

## LEASE AMENDMENT

THIS AMENDMENT (this "Amendment") is made as of \_\_\_\_\_, 2022, in San Francisco, California, by and between Evans Investment Partners, LLC, a California limited liability corporation ("Landlord") and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City" or "Tenant").

### RECITALS

THIS AMENDMENT is made with reference to the following facts and circumstances:

A. City and Landlord have previously entered into an existing lease agreement, dated as of May 1, 2017 (the "Lease"), for the lease of a portion of the building located at 2 Emery Lane, 734, 736, 750 and 752 Vallejo Street (the "Building"), being a portion of Lot 012, in Assessor's Block 0130, San Francisco, California.

B. Landlord has leased to City the premises in the Building identified in the Basic Lease Information as 752 Vallejo Street (the "Initial Premises"), consisting of approximately 750 rentable square feet. City is using the Initial Premises for general office related uses and such other uses as specified in the Basic Lease Information.

C. The parties now desire to modify the Lease on the terms and conditions as set forth herein to, among other things, expand the Premises to include approximately 1,820 rentable square feet of additional space in the portion of the Building identified as 750 Vallejo Street (the "Expansion Premises") and grant City a second option to lease the Premises for an additional extension term of five (5) years.

ACCORDINGLY, in consideration of the matters described in the foregoing Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, the City and Landlord agree as follows:

1. **Definitions.** Capitalized terms not otherwise defined in this Amendment have the meanings set forth in the Lease.

2. **Amended Basic Lease Information.** The subsections in Section 1 (**Basic Lease Information**) listed below are hereby amended and restated to read in their entirety as follows:

"Premises (**Section 2.1**): The Initial Premises is located at 752 Vallejo Street. Effective as of Landlord's delivery to City of the Expansion Premises located at 750 Vallejo Street, San Francisco, California, as shown in Exhibit A, in the condition required under Section 5.1(c), the Premises shall be the Initial Premises and the Expansion Premises."

"Rentable Area of Premises: Approximately 750 rentable square feet comprised the Initial Premises and, effective as of Landlord's delivery to City of the Expansion Premises in the condition required under Section 5.1(c), the Rentable Area of Premises shall be 2,570 rentable square feet."

"Extension Options (**Section 3.5**): Two (2) additional extension terms of five (5) years each, exercisable by notice to Landlord given not less than 180 days in advance, with rent determined as outlined in Section 3.5 Extension Option Determination of Base Rent for the Extended Term(s)."

"Base Rent (Section 4.1): Annual Base Rent: \$120,790 (\$47.00 per sq. ft.)  
 Monthly payments: \$10,066.00 (\$3.91 per sq. ft.)

Effective as of Landlord's delivery to City of the Expansion Premises in the condition required under Section 5.1(c), the Rent shall be as follows:

Effective Date	to		Monthly Payment	Annual Base Rent
	8/15/2022		\$ 10,783.33	
8/16/2022	to	8/15/2023	\$ 10,066.00	\$ 120,792.00
8/16/2023	to	8/15/2024	\$ 10,367.98	\$ 124,415.76
8/16/2024	to	8/15/2025	\$ 10,679.02	\$ 128,148.23
8/16/2025	to	8/15/2026	\$ 10,999.39	\$ 131,992.68
8/16/2026	to	8/15/2027	\$ 11,329.37	\$ 135,985.46

"City Share of Expenses (Sections 4.4 and 4.5): City shall be responsible for 7.02% of Building Operating Costs and Real Estate Taxes. Effective as of Landlord's delivery to City of the Expansion Premises in the condition required under Section 5.1(c), City shall be responsible for 24.05% of Building Operating Costs and Real Estate Taxes. The Base Year for purposes of Section 4.4 and Section 4.5 is 2017."

"Leasehold Improvements (Article 5): Landlord shall perform the Leasehold Improvements pursuant to Article 5 below. City received an initial allowance from Landlord of \$11,250 ("Initial Allowance") that was credited against the cost of Leasehold Improvements for the Initial Premises. City shall receive an additional allowance from Landlord of \$25,800 (the "Expansion Premises Allowance"). The Expansion Premises Allowance shall be credited by Landlord against the cost of the Leasehold Improvements for the Expansion Premises. City shall pay Landlord the amount, if any, by which (i) the actual cost of the Leasehold Improvements for the Expansion Premises exceeds the Expansion Premises Allowance, in the manner provided in Section 5.1(e), however in no event shall City's contribution for the Leasehold Improvements for the Expansion Premises exceed \$241,582. Landlord shall not incur costs above the Initial Allowance amount or the Expansion Premises Allowance amount, as applicable, without prior written approval of the Director of Property."

- Amended Section 3.4 (Delay in Delivery of Possession)**. Section 3.4. (Delay in Delivery of Possession) is hereby amended by adding the following paragraph to the end of Section 3.4:

Landlord shall use its best efforts to deliver possession of the Expansion Premises with all of the Leasehold Improvements substantially completed and accepted by City's Director of Property pursuant to Section 5.1 (Landlord's Obligation to Construct Improvements) on or before August 1, 2021. However, if Landlord is unable to deliver possession of the Expansion Premises as provided above, then, subject to the provisions of this Section below, the validity of this Lease shall not be affected by such inability to deliver possession except that City's obligations to pay increased Base Rent or any other charges shall not commence until such time as Landlord has delivered the Expansion Premises as required under this Lease.

- Amended Section 3.5. (Extension Option Determination of Base Rent for the Extended Term)**. Section 3.5. (Extension Option Determination of Base Rent for the Extended Term) is hereby amended and restated to read in its entirety as follows:

### 3.5 Extension Option Determination of Base Rent for the Extended Term(s)

At the commencement of each Extended Term, the Base Rent shall be adjusted to equal the prevailing market rate for space of comparable size and location to the Premises then being offered for rent in other buildings similar in age, location and quality to the Premises situated within the Russian Hill area of San Francisco ("Reference Area"); provided, however, in no event shall the Base Rent be reduced below the Base Rent for the lease year prior to commencement of such Extended Term. As used herein, the term "prevailing market rate" shall mean the base rental for such comparable space, taking into account (i) any additional rental and all other payments and escalations payable hereunder, (ii) floor location and size of the premises covered by leases of such comparable space, (iii) the duration of the renewal term and the term of such comparable leases, (iv) free rent given under such comparable leases and any other tenant concessions, and (v) building standard tenant improvement allowances and other allowances given under such comparable leases.

Within thirty (30) days following City's exercise of each Extension Option, Landlord shall notify City of Landlord's determination of the prevailing market rate for the Premises. If City disputes Landlord's determination of the prevailing market rate, City shall so notify Landlord within fourteen (14) days following Landlord's notice to City of the prevailing market rate and such dispute shall be resolved as follows:

(a) Within thirty (30) days following Landlord's notice to City of the prevailing market rate, Landlord and City shall attempt in good faith to meet no less than two (2) times, at a mutually agreeable time and place, to attempt to resolve any such disagreement.

(b) If within this thirty (30)-day period Landlord and City cannot reach agreement as to the prevailing market rate, they shall each select one appraiser to determine the prevailing market rate. Each such appraiser shall arrive at a determination of the prevailing market rate and submit his or her conclusions to Landlord and City within thirty (30) days of the expiration of the thirty (30) day consultation period described in (a) above.

(c) If only one appraisal is submitted within the requisite time period, it shall be deemed to be the prevailing market rate. If both appraisals are submitted within such time period, and if the two appraisals so submitted differ by less than ten percent (10%) of the higher of the two, then the average of the two shall be the prevailing market rate. If the two appraisals differ by more than ten percent (10%) of the higher of the two, then the two appraisers shall immediately select a third appraiser who will within thirty (30) days of his or her selection make a determination of the prevailing market rate and submit such determination to Landlord and City. This third appraisal will then be averaged with the closer of the two previous appraisals and the result shall be the prevailing market rate.

(d) If City's Director of Property does not approve of the prevailing market rate as determined by the appraisal procedure specified above, the Director of Property shall revoke the exercise of the Extension Option by City.

(e) All appraisers specified herein shall be "MAI" designated members of the Appraisal Institute with not less than five (5) years' experience appraising leases of commercial properties similar to the Premises in the City and County of San Francisco. Landlord and City shall pay the cost of the appraiser selected by such party and one-half of the cost of the third appraiser plus one-half of any other costs incurred in the arbitration.

5. **New Section 5.2 (Leasehold Improvements for Expansion Premises)**. A new Section 5.2 is hereby added to read in its entirety as follows:

**5.2. Landlord's Obligation to Construct Leasehold Improvements for Expansion Premises.** Landlord, through its general contractor approved by City, shall construct the Expansion Premises, perform the work and make the installations in the Expansion Premises at Landlord's sole cost pursuant to the Construction Documents approved by City, and in accordance

with the provisions of Article 5. For purposes of such obligations with respect to the Expansion Premises, the following terms shall have the following meanings:

(a) References to “Premises” throughout Article 5 shall mean the “Expansion Premises.”

(b) References to “Allowance” in Subsections 5.1(e) and (f) shall mean the “Expansion Premises Allowance” in the amount of \$25,800.

(c) References to “Additional Construction Allowance” shall not apply to the Leasehold Improvements for the Expansion Premises.

**6. Exhibit A (Floor Plan(s)).** Exhibit A (Floor Plan(s)) shall be replaced with the attached Exhibit A.

**7. Exhibit C (Scope of Work).** Exhibit C (Scope of Work) shall be replaced with the attached Exhibit C.

**8. Exhibit E (Space Plan).** Exhibit E (Space Plan) shall be replaced with the attached Exhibit E.

**9. No Joint Venture.** This Amendment or any activity by the City hereunder does not create a partnership or joint venture between the City and Landlord relating to the Lease or otherwise. This Amendment does not constitute authorization or approval by the City of any activity conducted by Landlord, and the City shall in no way be responsible for the acts or omissions of Landlord on the Premises or otherwise.

**10. Attorneys Fees.** In the event a dispute arises concerning this Amendment, the party not prevailing in such dispute shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees. For purposes of this Amendment, reasonable fees of attorneys of City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

**11. References.** No reference to this 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.

**12. Applicable Law.** This Amendment shall be governed by, construed and enforced in accordance with the laws of the State of California.

**13. Notification of Prohibition on Contributions.** By executing this Lease, Landlord acknowledges its obligations under section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who leases, or seeks to lease, to or from any department of the City any land or building from making any campaign contribution to (a) a City elected official if the lease must be approved by that official, (b) a candidate for that City elective office, or (c) a committee controlled by that elected official or a candidate for that office, at any time from the submission of a proposal for the lease until the later of either the termination of negotiations for the lease or twelve (12) months after the date the City approves the lease. Landlord acknowledges that the foregoing restriction applies only if the lease or a combination or series of leases or other contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of one hundred thousand dollars (\$100,000) or more. Landlord further acknowledges that (i) the prohibition on contributions applies to each prospective party to the lease; any person with an ownership interest of more than 10 percent (10%) in Landlord; any subcontractor listed in the lease; and any committee that is sponsored or controlled by Landlord;

and (ii) within thirty (30) days of the submission of a proposal for the Lease, the City department with whom Landlord is leasing is obligated to submit to the Ethics Commission the parties to the lease and any subcontractor. Additionally, Landlord certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the lease, and has provided the names of the persons required to be informed to the City department with whom it is leasing.

**14. Landlord's Compliance with City Business and Tax and Regulations Code.**

Landlord acknowledges that under Section 6.10-2 of the San Francisco Business and Tax Regulations Code, the City Treasurer and Tax Collector may require the withholding of payments to any vendor that is delinquent in the payment of any amounts that the vendor is required to pay the City under the San Francisco Business and Tax Regulations Code. If, under that authority, any payment City is required to make to Landlord under this Lease is withheld, then City will not be in breach or default under this Lease, and the Treasurer and Tax Collector will authorize release of any payments withheld under this paragraph to Landlord, without interest, late fees, penalties, or other charges, upon Landlord coming back into compliance with its San Francisco Business and Tax Regulations Code obligations.

**15. Further Instruments.** The parties hereto agree to execute such further instruments and to take such further actions as may be reasonably required to carry out the intent of this Amendment.


**16. Effective Date.** This Amendment shall become effective on the date (the "**Effective Date**") that (i) the City's Board of Supervisors enacts such resolution authorizing this Amendment and (ii) the Amendment is fully executed and delivered by both parties.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AMENDMENT, 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 SHALL HAVE DULY ADOPTED A RESOLUTION APPROVING THIS AMENDMENT AND AUTHORIZING CONSUMMATION OF THE TRANSACTION CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON ADOPTION OF SUCH A RESOLUTION, AND THIS AMENDMENT SHALL BE NULL AND VOID UNLESS CITY'S MAYOR AND BOARD OF SUPERVISORS APPROVE THIS AMENDMENT, IN THEIR RESPECTIVE SOLE AND ABSOLUTE DISCRETION, AND IN ACCORDANCE WITH ALL APPLICABLE LAWS. APPROVAL OF THIS AMENDMENT BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ADOPTED NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

**17. Miscellaneous.** Except as expressly modified herein, the terms, covenants and conditions of the Lease shall remain unmodified and in full force and effect. The Lease as amended by this Amendment constitutes the entire agreement of the parties concerning the subject matter hereof, and supersedes and conceals any and all previous negotiations, agreements, or understandings, if any, regarding the matters contained herein. The execution of this Amendment shall not constitute a waiver of relinquishment of any rights which the City may have relating to the Lease. Landlord and City hereby ratify and confirm all of the provisions of the Lease as amended by this Amendment.

In witness whereof, the parties hereto have executed this Amendment as of the date written above.

LANDLORD: EVANS INVESTMENT PARTNERS LLC

By:   
ERIC CHUNG

Its:

By:   
TWIGGY TANG

Its:

TENANT: CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: \_\_\_\_\_  
Andrico Q. Penick  
Director of Property

RECOMMENDED:

\_\_\_\_\_  
Police Department

APPROVED AS TO FORM:

David Chiu, City Attorney

By: \_\_\_\_\_  
Elizabeth Dietrich  
Deputy City Attorney

# Exhibit A

