

FIRST AMENDMENT TO LEASE

[City Attorney]

THIS FIRST AMENDMENT TO LEASE (this "**First Amendment**") is made and entered into as of June 13, 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 12, 2000 (the "**Lease**") for premises known as Suites 240 and 250 on the 2nd floor (the "**Second Floor Premises**"), Suites 401 and 418 on the 4th floor, Suite 500 on the 5th floor, Suite 600 on the 6th floor, and Suites 1008 and 1010 on the 10th floor (the "**Tower Premises**", together with the Second Floor Premises, the "**Original Premises**"), all in a building known as Fox Plaza, 1390 Market Street, San Francisco, CA (the "**Building**").
- B. The Lease's initial term expires December 31, 2007. The Lease provides City with one (1) 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 Premises (the "**Transfer Parcel**"). As a result, Landlord desires to relocate the Second Floor 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 Option Term, at Landlord's sole cost, to space approved by City within Landlord's Commercial Parcel (the "**Relocation Premises**"), and (ii) 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 is deleted and replaced with the following:

"C. Extension Option. City shall have the option to extend the Term the Initial Term for an additional term ("Extended Term") of five (5) years commencing upon the expiration of the Initial Term ("Extension Option"). Upon commencement of the Extended Term, all references in the Lease to the Term shall mean the Term as extended by the Extended Term.

(a) City's lease of the Premises during the Extended Term shall be on all of the terms and conditions set forth in the Lease, except that (i) at the start of the Extended Term, the Base Monthly Rent shall be adjusted to \$157,035.00 (approximately \$30 psf), and shall remain fixed at this amount for the remainder of the Term; (ii) the Base Year and the Base Tax Year, for purposes of determining City's Additional Rent, shall be calendar 2008, and there shall be no Additional Rent during calendar year 2008; (iii) subject to Landlord's completion of the relocation as set forth below, the Second Floor Premises shall be deleted from the Premises and the Relocation Premises shall be added to the Premises; and (iv) 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 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. The Relocation Premises shall be located in two separate spaces 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 Premises. The Relocation Premises shall contain a rentable area no greater or less than one hundred percent (100%) of the Second Floor Premises without City's prior consent, which City may withhold in its sole discretion. The portion of the Relocation Premises to be used by Tenant for its' infant care program shall be located in contiguous, code-complying space for use as an infant care facility on the [fourth (4th)] floor or a lower floor of the Building and otherwise in accordance with all applicable laws and regulations. The remainder of the Relocation Premises shall be located in contiguous, code-complying office space on the seventh (7th) floor of the Building within the area shown in Exhibit A-1 attached hereto. 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 Premises to the Relocation Premises. Tenant shall have no obligation to vacate the Second Floor Premises unless and until all necessary approvals and permits have been obtained. No later than December 31, 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 April 1, 2007. Such plans shall provide at least the same quantity and quality of tenant improvements as are currently located in the Second Floor Premises, including security improvements, offices and conference rooms, and specialized facilities in the infant care program space. Such plans shall also include or provide: (i) a server room of not less than 144 square feet which shall also include, without limitation, 24 hour air conditioning, anti-static tiles, sleeves and risers, and 6 dedicated 15 amp electrical outlets; (ii) 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; (iii) 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; (iv) 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; (v) 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 (vi) 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 carpet 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 \$245,885.00 (approximately \$5.00 psf on the Tower Premises), 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 June 30, 2009, 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, if at all, by giving written notice to Landlord no later than April 1, 2007; provided, however, if Landlord has not completed the space plans and specifications for the Relocation Premises and the Tower Premises by April 1, 2007, then City shall have the right to extend the notice date for the 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 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 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, 2008, 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 the 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 July 1, 2007. If such approval and authorization is not received by Landlord on or before July 1, 2007, City's Extension Options shall terminate and City shall have no further option to extend the Term.

(h) Upon the relocation of City from the Second Floor 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. **HOLDING OVER.** As of the Effective Date of this First Amendment, the following language shall be added to the end of Lease Paragraph 8: "Notwithstanding anything to the contrary above, if Tenant holds possession of the Premises after the Initial Term and does not exercise the Extension Option, then Tenant shall become a month-to-month Tenant for a period of up to six (6) months, and during such six (6) month period the Base Rent payable by City shall be \$235,552.50 (approximately \$45 psf) per month."

3. **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.

4. **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.

5. **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.

6. **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.

7. **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.

8. **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.

9. **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.

10. **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.

11. **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.

12. **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:

DENNIS J. HERRERA, City Attorney

By: [Signature]

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

By: [Signature]
Deputy City Attorney

EXHIBIT A-1

Relocation Premises