

## FIRST AMENDMENT TO LEASE

The First Amendment to Lease (this “**Amendment**”), dated as of \_\_\_\_\_, 2018, is made by and between 1415 16th STREET ASSOCIATES, LLC, a California limited liability company (“**Landlord**”) and the CITY AND COUNTY OF SAN FRANCISCO (“**City**” or “**Tenant**”).

### RECITALS

This Amendment is made with reference to the following facts:

A. Landlord and City are parties to that certain Lease dated July 25th, 2008 (Board of Supervisors’ Resolution No. 453-08, adopted October 21, 2008) (the “**Existing Lease**”), pursuant to which Landlord leased to City certain premises in the real property and improvements described as 1700-1740 17th Street and 1415 16th Street, San Francisco, California, consisting of approximately 52,125 square feet. The Existing Lease expires on November 2, 2018.

B. Landlord and Tenant desire to amend the Existing Lease to (i) extend the term of the Existing Lease, (ii) increase the Base Rent during the extended term, and (iii) make certain other amendments to the Existing Lease, all subject to, and on the basis of, the terms, covenants, and conditions of this Amendment. The Existing Lease, as amended by this Amendment, is referred in this Amendment to as the “**Lease**.”

### AGREEMENT

Therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and City hereby agree as follows:

1. Definitions; Recitals. Unless otherwise defined in this Amendment or unless the context clearly requires otherwise, all capitalized terms used in this Amendment have the defined meanings given to them in the Existing Lease. The provisions of the Recitals above are fully incorporated into this Amendment by this reference.

2. Extension. The term of the Lease is extended until November 2, 2028 (the “**Expiration Date**”). The portion of the term of the Lease commencing Approval of the Board of Supervisors and Mayor (the “**Extended Term Commencement Date**”) and ending on November 2, 2028 is referred to in this Amendment as the “**Extended Term**.” The reference to the Extension Option in the Basic Lease Information and Sections 3.4 and 3.5 and of the Existing Lease are deleted.

3. Base Rent. Base Rent during the Extended Term shall be payable as follows:

3.1 First Year of the Extended Term. Base Rent for the first Lease Year of the Extended Terms is \$3,075,375 per year with the monthly payments of \$256,281.00.

3.2 Subsequent Years in the Extended Term. After the first Lease Year of the Extended Term, Base Rent during each year of the Extended Term will be increased annually on November 3 (the “**Extended Term Rent Adjustment Date**”). The increase in annual Base Rent

on the Extended Term Rent Adjustment Date (for the applicable Lease Year in question) will equal the increase in the Consumer Price Index for All Urban Consumers (base years 1982-1984 = 100) for the San Francisco-Oakland-San Jose area (the “CPI”) during the preceding Lease Year, based on the 12-month CPI figures most recently published before the Extended Term Rent Adjustment Date (for example, as of the date of this Amendment, the CPI is published only in even months, so the increase would be calculated using the August-to-August CPI increase). Notwithstanding, these limitations, the increase in Base Rent will be at least 2.5% above the prior Lease Year's Base Rent, but may not be more than not more than 5% above the prior Lease Year's Base Rent. Landlord must notify Tenant of the Base Rent increase at least two (2) weeks before the Extended Term Rent Adjustment Date. If Landlord does not timely notify Tenant of the increased Base Rent, then the Base Rent will continue to be payable at the rate applicable for the prior Lease Year, but any the increase in the Base Rent is not waived. Tenant will be obligated to pay the increase accrued since the Extended Term Rent Commencement Date once (a) Landlord has invoiced Tenant for the increased amount (“**Delayed Rent Increase Notice**”) and (b) if the Delayed Rent Increase Notice is provided before the fourteenth (14th) day of the then pending month, then the full increased Base Rent payment (including any amount shortfall in payments since the Extended Term Rent Adjustment Date) will be due on the first day of the first month that follows the Delayed Rent Increase Notice, otherwise it will be due on the first day of the second month. Until the Delayed Rent Increase Notice is given, and the payment is due, the unpaid amount of the increase will not be considered late or delinquent, will not be subject to interest or late fees, and will not constitute a default or a Tenant event of default.

4. Extended Term Leasehold Improvements.

4.1 Construction by Landlord. Promptly upon approval of this Amendment by City’s Board of Supervisors and Mayor, in their sole discretion, Landlord will perform work to the Premises as provided in this Section 4 (the “**Extended Term Leasehold Improvements**” and the work of completing the Extended Term Leasehold Improvements, “**Landlord’s Work**”). Landlord will complete the Extended Terms Leasehold Improvements no later than December 31, 2018.

(a) Landlord and Tenant have approved the Extended Term Leasehold Improvements and Landlord’s Work, as described (i) in the bid summary for the “HVAC Work,” as described in Exhibit A-1 (“**Approved Plan**”).

(b) Landlord will cause construction of the Tenant Extended Term Leasehold Improvements to be completed in a good and workmanlike manner based on and pursuant to the Approved Plans.

(c) Subject to the provisions of Section 4.2 below, Landlord will pay the cost of the Extended Term Leasehold Improvements. Those costs include, but are not limited to:

(i) All costs of any preliminary and final architectural and engineering plans, drawings, and specifications for the Extended Term Leasehold Improvements and any revisions to those plans, drawings, and specifications required by the applicable government authorities;

- (ii) All costs of obtaining building permits and other necessary authorizations from the applicable governmental authority, if any;
- (iii) All costs of interior design and finish schedule plans, drawings, and specifications including as-built drawings, if applicable;
- (iv) All direct and indirect costs of procuring materials and installing Extended Term Leasehold Improvements in the Premises, including the subcontractors' costs and fees, the general contractor's costs and fees for overhead and profit, the cost of all of contractor's on-site supervisory and administrative staff and the cost of all of Landlord's project management and supervisory staff, office, equipment, and temporary services provided in connection with construction of the Extended Term Leasehold Improvements;
- (v) All costs associated with compliance with the Americans with Disabilities Act, other applicable laws, and fire and safety code codes related to the Extended Term Leasehold Improvements in the Premises; and
- (vi) Fire and Builder's All-Risk insurance and commercial general liability insurance premiums and fees.

#### 4.2 Changes Requested by Tenant.

- (a) No changes to the Approved Plans requested by Tenant will be made without Landlord's prior approval, which approval shall not be unreasonably withheld, conditioned, or delayed. Any changes to the Approved Plans will be in writing and signed by both Landlord and Tenant before the change is made.
- (b) Tenant will be responsible for the actual out-of-pocket added costs resulting from Tenant's requested and approved changes. Tenant will pay Landlord as Additional Rent, within thirty (30) days after receipt of an itemized written bill with reasonable supporting documentation from Landlord, any actual out-of-pocket added costs resulting from Tenant's requested and approved changes. A written change request will constitute an agreement by Tenant to any reasonable delay in substantial completion caused by reviewing, processing, and implementing the change.
- (c) As soon as reasonably possible after receipt of a written change request from Tenant, Landlord will notify Tenant of Landlord's approval or disapproval of the request, and, if the request is approved, of an estimated increase in costs, if any, and an estimate of the effect the change shall have on the projected date for substantial completion of the Extended Term Leasehold Improvements.

4.3 Changes by Landlord. Landlord will have the authority, without the consent of Tenant, to order minor changes in the Extended Term Leasehold Improvements so long as they do not create any increase in cost to Tenant, do not extend the expected date of substantial completion, do not negatively affect the operation of the Premises, including, but not limited to, HVAC or generator, and are not inconsistent with the intent and the quality of the work described in the Approved Plans.

4.4 Cooperation. Landlord and Tenant will cooperate and Landlord shall diligently assist the contractor in completing construction of the Extended Term Leasehold Improvements.

4.5 Completion.

(a) Landlord will keep City apprised on a regular basis of the status of plan preparation, permit issuance, and the progress of construction. From time to time during the design and construction of the Extended Term Leasehold Improvements, City will have the right at reasonable times to inspect Landlord's Work, provided such inspections do not unreasonably interfere with the construction. Landlord or its representative may accompany City during any inspection. When construction progress permits, but not less than fifteen (15) days before completion, Landlord will notify City of the approximate date that Landlord's Work will be substantially completed in accordance with the Approved Plans. Landlord will revise the notice of the approximate substantial completion date as appropriate from time to time and will immediately notify City when Landlord's Work is substantially completed. On a mutually agreeable date as soon as practicable after Landlord's notice to the City of the substantial completion of the Extended Term Leasehold Improvements, City and its authorized representatives will accompany Landlord or its Agent on an inspection of the Extended Term Leasehold Improvements.

(b) The Leasehold Improvement Work will be deemed to be "substantially completed" for purposes of this Amendment when the Extended Term Leasehold Improvements have been sufficiently completed in accordance with the Approved Plans so that City can use the Premises and conduct its business for its intended uses and City, through its Director of Property, has approved the Extended Term Leasehold Improvements. City may, at its option, approve the Extended Term Leasehold Improvements even though there may remain minor details that would not interfere with City's use. Landlord will diligently pursue to completion all incomplete details. Within thirty (30) days after City's approval of the Extended Term Leasehold Improvements or as soon thereafter as practicable, City will have the right to present to Landlord a written punchlist of any items that have not been finished in accordance with the Approved Plans. Landlord will promptly complete all defective or incomplete items identified in the punchlist, and will in any event complete all items within thirty (30) days after the delivery of the punchlist. City's failure to include any item on the punchlist will not alter Landlord's obligation under the Lease to complete the Extended Term Leasehold Improvement Work in accordance with the Approved Plans, or constitute any waiver of any latent defects.

(c) If Landlord does not complete the Extended Term Leasehold Improvements by December 31, 2018, Tenant will have all of its rights and remedies under the Lease, at law and in equity, including but not limited to, as provided under Section 15.3 of the Existing Lease.

4.6 Approvals. No approval by City or any of its Agents of the Approved Plans, or completion of the Extended Term Leasehold Improvement Work for purposes of this Amendment will be deemed to constitute approval of any governmental or regulatory authority with jurisdiction over the Premises, and nothing in this Amendment will limit Landlord's obligations to obtain all needed approvals.

5. Energy Consumption. City acknowledges and agrees that Landlord delivered the Data Verification Checklist (as defined in the California Code of Regulations, Title 20, Division 2, Chapter 4, Article 9, Section 1681) for the Premises, copies of which are attached as Schedule 1 to this Amendment, no less than 24 hours prior to City's execution of this Amendment.

6. Amendments to Existing Lease. The Existing Lease is amended as follows:

6.7 Disability Access. A new Section 2.2 is added as follows:

**2.2 Disability Access**

California Civil Code Section 1938 requires commercial landlords to disclose to tenants whether the property being leased has undergone inspection by a Certified Access Specialist ("CASp") to determine whether the property meets all applicable construction-related accessibility requirements.

City is hereby advised that the Premises have been inspected by a CASp and have been found to meet all applicable construction-related accessibility requirements pursuant to California Civil Code Section 55.53.

6.8 A new Section 9.2 is added as follows:

**9.2 Additional Services**

City reserves the right to request that the Landlord, at City's cost, perform minor Lease-related services or incur additional expenses not covered under this Lease that the City may require from time to time as reasonably requested by the City and approved by the Real Estate Division, acting through the Director of Property or his or her designee ("Additional Services"), provided that if Landlord, in its sole and absolute discretion, agrees to perform such services or incur such additional expenses, City shall reimburse Landlord for the pre-approved cost for such expenses as Additional Charges within thirty (30) days after receipt of Landlord's invoice therefor. Landlord's charges for the Additional Services may not exceed the rates customarily charged by landlords to tenants or occupants of buildings like the Premises in San Francisco. Landlord shall provide City with invoices for all Additional Services in a format reasonably approved by City. Additional Services may not exceed ten thousand dollars (\$35,000) in any calendar month.

6.9 Prevailing Wages for Construction Work. Section 23.24 of this the Existing Lease deleted and replaced with the following:

Landlord agrees that any person performing labor in the construction of the Leasehold Improvements or other improvements to the Premises which Landlord provides under this Lease shall be paid not less than the highest prevailing rate of wages and that Landlord shall include, in any contract for construction of such improvements, a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Landlord further agrees that, as to the construction of such improvements under this Lease, Landlord shall comply with all the provisions of subsection (b) of San Francisco Charter Section A and Sections 6.33 through 6.45 of the San Francisco Administrative Code that relates to payment of prevailing wages. Landlord shall require any contractor to provide, and shall deliver to City every two weeks during any construction period, certified payroll reports with respect to all persons performing labor in the construction of any Leasehold Improvements or other improvements to the Premises.

- 6.10 Authority. Section 23.4 is hereby deleted and replaced in its entirety with the following:

**23.4 Authority**

Landlord represents and warrants to City that it is the sole owner of the Property and the execution and delivery of this Lease by Landlord does not violate any provision of any agreement, or Laws to which Landlord or the Property is subject. Each of the persons executing this Lease on behalf of Landlord does hereby covenant and warrant that Landlord is a duly authorized and existing limited liability company, that Landlord has and is qualified to do business in California, that Landlord has the full right and authority to enter into this Lease, and that each and all of the persons signing on behalf of Landlord are authorized to do so. On City's request, Landlord will provide City with evidence reasonably satisfactory to City confirming the foregoing representations and warranties.

- 6.11 Prevailing Wages. Section 23.24 is deleted and replaced with the following:

**23.24 Prevailing Wages and Working Conditions**

Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.61. Landlord agrees to require its Contractors and Subcontractors performing (i) labor in the construction of a "public work" as defined in California Labor Code Section 1720 et seq. (which includes certain construction, alteration, maintenance, demolition, installation, repair, carpet

laying, or refuse hauling if paid for in whole or part out of public funds), or (ii) Covered Construction at the Premises to (1) pay workers performing such work not less than the Prevailing Rate of Wages, (2) provide the same hours, working conditions and benefits as in each case are provided for similar work performed in San Francisco County, and (3) employ Apprentices in accordance with San Francisco Administrative Code Section 23.61 (collectively, “**Prevailing Wage Requirements**”). Landlord agrees to cooperate with the City in any action or proceeding against a Contractor or Subcontractor that fails to comply with the Prevailing Wage Requirements.

Landlord shall include, and require its Contractors and Subcontractors (regardless of tier) to include, the Prevailing Wage Requirements and the agreement to cooperate in City enforcement actions in any Construction Contract with specific reference to San Francisco Administrative Code Section 23.61. Each such Construction Contract shall name the City and County of San Francisco, affected workers, and employee organizations formally representing affected workers as third party beneficiaries for the limited purpose of enforcing the Prevailing Wage Requirements, including the right to file charges and seek penalties against any Contractor or Subcontractor in accordance with San Francisco Administrative Code Section 23.61. Landlord’s failure to comply with its obligations under this Section shall constitute a material breach of this Lease. A Contractor’s or Subcontractor’s failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.61 against the breaching party

6.12 Non Discrimination. Section 23.25 is deleted and replaced with the following:

**23.25 Non Discrimination in City Contracts and Benefits Ordinance**

**(a) Covenant Not to Discriminate**

In the performance of this Lease, Landlord agrees not to discriminate against any employee of, any City employee working with Landlord, or applicant for employment with Landlord, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person’s race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV

status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

**(b) Subcontracts**

Landlord shall include in all subcontracts relating to the Premises a non discrimination clause applicable to such subcontractor in substantially the form of subsection (a) above. In addition, Landlord shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k) and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Landlord's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

**(c) Non-Discrimination in Benefits**

Landlord does not as of the date of this Lease and will not during the term of this Lease, in any of its operations in San Francisco, on real property owned by City, or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to Laws authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

**(d) CMD Form**

As a condition to this Lease, Landlord shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form CMD-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Contract Monitoring Division (the "CMD"). Landlord hereby represents that prior to execution of the Lease: (a) Landlord executed and submitted to the CMD Form CMD-12B-101 with supporting documentation, and (b) the CMD approved such form.

**(e) Incorporation of Administrative Code Provisions by Reference**

The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties



contracting for the lease of property to City are incorporated in this Section by reference and made a part of this Lease as though fully set forth herein. Landlord shall comply fully with and be bound by all of the provisions that apply to this Lease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Landlord understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of Fifty Dollars (\$50) for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Lease may be assessed against Landlord and/or deducted from any payments due Landlord.

6.13 Resource Efficient Buildings. Section 23.28 is deleted and replaced with the following:

**23.28 Resource Efficient City Buildings**

Landlord acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Sections 700 to 713 relating to green building requirements for the design, construction, and operation of City buildings. Landlord will comply with all applicable provisions of such those code sections.

6.14 Limitations on Contributions. Section 23.26 is deleted and replaced with the following:

**23.36 Notification of Limitations on Contributions**

Through its execution of this Lease, Landlord acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Landlord acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Landlord further acknowledges that the prohibition on contributions applies to each

Landlord; each member of Landlord's board of directors, and Landlord's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Landlord; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Landlord. Additionally, Landlord acknowledges that Landlord must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Landlord will provide to City the name of each person, entity, or committee described above.

7. Miscellaneous.

7.15 This Amendment will become effective on the date that (a) City's Mayor and Board of Supervisors, in their sole and absolute discretion, adopt a resolution approving this Lease in accordance with all applicable Laws, and (b) this Lease is duly executed by the parties.

7.16 Except as modified by this Amendment, all of the terms, conditions and provisions of the Existing Lease remain in full force and effect.

7.17 To the extent the terms of the Existing Lease and this Amendment are inconsistent, the terms of this Amendment will control.

7.18 This Amendment contains the entire agreement of Landlord and Tenant regarding the extension of the term of Existing Lease. It is understood that there are no oral agreements between Landlord and Tenant affecting the Existing Lease as amended by this Amendment, and this Amendment supersedes and cancels any and all previous negotiations, representations, agreements, and understandings, if any, between Landlord and Tenant and their respective agents with respect to the Existing Lease as amended by this Amendment, and none may be used to interpret or construe the Lease.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, LANDLORD ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY HERETO UNLESS AND UNTIL CITY'S BOARD OF SUPERVISORS HAS DULY ADOPTED A RESOLUTION APPROVING THIS LEASE AND AUTHORIZING CONSUMMATION OF THE TRANSACTION CONTEMPLATED BY THIS LEASE. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY UNDER THIS LEASE ARE CONTINGENT UPON ADOPTION OF THAT RESOLUTION, AND THIS LEASE WILL BE NULL AND VOID UNLESS CITY'S MAYOR AND BOARD OF SUPERVISORS APPROVE THIS LEASE, IN THEIR RESPECTIVE SOLE AND ABSOLUTE DISCRETION, AND IN ACCORDANCE WITH ALL APPLICABLE LAWS. APPROVAL OF THIS LEASE BY ANY DEPARTMENT, COMMISSION, OR AGENCY OF CITY WILL NOT BE DEEMED TO IMPLY THAT THE RESOLUTION WILL BE ADOPTED AND NO SUCH APPROVAL WILL CREATE ANY BINDING OBLIGATIONS ON CITY.

*Remainder of Page Intentionally Left Blank; Signatures Appear on Following Pages*

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date first written above.

LANDLORD:

1415 16th Street Associates, LLC  
a California limited liability company

By: \_\_\_\_\_  
DAVID O'KEEFFE  
Managing Member

CITY:

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: \_\_\_\_\_  
Name: ANDRICO Q. PENICK  
Director of Property

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_  
Eileen Chauvet  
Deputy City Attorney

EXHIBIT A-1  
HVAC Work

The HVAC Work is as follows:

***1415 16<sup>TH</sup> Street Associates LLC  
188 King Street, Suite 408  
San Francisco, Ca 94107***

Date: May 15, 2018

Location: 1740 17<sup>th</sup> Street, San Francisco, CA 94106

**Estimate New 5-ton Air conditioning unit for computer room**

**5 Ton split system for Data Room**

**Air Handler hung from ceiling**

**Condensing unit installed on roof**

**All electrical back to sub panel**

**Related roof jack waterproofing**

**New make up air vent to men's locker room 2<sup>nd</sup> floor**

**Replace fan belt to exhaust system**

**Repair and replace leak to existing condensate line in data room**

**Total estimate \$28,750.**

