</small>		
1735 Montgomery Street Oroville, California 95965		
STATE OF CALIFORNIA		
<small>AGENCY NAME</small>		
Department of Water Resources		
<small>BY (Authorized Signature)</small>	<small>DATE SIGNED (Do not type)</small>	
	<u>12/20/2011</u>	
<small>PRINTED NAME AND TITLE OF PERSON SIGNING</small>		
David V. Starks, Acting Chief, Division of Operations and Maintenance		
<small>ADDRESS</small>		
1416 Ninth Street, Room 605-1 Sacramento, California 95814		

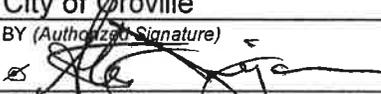
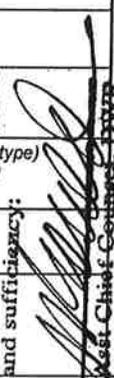
Approved to file form
 and sufficient
 11/30/11
 Asst. Chief Counsel, DWR

CHECK HERE IF ADDITIONAL PAGES ARE ATTACHED 5 Pages

AGREEMENT NUMBER	AMENDMENT NUMBER
4600007302	1
REGISTRATION NUMBER	
EP1001500	

1. This Agreement is entered into between the State Agency and Contractor named below:
 STATE AGENCY'S NAME
Department of Water Resources
 CONTRACTOR'S NAME
City of Oroville
2. The term of this Agreement is July 21, 2006 through July 20, 2011
 This agreement shall not become effective until approved by the Department of General Services.
3. The maximum amount of this \$8,070,000.00
 Agreement after this amendment is: Eight Million Seventy Thousand and No Cents
4. The parties mutually agree to this amendment as follows. All actions noted below are by this reference made a part of the Agreement and incorporated herein:
 - A. Std 213, Original Contract, Section 2, is hereby amended: Extend the termination date by two years, from July 20, 2009 to July 20, 2011. The term of this agreement begins on July 21, 2006 and terminates on July 20, 2011. This amendment will allow DWR to secure a new FERC license and make necessary payments to the City of Oroville.
 - B. Exhibit C, General Terms and Conditions has been amended to reflect the current changes. GTC 307 replaces the original GTC 306, and is hereby incorporated by this reference and made part of this Agreement as if attached hereto. The document can be viewed at <http://www.ols.dgs.ca.gov/Standard%20Language/default.htm>
 - C. Exhibit D, Special Terms and Conditions for Department of Water Resources (DWR 9546), is being amended to reflect the revisions dated January 2009.
 - D. Exhibit D, Attachment 1, Recycled Content Certification Form (DWR 9557), is being amended to reflect the revisions dated January 2009.
 - E. All other terms and conditions shall remain the same.

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

CONTRACTOR		CALIFORNIA Department of General Services Use Only	
CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.) <u>City of Oroville</u>		<div style="border: 2px solid black; padding: 10px; width: fit-content; margin: auto;"> <p style="margin: 0;">APPROVED</p> <p style="margin: 0; font-size: 1.2em;">APR - 1 2009</p> <p style="margin: 0;">DEPT OF GENERAL SERVICES</p> </div>	
BY (Authorized Signature) 	DATE SIGNED (Do not type) <u>3/9/09</u>		
PRINTED NAME AND TITLE OF PERSON SIGNING <u>Steve Jernigan, Mayor</u>			
ADDRESS <u>1735 Montgomery Street Oroville, CA 95965</u>			
STATE OF CALIFORNIA			
AGENCY NAME <u>Department of Water Resources</u>		<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: auto;"> <p style="margin: 0; font-size: 0.8em;">Approved as to legal form and sufficiency:</p>  <p style="margin: 0; font-size: 0.8em;">Asst. Chief Counsel, DWR</p> </div>	
BY (Authorized Signature) 	DATE SIGNED (Do not type) <u>3/18/09</u>		
PRINTED NAME AND TITLE OF PERSON SIGNING <u>Karl A. Torgersen, Chief, Division of Operations and Maintenance</u>			
ADDRESS <u>1416 Ninth Street Sacramento, CA 95814</u>			

STANDARD AGREEMENT AMENDMENT

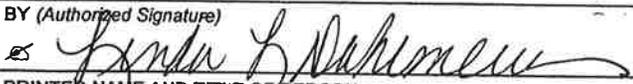
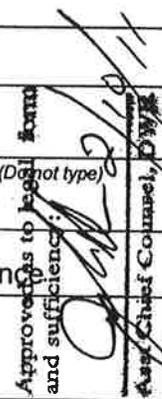
STD. 213 A (Rev 6/03)

CHECK HERE IF ADDITIONAL PAGES ARE ATTACHED 4 Pages

AGREEMENT NUMBER	AMENDMENT NUMBER
4600007302	2
REGISTRATION NUMBER	

- This Agreement is entered into between the State Agency and Contractor named below:
STATE AGENCY'S NAME
Department of Water Resources
CONTRACTOR'S NAME
City of Oroville
- The term of this Agreement is **July 21, 2006** through **July 20, 2013**
This agreement shall not become effective until approved by the Department of General Services.
- The maximum amount of this **\$8,070,000.00**
Agreement after this amendment is: **Eight Million Seventy Thousand and No Cents**
- The parties mutually agree to this amendment as follows. All actions noted below are by this reference made a part of the Agreement and incorporated herein:
 - STD 213, Original Contract Amendment 1, Section 2, is hereby amended: Extend the termination date by two years, from July 20, 2011 to July 20, 2013. The term of this agreement begins on July 21, 2006 and terminates on July 20, 2013. This amendment will allow DWR to secure a new FERC license and make necessary payments to the City of Oroville.
 - Exhibit B – Budget Detail and Payment Provisions, Public Entities, is hereby amended to reflect current revision 07/10 replacing the original Exhibit B revision 04/05.
 - Exhibit C - General Terms and Conditions, 307, is hereby amended to reflect changes in statute. GTC 610 dated 06/09/2010 replaces the original GTC 307 and is hereby made a part of this Agreement by reference and can be viewed at <http://www.ols.dgs.ca.gov/Standard+Language>.
 - Exhibit D – Special Terms and Conditions for Department of Water Resources, is hereby amended to reflect current revision 12/10 replacing the original Exhibit D dated 01/09.
 - All other terms and conditions shall remain the same.

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

CONTRACTOR		CALIFORNIA Department of General Services Use Only
<small>CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.)</small> City of Oroville		
<small>BY (Authorized Signature)</small> 	<small>DATE SIGNED (Do not type)</small> 5/17/11	
<small>PRINTED NAME AND TITLE OF PERSON SIGNING</small> Steve Jernigan, Mayor Linda Dahlmeier, Mayor		
<small>ADDRESS</small> 1735 Montgomery Street Oroville, California 95965		
STATE OF CALIFORNIA		
<small>AGENCY NAME</small> Department of Water Resources		
<small>BY (Authorized Signature)</small> 	<small>DATE SIGNED (Do not type)</small> 5/17/11	<small>Approved as to legal form and sufficiency:</small>  Asst. Chief Counsel, DWR
<small>PRINTED NAME AND TITLE OF PERSON SIGNING</small> Carl A. Torgersen, Chief, Division of Operations and Maintenance		
<small>ADDRESS</small> 1416 Ninth Street, Rm 605-1 Sacramento, California 95814		

**OROVILLE CITY COUNCIL
STAFF REPORT**

**TO: MAYOR AND COUNCIL MEMBERS
RANDY MURPHY, CITY ADMINISTRATOR**

**FROM: DONALD L. RUST, DIRECTOR (530) 538-2433
COMMUNITY DEVELOPMENT DEPARTMENT**

**RE: LEASE AGREEMENT WITH PETALUMA ECUMENICAL PROPERTIES TO
UTILIZE A PORTION OF THE CENTENNIAL CULTURE CENTER**

DATE: JUNE 24, 2014

SUMMARY

The Council may consider a Lease Agreement to allow Petaluma Ecumenical Properties (PEP Housing) to utilize a portion of the Centennial Cultural Center located at 1931 Arlin Rhine Memorial Drive, Oroville, for approximately three (3) months.

DISCUSSION

At the June, 3, 2014 meeting, the Council received an update regarding the Orange Tree Senior Apartment Project (Project) relating to the current status of the Project and several amenities that were being added to the Project. The applicant was adding an on-site bus stop shelter, a dog run, and a monument sign on High Street. In addition, PEP Housing has requested to utilize 620 square feet of office space at the Centennial Cultural Center, located at 1931 Arlin Rhine Memorial Drive.

This staff report and attached Lease Agreement are for a 620 sq. ft. portion of the Centennial Cultural Center for office space to be used by PEP Housing; the terms of the Agreement are for an initial three (3) month lease with an option to extend to a month to month basis to provide information and to meet with prospective tenants related to leasing of affordable senior housing units at the Orange Tree Senior Apartments.

PEP Housing will occupancy and articulated in the Lease Agreement with Bob Thomaston.

The tenant has agreed to pay \$310 per month for the office space at Centennial Cultural Center, at 1931 Arlin Rhine Memorial Drive. The rent is calculated as follows: the office space of 620 sq. ft. x \$0.50 per sq. ft. = \$310, which will be revenue to the General Fund.

CC-2

FISCAL IMPACT

This action will have a slightly positive impact to the General Fund.

RECOMMENDATIONS

Adopt Resolution No. 8225 – A RESOLUTION OF THE OROVILLE CITY COUNCIL AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE A LEASE AGREEMENT WITH PETALUMA ECUMENTICAL PROPERTIES FOR RENT OF 620 SQ. FT. OF OFFICE SPACE AT THE CENTENNIAL CULTURAL CENTER LOCATED AT 1931 ARLIN RHINE MEMORIAL DRIVE, OROVILLE – (Agreement No. 3070).

ATTACHMENTS

Resolution No. 8225
Agreement No. 3070

**CITY OF OROVILLE
RESOLUTION NO. 8225**

A RESOLUTION OF THE OROVILLE CITY COUNCIL AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE A LEASE AGREEMENT WITH PETALUMA ECUMENICAL PROPERTIES FOR RENT OF 620 SQ. FT. OF OFFICE SPACE AT THE CENTENNIAL CULTURAL CENTER LOCATED AT 1931 ARLIN RHINE MEMORIAL DRIVE, OROVILLE

(Agreement No. 3070)

NOW THEREFORE, be it hereby resolved by the Oroville City Council as follows:

1. The Mayor is hereby authorized and directed to execute a Lease Agreement with Petaluma Ecumenical Properties, to rent 620 sq. ft of office space located at Centennial Cultural Center located at 1931 Arlin Rhine Memorial Drive, Oroville.
2. The City Clerk shall attest to the adoption of this Resolution.

PASSED AND ADOPTED by the Oroville City Council at a special meeting on June 24, 2014, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Linda L. Dahlmeier, Mayor

APPROVED AS TO FORM:

ATTEST:

Scott E. Huber, City Attorney

Randy Murphy City Clerk

**CITY OF OROVILLE PUBLIC FACILITY
LEASE AGREEMENT
(Agreement No. 3070)**

THIS LEASE AGREEMENT is made this 1st day of July, 2014, between City of Oroville ("Landlord"), and Petaluma Ecumenical Properties ("Tenant").

BUSINESS TERMS

Landlord: **CITY OF OROVILLE**

Tenant: **PETALUMA ECUMENICAL PROPERTIES**

Premises: Centennial Cultural Center – (Former VIPS Area)
1931 Arlin Rhine Memorial Drive
Oroville, CA 95965

Permitted Use: Office

Current Zoning: C2 – Intensive Commercial

Term: 3 months, plus an option to renew on a month to month basis. .

Renewal Option: Month to Month.

Base Rent: \$310.00 per month (rental space is 620 square feet at \$0.50 per square)

Percentage Rent: NONE

Net Lease: Tenant is to pay for all taxes, insurances, and common area maintenance charges. The tenant is responsible for all occupancy costs for the Premise as subject to Paragraph 7.

Security Deposit: \$1,000

Security Deposit is held to mitigate damage that may result to the Premise from business operations as subject to Paragraph 5. Deposit is returned in full with no interest when Premise has been vacated and inspected by the City of Oroville to assess its condition.

Rent Commencement: Rent, as subject to Paragraph 4, shall commence on the execution of this Lease Agreement. Tenant shall pay Landlord its rent for the first month rent and security deposit for the Premise.

Possession: At execution of Lease Agreement by all parties.

Condition of Premises: Tenant is willing to take the Premises in "as is" condition subject to conducting a thorough assessment of the condition of the Premises by Tenants' contractors to determine if the "Construction Allowance" as set forth herein will be adequate to bring the Premises into good working order.

Any additional improvements over and above the "Construction Allowance" shall be at Tenant's sole cost and expense as subject to Paragraph 13.

Building Signage: Signage shall be in conformance with the Zoning Code, sign regulations, and approved by Landlord prior to installation or placement. All signage shall be at Tenant's expense.

1. **Granting Clause.** In consideration of the obligation of Tenant to pay rent as herein provided and in consideration of the other terms, covenants, and conditions hereof, Landlord leases to Tenant, and Tenant takes from Landlord, the Premises, to have and to hold for the Lease Term, subject to the terms, covenants and conditions of this Lease.

2. **Acceptance of Premises.** Tenant shall accept the Premises in its condition as of the Commencement Date, subject to all applicable laws, ordinances, regulations, covenants and restrictions. Landlord has made no representation or warranty as to the suitability of the Premises for the conduct of Tenant's business, and Tenant waives any implied warranty that the Premises are suitable for Tenant's intended purposes. Except as provided in Paragraph 11, in no event shall Landlord have any obligation for any defects in the Premises or any limitation on its use. The taking of possession of the Premises shall be conclusive evidence that Tenant accepts the Premises and that the Premises were in good condition at the time possession was taken except for items that are Landlord's responsibility under Paragraph 11.

3. **Use.** The Premises shall be used only for the purpose of providing information and meeting with prospective tenants related to leasing of affordable senior housing units at the Orange Tree Senior Apartments. Tenant must comply with the City Zoning Code. Tenant shall not conduct or give notice of any auction, liquidation, or going out of business sale on the Premises, without Landlord's prior written consent,

which Landlord shall not unreasonably withhold. Tenant will use the Premises in a careful, safe and proper manner and will not commit waste, overload the floor or structure of the Premises or subject the Premises to use that would damage the Premises. Tenant shall not permit any objectionable or unpleasant odors, smoke, dust, gas, noise, or vibrations to emanate from the Premises, or take any other action that would constitute a nuisance or would disturb, unreasonably interfere with, or endanger Landlord or any tenants of the Premises. Tenant, at its sole expense, shall use and occupy the Premises in compliance with all laws, including, without limitation, the Americans With Disabilities Act, orders, judgments, ordinances, regulations, codes, directives, permits, licenses, covenants and restrictions now or hereafter applicable to the Premises (collectively, "Legal Requirements") unless such Legal Requirements are met due to their "grandfathered" nature. Tenant shall, at its expense, make any alterations or modifications, within or without the Premises, that are required by Legal Requirements related to Tenant's use or occupation of the Premises unless such Legal Requirements are met due to their "grandfathered" nature. Tenant must receive Landlord's written authorization and approval for all alteration or modifications to the Premises.

4. **Base Rent.** Tenant shall pay Base Rent in the amount set forth above. The first month's Base Rent, the Security Deposit, and the first monthly installment of estimated Operating Expenses (as hereafter defined) shall be due and payable on the date hereof, and Tenant promises to pay to Landlord in advance, without demand, deduction or set-off, monthly installments of Base Rent on or before the first day of each calendar month succeeding the Commencement Date, and the first month rent is due on or before July 1, 2014. Payments of Base Rent for any fractional calendar month shall be prorated. All payments required to be made by Tenant to Landlord hereunder (or to such other party as Landlord may from time to time specify in writing) shall be made by check of immediately available funds before 4:00 p.m., Pacific Time, at City of Oroville, Finance Department, 1735 Montgomery Street, Oroville, California, 95965, or as Landlord may from time to time designate to Tenant in writing. The obligation of Tenant to pay Base Rent and other sums to Landlord and the obligations of Landlord under this Lease are independent obligations. Tenant shall have no right at any time to abate, reduce, or set-off any rent due hereunder except as may be expressly provided in this Lease. If Tenant is delinquent in any monthly installment of Base Rent for more than 5 business days, Tenant shall pay to Landlord on demand a late charge equal to 5 percent of such delinquent sum. The provision for such late charge shall be in addition to all of Landlord's other rights and remedies hereunder or at law and shall not be construed as a penalty.

5. **Security Deposit.** The Security deposit is due on or before July 1, 2014. The security deposit shall be held by Landlord as security for the faithful performance by Tenant of all of the terms, covenants and conditions to be performed by Tenant. The security deposit shall not be assigned, transferred or encumbered by Tenant, and any attempt to do so shall not be binding upon Landlord. If, at any time during the term of this Lease, any rent or portion of any rent payable by Tenant to Landlord shall not be timely paid, then, Landlord may, at its option (but shall not be required to), appropriate and apply any portion of the security deposit to the payment of

such overdue rent. Under no circumstances shall Tenant apply the security deposit as Rent for the final months of the Lease. In the event of the failure of Tenant to keep and perform any of the terms, covenants and conditions of this Lease to be kept and performed by Tenant, then, at the option of Landlord, Landlord may (but shall not be required to) appropriate and apply the security deposit, or so much so as may be necessary, to compensate Landlord for all loss or damage sustained or suffered by Landlord due to such default on the part of Tenant. Should the entire security deposit, or any portion thereof, be appropriated and applied by Landlord for the purposes set forth herein, or for any other lawful purpose, then Tenant shall, within 10 days after written demand by Landlord, deliver to Landlord a sufficient sum in cash to restore the security deposit to the original sum of the security deposit. Landlord shall not be obligated to keep the security deposit in a separate fund, but may commingle the security deposit with its own funds. The failure of Tenant to maintain the security deposit in the initial amount as stated above shall constitute a failure to pay rent and shall carry with it the consequences set forth in this Lease for failure to pay rent. Upon expiration of the Lease, the security deposit, if not applied toward the payment of Rent in arrears or toward the payment of damages suffered by Landlord by reason of Tenant's breach of this Lease, is to be returned to Tenant without interest, but in no event shall the security deposit be returned until Tenant has vacated the Leased Premises, delivered possession thereof to Landlord, and fully satisfied Tenant's obligations under this Lease.

6. **Operating Expense Payments.** Intentionally Omitted.

7. **Utilities.** Tenant shall pay Landlord 13% of the total cost of Utilities, as defined in this paragraph and in this Agreement, for Tenant's proportional share, based on the amount of square footage rented, of all water, gas, electricity, heat, light, power, sprinkler services, refuse and trash collection, and other utilities and services used on the Premises, all maintenance charges for utilities, and any other similar charges for utilities imposed by any governmental entity or utility provider, together with any taxes, penalties, surcharges or the like pertaining to Tenant's use of the Premises. Tenant shall be responsible for its own telephone service. Landlord may cause at Tenant's expense any utilities to be separately metered or charged directly to Tenant by the provider. Tenant shall pay its share of all charges for jointly metered utilities within 30 days of receipt of an invoice from Landlord. No interruption or failure of utilities shall result in the termination of this Lease or the abatement of rent.

8. **Taxes.** If any such tax or excise is levied or assessed directly against Tenant, including but not limited to possessory tax, then Tenant shall be responsible for and shall pay the same at such times and in such manner as the taxing authority shall require. Tenant shall be liable for all taxes levied or assessed against any personal property or fixtures placed in the Premises, whether levied or assessed against Landlord or Tenant.

TENANT INITIALS _____

9. **Insurance.** Landlord shall maintain all risk property insurance covering the full replacement cost of the Building. Landlord may, but is not obligated to, maintain such other insurance and additional coverages as it may deem necessary, including, but not limited to, commercial liability insurance and rent loss insurance. All such insurance shall be included as part of the Operating Expenses charged to Tenant. The Premise or Building may be included in a blanket policy (in which case the cost of such insurance allocable to the Premise or Building will be determined by Landlord based upon the insurer's cost calculations). Tenant shall also reimburse Landlord for any increased premiums or additional insurance which Landlord reasonably deems necessary as a result of Tenant's use of the Premises.

Tenant, at its expense, shall maintain during the Lease Term: all risk property insurance covering the full replacement cost of all property and improvements installed or placed in the Premises by Tenant at Tenant's expense; workers' compensation insurance with no less than the minimum limits required by law; employer's liability insurance with such limits as required by law; and commercial liability insurance, with a minimum limit of \$1,000,000 per occurrence and a minimum umbrella limit of \$1,000,000, for a total minimum combined general liability and umbrella limit of \$2,000,000 (together with such additional umbrella coverage as Landlord may reasonably require) for property damage, personal injuries, or deaths of persons occurring in or about the Premises. Landlord may from time to time require reasonable increases in any such limits. The commercial liability policies shall name Landlord as an additional insured, insure on an occurrence and not a claims-made basis, be issued by insurance companies which are reasonably acceptable to Landlord, not be cancelable unless 30 days' prior written notice shall have been given to Landlord, contain a hostile fire endorsement and a contractual liability endorsement and provide primary coverage to Landlord (any policy issued to Landlord providing duplicate or similar coverage shall be deemed excess over Tenant's policies). SUCH POLICIES OR CERTIFICATES THEREOF SHALL BE DELIVERED TO LANDLORD BY TENANT UPON COMMENCEMENT OF THE LEASE TERM AND UPON EACH RENEWAL OF SAID INSURANCE.

The all-risk property insurance obtained by Landlord and Tenant shall include a waiver of subrogation by the insurers and all rights based upon an assignment from its insured, against Landlord or Tenant, their officers, directors, employees, managers, agents, invitees and contractors, in connection with any loss or damage thereby insured against. Neither party nor its officers, directors, employees, managers, agents, invitees or contractors shall be liable to the other for loss or damage caused by any risk coverable by all risk property insurance, and each party waives any claims against the other party, and its officers, directors, employees, managers, agents, invitees and contractors for such loss or damage. The failure of a party to insure its property shall not void this waiver. Landlord and its agents, employees and contractors shall not be liable for, and Tenant hereby waives all claims against such parties for, business interruption and losses occasioned thereby sustained by Tenant or any person claiming through Tenant resulting from any accident or occurrence in or upon the Premises from any cause whatsoever, including without limitation, damage caused in

whole or in part, directly or indirectly, by the negligence of Landlord or its agents, employees or contractors.

10. **Construction Allowance.** All construction costs associated with the mutually agreed upon ADA upgrades and Tenant Improvements and required permits will be handled by the Tenant PEP Housing.

11. **Landlord's Repairs.** Landlord shall maintain, at its expense, the structural soundness of the roof, foundation, and exterior walls of the Building in good repair, reasonable wear and tear and uninsured losses and damages caused by Tenant, its agents and contractors excluded. The term "walls" as used in this Paragraph 11 shall not include windows, glass or plate glass, doors or overhead doors, special store fronts, or office entries. Tenant shall promptly give Landlord written notice of any repair required by Landlord pursuant to this Paragraph 11, after which Landlord shall have a reasonable opportunity to repair.

12. **Tenant's Repairs.** Landlord, at Tenant's expense as provided in Paragraph 6, shall maintain in good repair and condition. Subject to Landlord's obligation in Paragraph 11 and subject to Paragraphs 9 and 16, Tenant, at its expense, shall repair, replace and maintain in good condition all portions of the Premises and all areas, improvements and systems exclusively serving the Premises including, without limitation, entries, doors, ceilings, windows, interior walls, and the interior side of demising walls. Such repair and replacements include capital expenditures and repairs whose benefit may extend beyond the Term. The scope of services and contractors under such maintenance contracts shall be reasonably approved by Landlord. If Tenant fails to perform any repair or replacement for which it is responsible, Landlord may perform such work and be reimbursed by Tenant within 10 days after demand therefore. Subject to Paragraphs 9 and 16, Tenant shall bear the full cost of any repair or replacement to any part of the Building or Premise that results from damage caused by Tenant, its agents, contractors, or invitees and any repair that benefits only the Premises.

13. **Tenant-Made Alterations and Trade Fixtures.** Any alterations, additions, or improvements made by or on behalf of Tenant to the Premises ("Tenant-Made Alterations") shall be subject to Landlord's prior written consent. Tenant shall cause, at its expense, all Tenant-Made Alterations to comply with insurance requirements and with Legal Requirements and shall construct at its expense any alteration or modification required by Legal Requirements as a result of any Tenant-Made Alterations. All Tenant-Made Alterations shall be constructed in a good and workmanlike manner by contractors reasonably acceptable to Landlord and only good grades of materials shall be used. All plans and specifications for any Tenant-Made Alterations shall be submitted to Landlord for its approval. Landlord may monitor construction of the Tenant-Made Alterations. Tenant shall provide Landlord with the identities and mailing addresses of all persons performing work or supplying materials, prior to beginning such construction, and Landlord may post on and about the Premises notices of non-responsibility pursuant to applicable law. Tenant shall furnish security or make other arrangements satisfactory to Landlord to assure payment for the completion

of all work free and clear of liens and shall provide certificates of insurance for workers' compensation and other coverage in amounts and from an insurance company satisfactory to Landlord protecting Landlord against liability for personal injury or property damage during construction. Upon completion of any Tenant-Made Alterations, Tenant shall deliver to Landlord sworn statements setting forth the names of all contractors and subcontractors who did work on the Tenant-Made Alterations and final lien waivers from all such contractors and subcontractors. Upon surrender of the Premises, all Tenant-Made Alterations and any leasehold improvements constructed by Landlord or Tenant shall remain on the Premises as Landlord's property, except to the extent Landlord requires removal at Tenant's expense of any such items or Landlord and Tenant have otherwise agreed in writing in connection with Landlord's consent to any Tenant-Made Alterations. Tenant shall repair any damage caused by such removal.

Tenant, at its own cost and expense and without Landlord's prior approval, may paint interior spaces, erect such shelves, bins, machinery and trade fixtures (collectively "Trade Fixtures") in the ordinary course of its business provided that such items do not alter the basic character of the Premises, do not overload or damage the Premises, and may be removed without injury to the Premises, and the construction, erection, and installation thereof complies with all Legal Requirements and with Landlord's requirements set forth above. Tenant shall remove its Trade Fixtures and shall repair any damage caused by such removal.

14. **Signs.** Tenant shall not make any changes to the exterior of the Premises, install any exterior lights, decorations, balloons, flags, pennants, banners, or painting, or erect or install any signs, windows or door lettering, placards, decorations, or advertising media of any type which can be viewed from the exterior of the Premises, without Landlord's prior written consent. Upon surrender or vacation of the Premises, Tenant shall have removed all signs and repair, paint, and/or replace the building fascia surface to which its signs are attached. Tenant shall obtain all applicable governmental permits and approvals for sign and exterior treatments. All signs, decorations, advertising media, blinds, draperies and other window treatment or bars or other security installations visible from outside the Premises shall be subject to Landlord's approval and conform in all respects to Landlord's requirements.

15. **Parking.** No off-street parking is provided by Landlord. Public parking is available to Tenant in City owned parking lots located near Premises.

16. **Restoration.** If at any time during the Lease Term the Premises are damaged by a fire or other casualty, Landlord shall notify Tenant within 60 days after such damage as to the amount of time Landlord reasonably estimates it will take to restore the Premises. If the restoration time is estimated to exceed 6 months, either Landlord or Tenant may elect to terminate this Lease upon notice to the other party given no later than 30 days after Landlord's notice. If neither party elects to terminate this Lease or if Landlord estimates that restoration will take 6 months or less, then, subject to receipt of sufficient insurance proceeds, Landlord shall promptly restore the Premises excluding the improvements installed by Tenant or by Landlord and paid by

Tenant, subject to delays arising from the collection of insurance proceeds or from Force Majeure events. Tenant at Tenant's expense shall promptly perform, subject to delays arising from the collection of insurance proceeds, or from Force Majeure events, all repairs or restoration not required to be done by Landlord and shall promptly re-enter the Premises and commence doing business in accordance with this Lease. Notwithstanding the foregoing, either party may terminate this Lease if the Premises are damaged during the last year of the Lease Term and Landlord reasonably estimates that it will take more than one month to repair such damage. Base Rent and Operating Expenses shall be abated for the period of repair and restoration in the proportion which the area of the Premises, if any, which is not usable by Tenant bears to the total area of the Premises. Such abatement shall be the sole remedy of Tenant, and except as provided herein, Tenant waives any right to terminate the Lease by reason of damage or casualty loss.

17. **Condemnation.** If any part of the Premises should be taken for any public or quasi-public use under governmental law, ordinance, or regulation, or by right of eminent domain, or by private purchase in lieu thereof (a "Taking" or "Taken"), and the Taking would prevent or materially interfere with Tenant's use of the Premises or in Landlord's judgment would materially interfere with or impair its ownership or operation of the Premise, then upon written notice by Landlord this Lease shall terminate and Base Rent shall be apportioned as of said date. If part of the Premises shall be Taken, and this Lease is not terminated as provided above, the Base Rent payable hereunder during the unexpired Lease Term shall be reduced to such extent as may be fair and reasonable under the circumstances. In the event of any such Taking, Landlord shall be entitled to receive the entire price or award from any such Taking without any payment to Tenant, and Tenant hereby assigns to Landlord Tenant's interest, if any, in such award. Tenant shall have the right, to the extent that same shall not diminish Landlord's award, to make a separate claim against the condemning authority (but not Landlord) for such compensation as may be separately awarded or recoverable by Tenant for moving expenses and damage to Tenant's Trade Fixtures, if a separate award for such items is made to Tenant.

18. **Assignment and Subletting.** Without Landlord's prior written consent, which Landlord shall not unreasonably withhold, Tenant shall not assign this Lease or sublease the Premises or any part thereof or mortgage, pledge, or hypothecate its leasehold interest or grant any concession or license within the Premises and any attempt to do any of the foregoing shall be void and of no effect. For purposes of this paragraph, a transfer of the ownership interests resulting in a change of control of Tenant shall be deemed an assignment of this Lease. Tenant shall reimburse Landlord for all of Landlord's reasonable out-of-pocket expenses in connection with any assignment or sublease in an amount not to exceed \$1,500. Upon Landlord's receipt of Tenant's written notice of a desire to assign or sublet the Premises, or any part thereof (other than to a Tenant Affiliate), Landlord may, by giving written notice to Tenant within 15 days after receipt of Tenant's notice, terminate this Lease with respect to the space described in Tenant's notice, as of the date specified in Tenant's notice for the commencement of the proposed assignment or sublease. If Landlord so terminates the Lease, Landlord may enter into a lease directly with the proposed sublessee or

assignee. Tenant may withdraw its notice to sublease or assign by notifying Landlord within 10 days after Landlord has given Tenant notice of such termination, in which case the Lease shall not terminate but shall continue.

It shall be reasonable for the Landlord to withhold its consent to any assignment or sublease in any of the following instances: (i) an Event of Default has occurred and is continuing that would not be cured upon the proposed sublease or assignment; (ii) the assignee or sublessee does not have a net worth which is consistent with net worth of other tenant's which Landlord is entering into leases with in the Premise; (iii) the intended use of the Premises by the assignee or sublessee is not consistent with the use provision herein; (iv) occupancy of the Premises by the assignee or sublessee would, in Landlord's opinion, violate an agreement binding upon Landlord with regard to the identity of tenants, usage in the Premise, or similar matters; (v) the identity or business reputation of the assignee or sublessee will, in the good faith judgment of Landlord, tend to damage the goodwill or reputation of the Premise; (vi) the assignment or sublet is to another tenant in the Premise and is at rates which are below those charged by Landlord for comparable space in the Premise and Landlord has space available in the Premise to accommodate the tenant's needs; (vii) in the case of a sublease, the subtenant has not acknowledged that the Lease controls over any inconsistent provision in the sublease; (viii) the proposed assignee or sublessee is a governmental agency; or (ix) there is vacant space in the Premise suitable for lease to the proposed sublessee or assignee. Tenant and Landlord acknowledge that each of the foregoing criteria are reasonable as of the date of execution of this Lease. The foregoing criteria shall not exclude any other reasonable basis for Landlord to refuse its consent to such assignment or sublease. Any approved assignment or sublease shall be expressly subject to the terms and conditions of this Lease. Tenant shall provide to Landlord all information concerning the assignee or sublessee as Landlord may request.

Notwithstanding any assignment or subletting, Tenant shall at all times remain fully responsible and liable for the payment of the rent and for compliance with all of Tenant's other obligations under this Lease (regardless of whether Landlord's approval has been obtained for any such assignments or sublettings). In the event that the rent due and payable by a sublessee or assignee (or a combination of the rental payable under such sublease or assignment plus any bonus or other consideration therefore or incident thereto) exceeds the rental payable under this Lease, then Tenant shall be bound and obligated to pay Landlord as additional rent hereunder fifty percent (50%) of such excess rental and other excess consideration ("Profit") within 10 days following receipt of each month's Profit thereof by Tenant. Profit shall be further defined to take into consideration all of Tenant's costs in any assignment of subletting including but not limited to real estate commissions, legal fees, marketing costs, any improvement allowance or other economic concession (planning allowance, moving expenses, etc.), paid by Tenant to sublessee or assignee.

If this Lease be assigned or if the Premises be subleased (whether in whole or in part) or in the event of the mortgage, pledge, or hypothecation of Tenant's leasehold interest or grant of any concession or license within the Premises or if the

Premises be occupied in whole or in part by anyone other than Tenant, then upon a default by Tenant hereunder Landlord may collect rent from the assignee, sublessee, mortgagee, pledgee, party to whom the leasehold interest was hypothecated, concessionee or licensee or other occupant and, except to the extent set forth in the preceding paragraph, apply the amount collected to the next rent payable hereunder; and all such rentals collected by Tenant shall be held in trust for Landlord and immediately forwarded to Landlord. No such transaction or collection of rent or application thereof by Landlord, however, shall be deemed a waiver of these provisions or a release of Tenant from the further performance by Tenant of its covenants, duties, or obligations hereunder.

19. **Indemnification.** Except for the negligence of Landlord, its agents, employees or contractors, and to the extent permitted by law, Tenant agrees to indemnify, defend and hold harmless Landlord, and Landlord's agents, employees and contractors, from and against any and all losses, liabilities, damages, costs and expenses (including attorneys' fees) resulting from claims by third parties for injuries to any person and damage to or theft or misappropriation or loss of property occurring in or about the Premise and arising from the use and occupancy of the Premises or from any activity, work, or thing done, permitted or suffered by Tenant in or about the Premises or due to any other act or omission of Tenant, its subtenants, assignees, invitees, employees, contractors and agents. The furnishing of insurance required hereunder shall not be deemed to limit Tenant's obligations under this Paragraph 19.

20. **Inspection and Access.** Landlord and its agents, representatives, and contractors may enter the Premises with prior notice at any reasonable time to inspect the Premises and to make such repairs as may be required or permitted pursuant to this Lease and for any other business purpose. Landlord and Landlord's representatives may enter the Premises during business hours for the purpose of showing the Premises to prospective purchasers and, during the last 4 months of the Lease Term, to prospective tenants. Landlord may erect or post a suitable sign on the Premises stating the Premises are available to let. Landlord may grant easements, make public dedications, designate common areas and create restrictions on or about the Premises, provided that no such easement, dedication, designation or restriction materially interferes with Tenant's use or occupancy of the Premises. At Landlord's request, Tenant shall execute such instruments as may be necessary for such easements, dedications or restrictions.

21. **Quiet Enjoyment.** If Tenant shall perform all of the covenants and agreements herein required to be performed by Tenant, Tenant shall, subject to the terms of this Lease, at all times during the Lease Term, have peaceful and quiet enjoyment of the Premises against any person claiming by, through or under Landlord.

22. **Surrender.** Upon termination of the Lease Term or earlier termination of Tenant's right of possession, Tenant shall surrender the Premises to Landlord in the same condition as received, broom clean, ordinary wear and tear and casualty loss and condemnation covered by Paragraphs 16 and 17 excepted. Any Trade Fixtures, Tenant-Made Alterations and property not so removed by Tenant as

permitted or required herein shall be deemed abandoned and may be stored, removed, and disposed of by Landlord at Tenant's expense, and Tenant waives all claims against Landlord for any damages resulting from Landlord's retention and disposition of such property. All obligations of Tenant hereunder not fully performed as of the termination of the Lease Term shall survive the termination of the Lease Term, including without limitation, indemnity obligations, payment obligations with respect to Operating Expenses and obligations concerning the condition and repair of the Premises.

23. **Holding Over.** If Tenant retains possession of the Premises after the termination of the Lease Term, unless otherwise agreed in writing, such possession shall be subject to immediate termination by Landlord at any time, and all of the other terms and provisions of this Lease (excluding any expansion or renewal option or other similar right or option) shall be applicable during such holdover period, except that Tenant shall pay Landlord from time to time, upon demand, as Base Rent for the holdover period, an amount equal to 150 percent the Base Rent in effect on the termination date, computed on a monthly basis for each month or part thereof during such holding over. All other payments shall continue under the terms of this Lease. In addition, Tenant shall be liable for all damages incurred by Landlord as a result of such holding over. No holding over by Tenant, whether with or without consent of Landlord, shall operate to extend this Lease except as otherwise expressly provided, and this Paragraph 23 shall not be construed as consent for Tenant to retain possession of the Premises. For purposes of this Paragraph 23, "possession of the Premises" shall continue until, among other things, Tenant has delivered all keys to the Premises to Landlord, Landlord has complete and total dominion and control over the Premises, and Tenant has completely fulfilled all obligations required of it upon termination of the Lease as set forth in this Lease, including, without limitation, those concerning the condition and repair of the Premises.

24. **Events of Default.** Each of the following events shall be an event of default ("Event of Default") by Tenant under this Lease:

(i) Tenant shall fail to pay any installment of Base Rent or any other payment required herein when due, and such failure shall continue for a period of 5 business days from the date such payment was due.

(ii) Tenant or any guarantor or surety of Tenant's obligations hereunder shall (A) make a general assignment for the benefit of creditors; (B) commence any case, proceeding or other action seeking to have an order for relief entered on its behalf as a debtor or to adjudicate it as bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or of any substantial part of its property (collectively a "proceeding for relief"); (C) become the subject of any proceeding for relief which is not dismissed within 60 days of its filing or entry; or (D) die or suffer a legal disability (if Tenant, guarantor, or surety is an individual) or be dissolved or otherwise fail to maintain its legal existence (if Tenant, guarantor or surety is a corporation, partnership or other entity).

(iii) Any insurance required to be maintained by Tenant pursuant to this Lease shall be cancelled or terminated or shall expire or shall be reduced or materially changed, except, in each case, as permitted in this Lease.

(iv) Tenant shall not occupy or shall vacate the Premises or shall fail to continuously operate its business at the Premises for the permitted use set forth herein, whether or not Tenant is in monetary or other default under this Lease. Tenant's vacating of the Premises shall not constitute an Event of Default if, prior to vacating the Premises, Tenant has made arrangements reasonably acceptable to Landlord to (a) insure that Tenant's insurance for the Premises will not be voided or cancelled with respect to the Premises as a result of such vacancy, (b) insure that the Premises are secured and not subject to vandalism, and (c) insure that the Premises will be properly maintained after such vacation. Tenant shall inspect the Premises at least once each month and report monthly in writing to Landlord on the condition of the Premises.

(v) There shall occur any assignment, subleasing or other transfer of Tenant's interest in or with respect to this Lease except as otherwise permitted in this Lease.

(vi) Tenant shall fail to discharge any lien placed upon the Premises in violation of this Lease within 30 days after Tenant's receipt of notice of any such lien or encumbrance is filed against the Premises.

(vii) Tenant shall fail to comply with any provision of this Lease other than those specifically referred to in this Paragraph 24, and except as otherwise expressly provided herein, such default shall continue for more than 30 days after Landlord shall have given Tenant written notice of such default.

25. **Landlord's Remedies.** Upon each occurrence of an Event of Default and so long as such Event of Default shall be continuing, Landlord may at any time thereafter at its election: terminate this Lease or Tenant's right of possession, (but Tenant shall remain liable as hereinafter provided) and/or pursue any other remedies at law or in equity. Upon the termination of this Lease or termination of Tenant's right of possession, it shall be lawful for Landlord, without formal demand or notice of any kind, to re-enter the Premises by summary dispossession proceedings or any other action or proceeding authorized by law and to remove Tenant and all persons and property therefrom. If Landlord re-enters the Premises, Landlord shall have the right to keep in place and use, or remove and store, all of the furniture, fixtures and equipment at the Premises.

Except as otherwise provided in the next paragraph, if Tenant breaches this Lease and abandons the Premises prior to the end of the term hereof, or if Tenant's right to possession is terminated by Landlord because of an Event of Default by Tenant under this Lease, this Lease shall terminate. Upon such termination, Landlord may recover from Tenant the following, as provided in Section 1951.2 of the Civil Code of California: (i) the worth at the time of award of the unpaid Base Rent and other charges under this Lease that had been earned at the time of termination; (ii) the worth at the

time of award of the amount by which the reasonable value of the unpaid Base Rent and other charges under this Lease which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; (iii) the worth at the time of the award by which the reasonable value of the unpaid Base Rent and other charges under this Lease for the balance of the term of this Lease after the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; and (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or that in the ordinary course of things would be likely to result therefrom. As used herein, the following terms are defined: (a) the "worth at the time of award" of the amounts referred to in Sections (i) and (ii) is computed by allowing interest at the lesser of 18 percent per annum or the maximum lawful rate. The "worth at the time of award" of the amount referred to in Section (iii) is 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; (b) the "time of award" as used in clauses (i), (ii), and (iii) above is the date on which judgment is entered by a court of competent jurisdiction; (c) The "reasonable value" of the amount referred to in clause (ii) above is computed by determining the mathematical product of (1) the "reasonable annual rental value" (as defined herein) and (2) the number of years, including fractional parts thereof, between the date of termination and the time of award. The "reasonable value" of the amount referred to in clause (iii) is computed by determining the mathematical product of (1) the annual Base Rent and other charges under this Lease and (2) the number of years including fractional parts thereof remaining in the balance of the term of this Lease after the time of award.

Even though Tenant has breached this Lease and abandoned the Premises, this Lease shall continue in effect for so long as Landlord does not terminate Tenant's right to possession, and Landlord may enforce all its rights and remedies under this Lease, including the right to recover rent as it becomes due. This remedy is intended to be the remedy described in California Civil Code Section 1951.4 and the following provision from such Civil Code Section is hereby repeated: "The Lessor has the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has right to sublet or assign, subject only to reasonable limitations)." Any such payments due Landlord shall be made upon demand therefor from time to time and Tenant agrees that Landlord may file suit to recover any sums falling due from time to time. Notwithstanding any such reletting without termination, Landlord may at any time thereafter elect in writing to terminate this Lease for such previous breach.

Exercise by Landlord of any one or more remedies hereunder granted or otherwise available shall not be deemed to be an acceptance of surrender of the Premises and/or a termination of this Lease by Landlord, whether by agreement or by operation of law, it being understood that such surrender and/or termination can be effected only by the written agreement of Landlord and Tenant. Any law, usage, or custom to the contrary notwithstanding, Landlord shall have the right at all times to enforce the provisions of this Lease in strict accordance with the terms hereof; and the failure of Landlord at any time to enforce its rights under this Lease strictly in

accordance with same shall not be construed as having created a custom in any way or manner contrary to the specific terms, provisions, and covenants of this Lease or as having modified the same. Tenant and Landlord further agree that forbearance or waiver by Landlord to enforce its rights pursuant to this Lease or at law or in equity, shall not be a waiver of Landlord's right to enforce one or more of its rights in connection with any subsequent default. A receipt by Landlord of rent or other payment with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by Landlord of any provision of this Lease shall be deemed to have been made unless expressed in writing and signed by Landlord. To the greatest extent permitted by law, Tenant waives the service of notice of Landlord's intention to re-enter as provided for in any statute, or to institute legal proceedings to that end, and also waives all right of redemption in case Tenant shall be dispossessed by a judgment or by warrant of any court or judge. The terms "enter," "re-enter," "entry" or "re-entry," as used in this Lease, are not restricted to their technical legal meanings. Any reletting of the Premises shall be on such terms and conditions as Landlord in its sole discretion may determine (including without limitation a term different than the remaining Lease Term, rental concessions, alterations and repair of the Premises, lease of less than the entire Premises to any tenant and leasing any or all other portions of the Premise before reletting the Premises). Landlord shall not be liable, nor shall Tenant's obligations hereunder be diminished because of, Landlord's failure to relet the Premises or collect rent due in respect of such reletting.

26. **Tenant's Remedies/Limitation of Liability.** Landlord shall not be in default hereunder unless Landlord fails to perform any of its obligations hereunder within 30 days after written notice from Tenant specifying such failure (unless such performance will, due to the nature of the obligation, require a period of time in excess of 30 days, then after such period of time as is reasonably necessary). All obligations of Landlord hereunder shall be construed as covenants, not conditions; and, except as may be otherwise expressly provided in this Lease, Tenant may not terminate this Lease for breach of Landlord's obligations hereunder. All obligations of Landlord under this Lease will be binding upon Landlord only during the period of its ownership of the Premises and not thereafter. The term "Landlord" in this Lease shall mean only the owner, for the time being of the Premises, and in the event of the transfer by such owner of its interest in the Premises, such owner shall thereupon be released and discharged from all obligations of Landlord thereafter accruing, but such obligations shall be binding during the Lease Term upon each new owner for the duration of such owner's ownership. Any liability of Landlord under this Lease shall be limited solely to its interest in the Premise, and in no event shall any personal liability be asserted against Landlord in connection with this Lease nor shall any recourse be had to any other property or assets of Landlord.

27. **Waiver of Jury Trial.** TENANT AND LANDLORD WAIVE ANY RIGHT TO TRIAL BY JURY OR TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE, BETWEEN LANDLORD AND TENANT ARISING OUT OF THIS LEASE OR ANY OTHER INSTRUMENT, DOCUMENT, OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith OR THE TRANSACTIONS RELATED HERETO.

28. **Subordination.** This Lease and Tenant's interest and rights hereunder are and shall be subject and subordinate at all times to the lien of any mortgage, now existing or hereafter created on or against the Premise or the Premises, and all amendments, restatements, renewals, modifications, consolidations, refinancing, assignments and extensions thereof, without the necessity of any further instrument or act on the part of Tenant. Tenant agrees, at the election of the holder of any such mortgage, to attorn to any such holder. Tenant agrees upon demand to execute, acknowledge and deliver such instruments, confirming such subordination and such instruments of attornment as shall be requested by any such holder. Notwithstanding the foregoing, any such holder may at any time subordinate its mortgage to this Lease, without Tenant's consent, by notice in writing to Tenant, and thereupon this Lease shall be deemed prior to such mortgage without regard to their respective dates of execution, delivery or recording and in that event such holder shall have the same rights with respect to this Lease as though this Lease had been executed prior to the execution, delivery and recording of such mortgage and had been assigned to such holder. The term "mortgage" whenever used in this Lease shall be deemed to include deeds of trust, security assignments and any other encumbrances, and any reference to the "holder" of a mortgage shall be deemed to include the beneficiary under a deed of trust.

29. **Mechanic's Liens.** Tenant has no express or implied authority to create or place any lien or encumbrance of any kind upon, or in any manner to bind the interest of Landlord or Tenant in, the Premises or to charge the rentals payable hereunder for any claim in favor of any person dealing with Tenant, including those who may furnish materials or perform labor for any construction or repairs. Tenant covenants and agrees that it will pay or cause to be paid all sums legally due and payable by it on account of any labor performed or materials furnished in connection with any work performed on the Premises and that it will save and hold Landlord harmless from all loss, cost or expense based on or arising out of asserted claims or liens against the leasehold estate or against the interest of Landlord in the Premises or under this Lease. Tenant shall give Landlord immediate written notice of the placing of any lien or encumbrance against the Premises and cause such lien or encumbrance to be discharged within 30 days of the filing or recording thereof; provided, however, Tenant may contest such liens or encumbrances as long as such contest prevents foreclosure of the lien or encumbrance and Tenant causes such lien or encumbrance to be bonded or insured over in a manner satisfactory to Landlord within such 30-day period. Landlord may require tenant to provide to Landlord all documents to establish payment by Tenant for all work performed by third parties.

30. **Estoppel Certificates.** Tenant agrees, from time to time, within 10 days after request of Landlord, to execute and deliver to Landlord, or Landlord's designee, any estoppel certificate requested by Landlord, stating that this Lease is in full force and effect, the date to which rent has been paid, that Landlord is not in default hereunder (or specifying in detail the nature of Landlord's default), the termination date of this Lease and such other matters pertaining to this Lease as may be requested by Landlord. Tenant's obligation to furnish each estoppel certificate in a timely fashion is a material inducement for Landlord's execution of this Lease. No cure or grace period

provided in this Lease shall apply to Tenant's obligations to timely deliver an estoppel certificate.

31. **Environmental Requirements.** Except for Hazardous Material contained in products used by Tenant in de minimis quantities for ordinary cleaning and office purposes, Tenant shall not permit or cause any party to bring any Hazardous Material upon the Premises or transport, store, use, generate, manufacture or release any Hazardous Material in or about the Premises without Landlord's prior written consent. Tenant, at its sole cost and expense, shall operate its business in the Premises in strict compliance with all Environmental Requirements and shall remediate in a manner satisfactory to Landlord any Hazardous Materials released on or from the Premise by Tenant, its agents, employees, contractors, subtenants or invitees. Tenant shall complete and certify to disclosure statements as requested by Landlord from time to time relating to Tenant's transportation, storage, use, generation, manufacture or release of Hazardous Materials on the Premises. The term "Environmental Requirements" means all applicable present and future statutes, regulations, ordinances, rules, codes, judgments, orders or other similar enactments of any governmental authority or agency regulating or relating to health, safety, or environmental conditions on, under, or about the Premises or the environment, including without limitation, the following: the Comprehensive Environmental Response, Compensation and Liability Act; the Resource Conservation and Recovery Act; and all state and local counterparts thereto, and any regulations or policies promulgated or issued thereunder. The term "Hazardous Materials" means and includes any substance, material, waste, pollutant, or contaminant listed or defined as hazardous or toxic, under any Environmental Requirements, asbestos and petroleum, including crude oil or any fraction thereof, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas). As defined in Environmental Requirements, Tenant is and shall be deemed to be the "operator" of Tenant's "facility" and the "owner" of all Hazardous Materials brought on the Premises by Tenant, its agents, employees, contractors or invitees, and the wastes, byproducts, or residues generated, resulting, or produced therefrom.

Tenant shall indemnify, defend, and hold Landlord harmless from and against any and all losses (including, without limitation, diminution in value of the Premises and loss of rental income from the Premise), claims, demands, actions, suits, damages (including, without limitation, punitive damages), expenses (including, without limitation, remediation, removal, repair, corrective action, or cleanup expenses), and costs (including, without limitation, actual attorneys' fees, consultant fees or expert fees and including, without limitation, removal or management of any asbestos brought into the property or disturbed in breach of the requirements of this Paragraph 31, regardless of whether such removal or management is required by law) which are brought or recoverable against, or suffered or incurred by Landlord as a result of any release of Hazardous Materials for which Tenant is obligated to remediate as provided above or any other breach of the requirements under this Paragraph 30 by Tenant, its agents, employees, contractors, subtenants, assignees or invitees, regardless of whether Tenant had knowledge of such noncompliance. The obligations of Tenant under this Paragraph 30 shall survive any termination of this Lease.

Landlord shall have access to, and a right to perform inspections and tests of, the Premises to determine Tenant's compliance with Environmental Requirements, its obligations under this Paragraph 30, or the environmental condition of the Premises. Access shall be granted to Landlord upon Landlord's prior notice to Tenant and at such times so as to minimize, so far as may be reasonable under the circumstances, any disturbance to Tenant's operations. Such inspections and tests shall be conducted at Landlord's expense, unless such inspections or tests reveal that Tenant has not complied with any Environmental Requirement, in which case Tenant shall reimburse Landlord for the reasonable cost of such inspection and tests. Landlord's receipt of or satisfaction with any environmental assessment in no way waives any rights that Landlord holds against Tenant.

32. **Rules and Regulations.** Tenant shall, at all times during the Lease Term and any extension thereof, comply with all reasonable rules and regulations at any time or from time to time established by Landlord covering use of the Premises. The current rules and regulations are attached hereto. In the event of any conflict between said rules and regulations and other provisions of this Lease, the other terms and provisions of this Lease shall control. Landlord shall not have any liability or obligation for the breach of any rules or regulations by other tenants in the Premise.

33. **Security Service.** Tenant acknowledges and agrees that, while Landlord may patrol the Premise, Landlord is not providing any security services with respect to the Premises and that Landlord shall not be liable to Tenant for, and Tenant waives any claim against Landlord with respect to, any loss by theft or any other damage suffered or incurred by Tenant in connection with any unauthorized entry into the Premises or any other breach of security with respect to the Premises.

34. **Force Majeure.** Landlord shall not be held responsible for delays in the performance of its obligations hereunder when caused by strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefore, governmental restrictions, governmental regulations, governmental controls, delay in issuance of permits, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of Landlord ("Force Majeure").

35. **Entire Agreement.** This Lease constitutes the complete agreement of Landlord and Tenant with respect to the subject matter hereof. No representations, inducements, promises or agreements, oral or written, have been made by Landlord or Tenant, or anyone acting on behalf of Landlord or Tenant, which are not contained herein, and any prior agreements, promises, negotiations, or representations are superseded by this Lease. This Lease may not be amended except by an instrument in writing signed by both parties hereto.

36. **Severability.** If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws, then and in that event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby. It is also the intention of the parties to this Lease that in lieu of each clause or

provision of this Lease that is illegal, invalid or unenforceable, there be added, as a part of this Lease, a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

37. **Brokers.** Tenant represents and warrants that it has dealt with no broker, agent or other person in connection with this transaction and that no broker, agent or other person brought about this transaction, other than the broker, if any, set forth on the first page of this Lease, and Tenant agrees to indemnify and hold Landlord harmless from and against any claims by any other broker, agent or other person claiming a commission or other form of compensation by virtue of having dealt with Tenant with regard to this leasing transaction.

38. **Miscellaneous.**

(a) Any payments or charges due from Tenant to Landlord hereunder shall be considered rent for all purposes of this Lease.

(b) If and when included within the term "Tenant," as used in this instrument, there is more than one person, firm or corporation, each shall be jointly and severally liable for the obligations of Tenant.

(c) All notices required or permitted to be given under this Lease shall be in writing and shall be sent by registered or certified mail, return receipt requested, or by a reputable national overnight courier service, postage prepaid, or by hand-delivery addressed to the parties at their addresses below, and with a copy sent to Landlord at City of Oroville, Attn: City Administrator, 1735 Montgomery Street, Oroville, California, 95965. Either party may by notice given aforesaid change its address for all subsequent notices. Except where otherwise expressly provided to the contrary, notice shall be deemed given upon delivery.

(d) Except as otherwise expressly provided in this Lease or as otherwise required by law, Landlord retains the absolute right to withhold any consent or approval.

(e) The normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Lease or any exhibits or amendments hereto.

(f) The submission by Landlord to Tenant of this Lease shall have no binding force or effect, shall not constitute an option for the leasing of the Premises, nor confer any right or impose any obligations upon either party until execution of this Lease by both parties.

(g) Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires. The captions inserted in this Lease are for convenience only and in no way define, limit or otherwise describe the scope or intent of this Lease, or any provision hereof, or in any way affect the interpretation of this Lease.

(h) Any amount not paid by Tenant within 5 days after its due date in accordance with the terms of this Lease shall bear interest from such due date until paid in full at the lesser of the highest rate permitted by applicable law or 15 percent per year. It is expressly the intent of Landlord and Tenant at all times to comply with applicable law governing the maximum rate or amount of any interest payable on or in connection with this Lease. If applicable law is ever judicially interpreted so as to render usurious any interest called for under this Lease, or contracted for, charged, taken, reserved, or received with respect to this Lease, then it is Landlord's and Tenant's express intent that all excess amounts theretofore collected by Landlord be credited on the applicable obligation (or, if the obligation has been or would thereby be paid in full, refunded to Tenant), and the provisions of this Lease immediately shall be deemed reformed and the amounts thereafter collectible hereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder.

(i) Construction and interpretation of this Lease shall be governed by the laws of the state in which the Premise is located, excluding any principles of conflicts of laws.

(j) Time is of the essence as to the performance of Tenant's obligations under this Lease.

(k) All exhibits and addenda attached hereto are hereby incorporated into this Lease and made a part hereof. In the event of any conflict between such exhibits or addenda and the terms of this Lease, such exhibits or addenda shall control.

(l) In the event either party hereto initiates litigation to enforce the terms and provisions of this Lease, the non-prevailing party in such action shall reimburse the prevailing party for its reasonable attorney's fees, filing fees, and court costs.

(m) In the event the total square footage and/or the footprint of the Leased Premises is modified by Landlord for purposes of practicality in compliance with any state or federal law, including but not limited to the Americans with Disabilities Act, Tenant agrees to accept such modifications without compensation. In the event Tenant reasonably believes such modifications prevent Tenant's Use of the Premises, as outlined in Paragraph 3, Tenant's sole remedy is to meet and confer with Landlord to seek voluntary modification of the Lease.

39. Landlord's Lien/Security Interest. Tenant hereby grants Landlord a security interest, and this Lease constitutes a security agreement, within the meaning of and pursuant to the Uniform Commercial Code of the state in which the Premises are situated as to all of Tenant's property situated in, or upon, or used in connection with the Premises (except merchandise sold in the ordinary course of business) as security for all of Tenant's obligations hereunder, including, without limitation, the obligation to pay rent. Such personalty thus encumbered includes specifically all trade and other fixtures for the purpose of this Paragraph and inventory,

equipment, contract rights, accounts receivable and the proceeds thereof. In order to perfect such security interest, Tenant shall execute such financing statements and file the same at Tenant's expense at the state and county Uniform Commercial Code filing offices as often as Landlord in its discretion shall require; and Tenant hereby irrevocably appoints Landlord its agent for the purpose of executing and filing such financing statements on Tenant's behalf as Landlord shall deem necessary.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first above written.

**CITY OF OROVILLE
LANDLORD**

**PETALUMA ECUMENICAL
PROPERTIES**

By: _____
Linda L. Dahlmeier, Mayor

By: _____
Print: Mary Stompe

ATTEST

By: _____
Print:

By: _____
Randy Murphy, City Clerk

APPROVED AS TO FORM

BUSINESS LICENSE NO.

By: _____
Scott E. Huber, City Attorney

**A COPY OF THE 2014/15
PRELIMINARY BUDGET WAS
DISTRIBUTED AT THE MAY 20,
2014 AND JUNE 3, 2014 REGULAR
MEETINGS OF THE CITY COUNCIL**

**PLEASE CONTACT THE CITY
CLERK'S OFFICE AT
(530) 538-2535 OR
CITYCLERK@CITYOFOROVILLE.ORG
FOR ADDITIONAL COPIES OR
REVIEW OF THE 2014/15
PRELIMINARY BUDGET**