

FIRST LEASE AMENDMENT

THIS AMENDMENT (this “Amendment”) is made as of _____, 20__, in San Francisco, California, by and between 33 GOUGH, LLC, a Georgia limited liability company (“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 are parties to that certain Lease Agreement dated as of December 1, 2019 (the “Lease”), for the lease of 33 Gough Street (the “Building”) located at 33 Gough Street, being a portion of Lot 029, in Assessor’s Block 3504, San Francisco, California.

B. Landlord has leased to City the premises in the Building identified in the Basic Lease Information (the “Premises”). City is using the Premises for any legally permitted office use, and, subject to necessary regulatory approvals, temporary sheltering of homeless residents of the City, navigation centers, and associated programs and services such other uses as specified in the Basic Lease Information.

C. The Term of the Lease is scheduled to expire March 14, 2023.

D. City and Landlord now desire to modify the Lease on the terms and conditions as set forth herein.

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, City and Landlord agree as follows:

1. **Lease Extension**. City and Landlord agree to extend the Term for a period commencing on March 14, 2023 and expiring on March 13, 2025, unless City further extends the Term pursuant to Section 3.4 (Extension Option) of the Lease. As of the effective date of this Amendment, all references in the Lease to the Term shall mean the Term as extended hereby.

2. **Base Rent**. As of the effective date of this Amendment, City shall pay to Landlord an annual Base Rent of \$1,372,000.00 (\$28.00 per sq. ft.). As of the effective date of this Amendment, all references in the Lease to the Base Rent shall mean the Base Rent as amended hereby.

3. **Amendments to Lease**.

A. As of the effective date of this Amendment, the following subsections in Section 1 (Basic Lease Information) are hereby amended or added to read as follows:

Term (Section 3)

Expiration Date:
March 13, 2025

Extension Option
(Section 3.4):

City shall have the option to extend the Term for one (1) additional term of one (1) year (the “Extended Term”), exercisable

by City providing notice to Landlord and mutually accepted by the Landlord in its sole discretion. The notice shall be given not less than one hundred eighty (180) calendar days and no more the three hundred sixty-five (365) calendar days prior to the expiration of the initial Term in advance, on the terms and conditions set forth in Section 3.4.

Base Rent (Section 4.1): Annual Base Rent: \$1,372,000.00 (\$28.00 per sq. ft.) will be paid as follows.

March 14, 2023 - \$1,372,000.00

March 14, 2024 - \$1,372,000.00

B. As of the effective date of this Amendment, the following Section 3.4 is hereby added to the Lease:

3.4 Extension Option

Landlord grants City the option to extend the Term (the “**Extension Option**”) for the additional term specified in the Basic Lease Information (the “**Extended Term**”). The Extended Term will be on all of the terms and conditions contained in this Lease, including but not limited to the Base Rent. City may exercise the Extension Option, if at all, by giving written notice (the “**Extension Notice**”) to Landlord no later than one hundred eighty (180) calendar days and no more the three hundred sixty-five (365) calendar days before expiration of the Term to be extended; If City extends the Term as provided in this Section, then the word “Term” will mean and include the Extended Term.

C. As of the effective date of this Amendment, Section 22 of the Lease is hereby amended to add the following provisions:

22.12 Resource-Efficient City Buildings

Landlord acknowledges that the City 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 those code sections.

22.13 Contractor Vaccination Requirements

(1) Landlord acknowledges that it has read the requirements of the 38th Supplement to Mayoral Proclamation Declaring the Existence of a Local Emergency (“Emergency Declaration”), dated February 25, 2020, and the Contractor Vaccination Policy for City Contractors issued by the City Administrator (“Contractor Vaccination Policy”), as those documents may be amended from time to time. A copy of the Contractor Vaccination Policy can be found at: <https://sf.gov/confirm-vaccine-status-your-employees-and-subcontractors>. Any undefined, initially-capitalized term used in this Section has the meaning given to that term in the Contractor Vaccination Policy.

(2) A Contract as defined in the Emergency Declaration is an agreement between the City and any other entity or individual and any subcontract under such agreement, where Covered Employees of the contractor or subcontractor work in-person with City employees at a facility owned, leased, or controlled by the City. A Contract includes such agreements currently in place or entered into during the term of the Emergency Declaration. A Contract does not include an agreement with a state or federal governmental entity or agreements that does not involve the City paying or receiving funds.

(3) Landlord has read the Contractor Vaccination Policy. In accordance with the Emergency Declaration, if this Lease is (or becomes) a Contract as defined in the Contractor Vaccination Policy, Landlord agrees that:

(I) Landlord shall ensure it complies with the requirements of the Contractor Vaccination Policy pertaining to Covered Employees, as they are defined under the Emergency Declaration and the Contractor Vaccination Policy, and insure such Covered Employees are fully vaccinated for COVID-19 or obtain an exemption based on medical or religious grounds; and

(II) If Landlord grants Covered Employees an exemption based on medical or religious grounds, Landlord will promptly notify City by completing and submitting the Covered Employees Granted Exemptions Form (“Exemptions Form”), which can be found at <https://sf.gov/confirm-vaccine-status-your-employees-and-subcontractors> (navigate to “Exemptions” to download the form).

4. **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.

5. **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.

6. **No Brokers.** Landlord represents and warrants that it has not dealt with any real estate broker in connection with this Amendment, and no compensation is due to Landlord’s broker in connection with this 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.

7. **Governing Law.** The Lease shall be governed by, construed and enforced in accordance with the laws of the State of California and City’s Charter. Any legal suit, action, or proceeding arising out of or relating to the Lease shall be instituted in the Superior Court for the City and County of San Francisco, and each party agrees to the exclusive jurisdiction of such court in any such suit, action, or proceeding (excluding bankruptcy matters). The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action, or proceeding in such court and irrevocably waive and agree not to plead or claim that any suit, action, or proceeding brought in San Francisco Superior Court relating to the Lease has been brought in an inconvenient forum.

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

9. **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.

10. **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.

11. **Authority.** Landlord represents and warrants to City that the execution and delivery of this Amendment by Landlord has been duly authorized and does not violate any provision of any agreement, law or regulation to which Landlord or the Premises is subject.

12. **Counterparts.** This 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.

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

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AMENDMENT, LANDLORD ACKNOWLEDGES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS AMENDMENT UNLESS CITY'S BOARD OF SUPERVISORS HAS DULY ADOPTED A RESOLUTION APPROVING THIS AMENDMENT AND AUTHORIZING CONSUMMATION OF THE TRANSACTION CONTEMPLATED BY THIS AMENDMENT. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY UNDER THIS AMENDMENT ARE CONTINGENT ON ADOPTION OF THAT RESOLUTION, AND THIS AMENDMENT WILL BE NULL AND VOID UNLESS CITY'S MAYOR AND BOARD OF SUPERVISORS APPROVE THIS AMENDMENT, AT 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 WILL NOT BE DEEMED TO IMPLY THAT THE RESOLUTION WILL BE ADOPTED AND NO SUCH APPROVAL WILL CREATE ANY BINDING OBLIGATIONS ON CITY.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, City and Landlord have executed this Amendment as of the date written above.

LANDLORD: 33 GOUGH LLC,
a Georgia limited liability company

By: _____

Its: _____

Date: _____

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

By: _____

Andrico Q. Penick
Director of Property

Date: _____

RECOMMENDED:

By: _____

Shireen McSpadden
Executive Director
Department of Homelessness and Supportive
Housing

APPROVED AS TO FORM:

DAVID CHIU, City Attorney

By: _____

JESSIE ALFARO-CASSELLA
Deputy City Attorney