

SECOND AMENDMENT TO LEASE

DPH

THIS SECOND AMENDMENT TO LEASE (this "**First Amendment**") is made and entered into as of June 26, 2006, by and between **API Fox Plaza, LLC**, a Delaware limited liability company ("**Landlord**") and the **City and County of San Francisco**, a municipal corporation ("**Tenant**" or "**City**").

RECITALS

- A. Calfox, Inc., as managing agent for Polk Market Co., a predecessor-in-interest to Landlord ("**Original Landlord**"), and Tenant entered into that certain Office Lease dated September 9, 1996, as amended by that certain First Amendment dated as of November 23, 2003 (the "**Lease**") for premises known as Suite 230 on the 2nd floor (the "**Second Floor Pad Premises**"), Suite 210 (the "**Second Floor Tower Premises**"), Suites 820 and 910 on the 8th and 9th floors, (together the "**Tower Premises**", together with Storage Spaces C, D, and E and the Second Floor Pad Premises, the "**Original Premises**"), all in a building known as Fox Plaza, 1390 Market Street, San Francisco, CA (the "**Building**").
- B. The City exercised the first extension option, and therefore the Lease's expires November 30, 2008. The Lease provides City with one (1) additional five year option to extend the Term (the "**Extension Option**", as defined in the Lease).
- C. Landlord is the successor-in-interest to Original Landlord and is the current owner of the Building. Landlord intends to subdivide the Building and land and sell that portion of the Building and land that contains the Second Floor Pad Premises (the "**Transfer Parcel**"). As a result, Landlord desires to relocate the Second Floor Pad Premises, at Landlord's sole cost, to certain non-residential portions (generally located on the 1st floor through the 12th floor) of the tower portion of the Building ("**Landlord's Commercial Parcel**").
- D. Landlord and Tenant now wish to amend the Lease to (i) permit Landlord to relocate the Second Floor Premises before commencement of the remaining Option Term, at Landlord's sole cost, to space approved by City within Landlord's Commercial Parcel (the "**Relocation Premises**"), (ii) add an additional option to extend the Term, and (iii) make certain other modifications to the Lease more particularly set forth below.

AMENDMENT

NOW THEREFORE, in consideration of the mutual agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby agree as follows:

1. **EXTENSION OPTION.** Effective on the date of this First Amendment, Paragraph 4(C) of the Lease shall be deleted and replaced with the following:

"C. Extension Option. City shall have two (2) remaining options to extend the Term for an additional term (each an "Extended Term", and collectively the "Extended Terms") of five (5) years each commencing upon the expiration of the existing Term, or November 30, 2008 ("Extension Options"). Upon commencement of the an Extended Term, all references in the Lease to the Term shall mean the Term as extended by that Extended Term.

(a) City's lease of the Premises during an Extended Term shall be on all of the terms and conditions set forth in the Lease, except that (i) the Base Monthly Rental shall be adjusted to ninety-five percent (95%) of Market Rental Value in accordance with Paragraph 6(C) hereof, (ii) the date for Landlord's good faith estimate of Base Monthly Rental for the first Extension Option shall be December 1, 2007 and for the second Extension Option shall be December 1 1, 2012, (iii) the Base Year and the Base Tax Year, for purposes of determining City's Additional Rent, shall be calendar 2009; (iv) subject to

Landlord's completion of the relocation as set forth below, the Second Floor Pad Premises shall be deleted from the Premises and the Relocation Premises shall be added to the Premises; and (v) City shall not be responsible for any increase in Direct Taxes or other costs or expenses resulting from any sale, transfer or subdivision of any interest in or title to the Building or the land on which the Building is located during calendar years 2006, 2007, or 2008.

(b) Upon City's exercise of the first Extension Option, Landlord shall relocate the Second Floor Premises to the Relocation Premises on or before the start of the Extended Term in accordance with the terms set forth in this Lease Amendment. The Relocation Premises shall be located in one contiguous space of Landlord's Commercial Parcel in space reasonably acceptable to City and as determined by space planning to replicate the functions currently located in the Second Floor Pad Premises. Landlord shall use good faith efforts to provide Relocation Premises adjacent to or near City's existing Tower Premises. The Relocation Premises shall contain a contiguous rentable area no greater or less than one hundred percent (100%) of the Second Floor Pad Premises without City's prior consent, which City may withhold in its sole discretion. Landlord shall be responsible for obtaining any necessary approvals for proposed uses of the Relocation Premises prior to Tenant's occupancy, including but not limited to approval by the San Francisco Department of Building Inspection and the Fire Marshall.

(c) The Relocation Premises shall be altered, at Landlord's sole cost, to provide turnkey improvements pursuant to plans approved by City. Landlord shall complete all improvements in accordance with applicable law and the approved plans, and Landlord shall obtain final building permit sign-offs and any additional required approvals before commencing the relocation of Tenant from the Second Floor Pad Premises to the Relocation Premises. Tenant shall have no obligation to vacate the Second Floor Pad Premises unless and until all necessary approvals and permits have been obtained and construction is substantially completed. No later than September 1, 2007, Landlord and Landlord's architect shall submit space plans and basic construction specifications for the Relocation Premises to City for its approval. Landlord shall use good faith efforts to produce acceptable space plans and specifications prior to December 1, 2007. Such plans shall provide at least the same quantity and quality of tenant improvements as are currently located in the Second Pad Floor Premises, including security improvements, offices and conference rooms, and specialized facilities. Such plans shall also include or provide: (i) labeled or color coded 2 data and 2 telephone "CAT 5e" or better wiring for each room, equipment and each work station terminated to City's telecommunication or data equipment as the case may be; (ii) turnkey electrical outlets including additional dedicated outlets as required and a minimum of 1 floor plex electrical outlet for each room, equipment, and work station; (iii) for the relocation of City furniture and workstations, and if such relocation can not be accomplished so as to provide the same aesthetics, layouts or use, then Landlord shall provide new or like new furniture and workstations; (iv) HVAC designed to meet ASHRAE standards for City's build out and, notwithstanding the foregoing, HVAC zoning of not less than 1 zone per 1200 rentable square feet, appropriate locations of thermostats and air supply and return vents; and (v) in the event that City chooses to perform the telecommunication and data wiring for the Relocated Premises, then Landlord shall provide to City a rent credit in the amount of City's actual costs for the telecommunication and data wiring and related equipment for the month immediately following City's expenditure and each successive month until exhaustion of the credit.

(d) At the start of the Extended Term, Landlord shall provide to City a credit against Base Rent in the amount of \$1000 for City's reprinting business cards and letterhead. Landlord shall pay all other costs of relocating City to the Relocation Premises including but not limited to moving costs and City's reasonable supervision costs. City shall only be responsible for clearing desks and work surfaces and for disconnecting computers and wiring. Such relocation shall occur over weekends in accordance with a schedule reasonably acceptable to both parties, and be accomplished so as to minimize the disruption to the business of Tenant.

(e) In addition to the improvements to the Relocation Premises, Landlord shall also be required to make the following improvements to the Tower Premises at Landlord's sole cost (the "Additional Improvements"): (i) new "green label" carpet squares and paint throughout the Tower Premises, reasonably acceptable to City; (ii) upgrades to the HVAC system to a standard equivalent to that done for Suites 900-903 and as recommended by the American Society of Heating, Refrigerating and Air-

Conditioning Engineers (ASHRAE); and (iii) such additional improvements as may be requested by City at the time of exercise of the Extension Option, and as may be agreed to or changed by the parties thereafter following consultation with Landlord's architects or agents, with a tenant allowance of \$100,000, provided City may request additional work above the allowance if City agrees to pay Landlord for the work above the allowance. Landlord shall complete the Additional Improvements after normal working hours pursuant to a schedule approved by City, but in no event later than November 30, 2008 , and such work shall be completed in a manner designed to minimize any disruption to City's business.

(f) City may exercise the Extension Option (s), if at all, by giving written notice to Landlord no later than January 1, 2008 for the first Extension Option and January 1 2013 for the second Extension Option; provided, however, if Landlord has not completed the space plans and specifications for the Relocation Premises and the Tower Premises by January 1, 2008 for the first Extension Option, then City shall have the right to extend the notice date for the first Extension Option to the date that is ten (10) days following Landlord's completion of such plans and specifications reasonably acceptable to City. If City is in material default hereunder on the date of giving such notice and fails to cure such default following notice as provided herein, Landlord may reject such exercise by delivering written notice thereof to City promptly after any such failure to cure. If, for any reason, the Relocation Premises are not ready for City's occupancy by the start of the first Extended Term, the Lease shall continue on all of the terms and conditions set forth herein, including but not limited to the Base Rent set forth in subparagraph (a) above, provided, City shall not be required to vacate the Second Floor Pad Premises and move into the Relocation Premises until the Relocation Premises are (i) substantially complete and ready for City's occupancy, and (ii) Landlord has completed the relocation of City. If, for any reason, the Relocation Premises or the Additional Improvements to the Tower Premises are not ready for City's occupancy by the June 30, 2009, City shall have the right to terminate the Lease anytime thereafter, without cost or penalty, by providing Landlord with thirty (30) days' advance written notice.

(g) Landlord acknowledges and agrees that City's notice of its intent to exercise each Extension Option shall be subject to enactment of a resolution by the Board of Supervisors and the Mayor, in their respective sole and absolute discretion, approving and authorizing the same no later than ninety (90) days after the date such notice of exercise is given. If such approval and authorization is not received by Landlord on or before such date(s), City's Extension Option shall terminate and City shall have no further option to extend the Term.

(h) Upon the relocation of City from the Second Floor Pad Premises to the Relocated Premises in accordance with this section, Landlord and Tenant agree to execute an amendment to the Lease reflecting the change in the description of the Premises. Any such amendment shall be ministerial, and shall not require the prior approval of the City's Board of Supervisors, although it shall be subject to the prior written approval of City's Director of Real Estate and the City Attorney."

2. **LANDLORD'S ADDRESS.** Effective as of the date of this First Amendment, Landlord's address for payment of Rent and for notices given pursuant to the Lease is:

1390 Market Street, Suite 108, San Francisco, CA 94102, or at such other place as Landlord may designate in writing.

3. **LANDLORD'S LIABILITY,** It is agreed by and between the parties hereto that Landlord shall be responsible for all aspects of the performance of the Lease and if the Extension Option is exercised, the successful completion of the terms herein, including the relocation provisions. After a successful relocation of City to the Relocation Premises and Landlord's subdivision and transfer of the Transfer Parcel, City shall have all rights and remedies for a Landlord default as set forth in the Lease, provided, City shall have no right to seek attachment against or to place a lien on the Transfer Parcel.

4. **NO BROKERS.** Tenant represents and warrants that it has not dealt with any real estate broker in connection with this First Amendment, and no compensation is due to Tenant's broker in connection with this First Amendment. Tenant agrees to indemnify and hold Landlord harmless for any loss, cost, liability or expense incurred by Landlord as a result of a claim for brokerage commissions or finder's fee from any broker based on the

act or omission of Tenant in breach of the foregoing warranty. Landlord represents and warrants that it has not dealt with any real estate broker in connection with this First Amendment, and no compensation is due to Landlord's broker in connection with this First Amendment. Landlord agrees to indemnify and hold Tenant harmless for any loss, cost, liability or expense incurred by Tenant as a result of a claim for brokerage commissions or finder's fee from any broker based on the act or omission of Landlord in breach of the foregoing warranty.

5. **DEFINED TERMS.** All capitalized terms used but not defined in this First Amendment will have the meanings set forth for such terms in the Lease. All terms that are defined in this First Amendment and used in any provisions that are added to the Lease pursuant to this First Amendment will have the meanings in the Lease set forth for such terms in this First Amendment.

6. **WHOLE AGREEMENT.** This First Amendment sets forth the entire agreement between the parties with respect to the matters set forth herein. There have been no additional oral or written representations or agreements. Except as amended herein, there shall be no other changes or modifications to the Lease between the parties and the Lease and the terms and provision contained therein shall remain in full force and effect.

7. **MISCELLANEOUS.** This First Amendment shall be binding upon the parties hereto, their heirs, successors and assigns. Except as modified hereby, there shall be no other changes or modifications to this First Amendment or to the Lease unless in writing and executed by the parties hereto. No reference to this First Amendment is necessary in any instrument or document at any time referring to the Lease. Any future reference to the Lease shall be deemed a reference to such document as amended hereby. This First Amendment shall be governed by, construed and enforced in accordance with the laws of the State of California.

8. **CONFIRMATION OF LEASE.** As amended by this First Amendment, Landlord and Tenant confirm and ratify in all respects the terms and conditions of the Lease, and further confirm that, except as provided in Section 1 of this First Amendment, there are no outstanding tenant improvement obligations of Landlord regarding the Premises. The execution of this First Amendment shall not constitute a waiver of relinquishment of any rights which Landlord or Tenant may have relating to the Lease.

9. **NO JOINT VENTURE.** This First Amendment or any activity by Tenant hereunder does not create a partnership or joint venture between Tenant and Landlord relating to the Lease or otherwise. This First Amendment does not constitute authorization or approval by the City of any activity conducted by Landlord.

10. **COUNTERPARTS.** This First Amendment may be executed in one or more counterparts, each of which shall be deemed an original, including transmittals by facsimile, all of which together shall constitute one and the same instrument.

11. **EFFECTIVE DATE.** This First Amendment shall become effective on the date that this First Amendment is fully executed and delivered by both parties.

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

LANDLORD

API Fox Plaza, LLC, a Delaware limited liability company

By: W. Robert Smith

Name: W. ROBERT SMITH

Its: SENIOR VP

TENANT

City and County of San Francisco, a municipal corporation

By: Amy L. Brown

Name: Amy Brown, Director of Real Estate

RECOMMENDED:

DEPARTMENT OF PUBLIC HEALTH

By: Mitch Katz

Mitch Katz, Director

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: Dennis J. Herrera
Deputy City Attorney

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[Lease of Real Property]

Resolution authorizing the exercise of a five year option to extend the lease of approximately 25,939 square feet of space at 1390 Market Street for the Department of Public Health.

WHEREAS, The City and Calfox, Inc., Landlord, executed the seven year lease dated September 9, 1996, authorized by Resolution 699-96 for Premises consisting of 25,939 sq. ft. at the building commonly known as Fox Plaza, 1390 Market Street; and

WHEREAS, Such Lease expires on November 30, 2003 and contains an option to extend the terms for 5 years on the same terms and conditions except that the Base Monthly Rental is to be adjusted to 95% of the market rental value; and

WHEREAS, Pursuant to the terms of such option, the Real Estate Division and the Landlord have negotiated such 95% of fair market rental, considering all factors; and

WHEREAS, Such terms for the option are subject to enactment of a resolution by the Board of Supervisors and the Mayor, in their respective sole and absolute direction, approving and authorizing such exercise; now, therefore, be it

RESOLVED, That in accordance with the recommendation of the Director of the Department of Public Health and the Director of Property, the Director of Property is hereby authorized to take all actions on behalf of the City and County of San Francisco, as tenant, to extend the Lease (a copy of the original lease is on file with the Clerk of the Board) with Calfox, Inc. ("Landlord"), for the building commonly known as Fox Plaza, 1390 Market Street, San Francisco, California, for the area of approximately 25,939 sq. ft. (the "Premises") on the terms and conditions set forth herein, and on a form approved by the City Attorney; and, be it

1 FURTHER RESOLVED, That the Lease extension shall be for a term of 5 years at a
2 monthly rental of \$44,019.92, (approximately \$20.36 per sq. ft. annually), fully serviced except
3 that City shall continue to pay for separately metered electricity on approximately 14,539 sq.
4 ft. The Landlord shall pay for the other utilities, janitorial services, and building maintenance
5 and repairs. City shall pay for the standard operating expense increases over a new 2003
6 Base Year; and, be it

7 FURTHER RESOLVED, That the Lease shall continue to include the lease clause,
8 indemnifying, holding harmless, and defending Landlord and its agents from and against any
9 and all claims, costs and expenses, including without limitation, reasonable attorneys' fees,
10 incurred as a result of any default by the City in the performance of any of its material
11 obligations under the Lease, or any negligent acts or omissions of the City or its agents, in,
12 on, or about the Premises or the property on which the Premises are located, excluding those
13 claims, costs and expenses incurred as a result of the negligence or willful misconduct of the
14 Landlord or its agents; and, be it

15 FURTHER RESOLVED, That all actions heretofore taken by the officers of the City
16 with respect to such Lease are hereby approved, confirmed and ratified; and, be it

17 FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of
18 Property to enter into any amendments or modifications to the Lease (including, without
19 limitation, the exhibits) that the Director of Property determines, in consultation with the City
20 Attorney, are in the best interest of the City, do not increase the rent or otherwise materially
21 increase the obligations or liabilities of the City, are necessary or advisable to effectuate the
22 purposes of the Lease renewal or this resolution, and are in compliance with all applicable
23 laws, including the City Charter; and, be it

24 FURTHER RESOLVED, That the City shall occupy the entire Premises for the full term
25 of the Lease unless funds for the Department of Public Health's rental payments are not

1 appropriated in any subsequent fiscal year at which time the City may terminate the Lease
2 with advance notice to Landlord. Said Lease shall be subject to certification as to funds by
3 the Controller, pursuant to Section 6.302 of the City Charter.

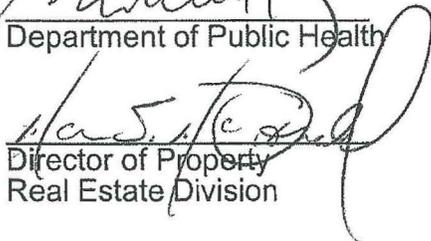
4
5 \$518,874.84 Available
6 (5 mos. @\$42, 147.08)
7 (7 mos. @\$44,019.92)
8 HCHPBADMINGF
9 HCHPBADMINGR
10 HCHPBHAZWTPJ
11 HCHPBWATERPJ
12 HCHBPUBSVSR
13 HCHPHLEAD-GF

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15 
16 _____
17 Controller

18 Subject to the enactment of the Annual Appropriation
19 Ordinance for Fiscal Year 2003/2004.

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RECOMMENDED:

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28 Department of Public Health

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30 _____
31 Director of Property
32 Real Estate Division



City and County of San Francisco

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Tails
Resolution

File Number: 030179

Date Passed:

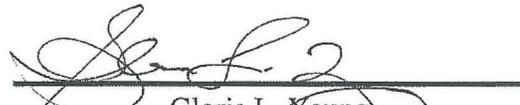
Resolution authorizing the exercise of a five year option to extend the lease of approximately 25,939 square feet of space at 1390 Market Street for the Department of Public Health.

March 18, 2003 Board of Supervisors — ADOPTED

Ayes: 10 - Ammiano, Dufty, Gonzalez, Hall, Ma, Maxwell, McGoldrick, Newsom, Peskin, Sandoval
Excused: 1 - Daly

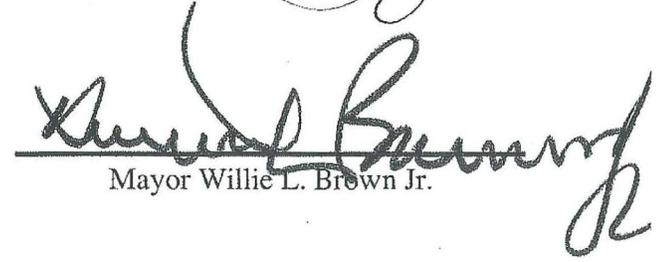
File No. 030179

I hereby certify that the foregoing Resolution was ADOPTED on March 18, 2003 by the Board of Supervisors of the City and County of San Francisco.


Gloria L. Young
Clerk of the Board

MAR 28 2003

Date Approved


Mayor Willie L. Brown Jr.