

LEASE

Health Service Department – WIC
Plaza San Pablo Business Center
San Pablo, California

This lease is dated _____, 2016, is between the CITY OF SAN PABLO, a municipal corporation of the State of California (“**Lessor**”) and the COUNTY OF CONTRA COSTA, a political subdivision of the State of California (“**County**”).

Recitals

- A. Lessor is the owner of that certain unimproved property located in the City of San Pablo, County of Contra Costa, and State of California that consists of an approximately 5.88 acres of land near Gateway Avenue, as more particularly described in Exhibit A (the “**Property**”).
- B. Lessor intends to cause a stand-alone building to be constructed on the Property consisting of approximately 7,000 square feet of floor space for use by the County (the “**Building**”) along with a surface parking lot (the “**Parking Lot**”). The site of the Building and the Parking Lot, once determined in accordance with this lease, is the “**Premises**.” The anticipated location of the Premises is shown on Exhibit A-1.
- C. Simultaneous with the execution of this lease, Lessor and County are entering into a work letter that sets forth how the tenant improvements to the Premises are to be constructed and the time schedule for completing the construction of the tenant improvements (“the **Work Letter**”). The Work Letter is a part of this lease.
- D. Under the Work Letter, the Lessor is required to cause the Building to be constructed in accordance with the Final Plans, as defined in the Work Letter. The rent due under this lease will be determined by multiplying the rate-per-square-foot (the “**Rent Factor**”) set forth in Section 4 below by the number of square feet in the Building, as set forth in the Final Plans, as defined in the Work Letter.
- E. The Parking Lot will have no fewer than forty-three (43) parking spaces, including standard, compact and a number of handicapped parking spaces, in accordance with local laws and ordinances. Lessor shall cause the Parking Lot to be constructed at its sole cost and expense, in conformance with the Final Plans.

The parties therefore agree as follows:

Agreement

1. Location of Premises. Prior to the completion of the Final Plans, Lessor shall submit to the County for its approval a map of the proposed exact location of the Premises. The parties shall meet to determine whether the proposed exact location is acceptable to both parties. Promptly after the parties agree on the location of the Premises, Lessor shall provide a legal description of the Premises to the County. Once the legal description of the Premises is complete, it will be attached to this lease as Exhibit A-2.

If Lessor and the County fail to agree on the location of the Premises within thirty (30) business days after Lessor submits the map to the County for approval, either party may terminate this lease by giving written notice to the other with no cost or obligation to either. Such termination is effective on the effective date of the written notice.

2. Lease of Premises. In consideration of the rents and subject to the terms herein set forth, Lessor hereby leases to County and County hereby leases from Lessor, the Premises.
3. Term. The “**Term**” of this lease is comprised of an Initial Term and, at County’s election, Renewal Terms, each as defined below.
 - a. Initial Term. The “**Initial Term**” is ten years, commencing on the Commencement Date, as defined in the Work Letter. The “**Commencement Date**” is the Substantial Completion Date. The “**Substantial Completion Date**” is defined in the Work Letter.
 - b. Renewal Terms. County has two options to renew this lease for a term of ten years for each option (each, a “**Renewal Term**”) upon all the terms and conditions set forth herein.
 - i. County will provide Lessor with written notice of its election to renew the Lease one hundred eighty days prior to the end of the Term. However, if County fails to provide such notice, its right to renew the Lease will not expire until fifteen working days after County’s receipt of Lessor’s written demand that County exercise or forfeit the option to renew.
 - ii. Upon the commencement of a Renewal Term, all references to the Term of this lease will be deemed to mean the Term as extended pursuant to this Section.
4. Rent. County shall pay rent (“**Rent**”) to Lessor in advance beginning on the Commencement Date. Rent is payable on the first day of each month during the Initial Term and, if applicable, the Renewal Terms. The amount of Rent due is equal to the result obtained by multiplying the following Rent Factors by the number of square feet in the Building:

a. Initial Term.

<u>Months</u>	<u>Rent Factor</u>	<u>Monthly Rent Based on 7,000 Sq. Ft.</u>
01 - 12	\$1.85	\$ 12,950.00
13 - 24	\$1.90	\$ 13,300.00
25 - 36	\$1.95	\$ 13,650.00
37 - 48	\$2.00	\$ 14,000.00
49 - 60	\$2.05	\$ 14,350.00
61 - 72	\$2.10	\$ 14,700.00
73 - 84	\$2.15	\$ 15,050.00
85 - 96	\$2.20	\$ 15,400.00
97 - 108	\$2.25	\$ 15,750.00
109 - 120	\$2.30	\$ 16,100.00

The number of square feet in the Building used to calculate the Rent will be the number of square feet in the Building that is set forth in the Final Plans. The parties will create a record of the number of square feet in the Building by executing a Commencement Date Certificate that is substantially in the form shown in Exhibit C. Each party shall execute the Commencement Date Certificate on or about the same time that it executes the Completion Notice, as defined in the Work Letter.

The Rent Factors, and Exhibit C, are subject to modification in accordance with Section 3.c. of the Work Letter.

- b. Renewal Terms. Rent during each Renewal Term will be at the then-fair market rental value of the Premises. The fair market rental value of the Premises will be established by the mutual agreement of the parties. If the parties fail to agree on the fair market rental value of the Premises by the date that is ninety days prior to the commencement of a Renewal Period, the parties will engage a real estate appraiser with knowledge of the commercial real estate market in the area to determine the fair market value of the Premises. The parties shall each bear one-half the cost of the appraiser.
- c. Fractional Month. Rent for any fractional month will be prorated and computed on a daily basis with each day's rent equal to one-thirtieth (1/30) of the monthly Rent.

5. Additional Rent. In addition to the rent set forth above, County shall pay Lessor the amounts set forth in subsections a. and b., below (together, "**Additional Rent**"). County shall pay Additional Rent monthly in accordance with Section 6 – Payment of Additional Rent.

After making the above payment, County has the right, exercisable upon reasonable prior written notice to Lessor, to inspect Lessor's books and records relating to the amounts charged to County as Additional Rent. County shall cause any such inspection to occur

within ninety days of receipt of the annual invoice. County may not withhold payment of the invoice until after the completion of such inspection. If, as a result of the above inspection of Lessor's books and records, County determines that it has made an overpayment of Additional Rent, then County has the right to deduct the amount of the overpayment from Rent that is due the month or months next following such determination.

a. Insurance. The Insurance Expense, as defined below.

"Insurance Expense" means the amount of Insurance, as defined below, actually paid or incurred by Lessor in any calendar year (or portion thereof).

"Insurance" means the All Risk Property Insurance maintained by Lessor covering the Premises and all improvements thereto for perils including fire and earthquake, if applicable, for an amount equal to full replacement cost; liability and other insurance that Lessor reasonably deems necessary on the Premises or that may be required by Lessor's mortgagee, including, but not limited to, earthquake and flood insurance.

b. Maintenance and Repairs. The Operating Expenses, as defined below.

"Operating Expenses" means the cost of operating and maintaining the Premises and includes, (i) all actual costs and expenses incurred by Lessor to operate and maintain the Premises, including the Building's entrances, walkways, sidewalks, lavatories, mechanical systems, fire or life safety systems, utilities, driveways, landscaped areas, and parking facilities and lighting that are within or contiguous to or serving the Building and are necessary or desirable for County's full use and enjoyment of the Premises, to repair Building facilities when reasonably required, to clean and remove trash and to provide security services, and (ii) an administrative management fee, for services rendered either by Lessor or by a third party manager, that is equal to no more than five percent of the total Operating Expenses, excluding administrative expenses, taxes, and insurance premiums.

Notwithstanding any provision of this Lease to the contrary, Lessor and County acknowledge and agree that the following items are excluded from Operating Expenses or other Additional Rent to be reimbursed or paid by County:

- i. Payments on any loans or ground leases affecting the Building.
- ii. Depreciation of any Building or any major systems of Building service equipment.
- iii. Any cost incurred in complying with hazardous materials laws.
- iv. Capital taxes, income taxes, corporate taxes, corporation capital taxes, excise taxes, profits taxes or other taxes personal to the Lessor.

- v. All costs and expenses that result from (1) Lessor's failure to maintain the Premises as required by this lease, or (2) construction defects.

6. Payment of Additional Rent.

- a. Annual Estimates. County shall pay the Estimated Monthly Additional Rent (defined below) monthly in advance, on the first day of each month, based on an estimate of what Lessor's actual costs and expenses for the relevant period will be. At the Commencement Date and at the beginning of each calendar year, Lessor shall provide County with a reasonable estimate of the amount of Additional Rent due for the upcoming year (or portion thereof). That amount will be divided by the number of months in the year (or portion thereof) to determine the "**Estimated Monthly Additional Rent.**"
- b. Annual Reconciliation. Within 120 days after the end of the calendar year, or, if applicable, within 120 days after the end of the term, Lessor shall (i) calculate the actual Additional Rent due for the calendar year most recently ended, and (ii) provide County with a statement that compares the actual expenses incurred by Lessor for that calendar year with the total payments of Estimated Monthly Additional Rent paid by County during such period (a "**Reconciliation Statement**"). If County's total payments of Estimated Monthly Additional Rent for the period are less than the amount of actual expenses incurred by Lessor, County shall pay to Lessor the amount of such deficiency within 30 days after receipt of the Reconciliation Statement. If County's total payments of Estimated Monthly Additional Rent for such period exceed actual expenses incurred by Lessor for such period, Lessor shall issue a refund to County for the excess amount within 30 days after issuance of the Reconciliation Statement.

7. Real Property Taxes. In addition to Rent and Additional Rent, County shall pay the Real Property Taxes (as defined below) paid or incurred by Lessor in any calendar year (or portion thereof). At the County's election, the County may pay the Real Property Taxes (i) directly to the taxing authority, or (ii) to Lessor, as reimbursement for Real Property Taxes paid by Lessor. County has Lessor's consent to work with the County Tax Collector to cause the Premises to be exempt from property taxes during the period of time that it is occupied only by County. If County undertakes this effort, Lessor shall take all steps reasonably requested by County to bring about such exemption.

"**Real Property Taxes**" means and includes all taxes, assessments (amortized over the longest period available to Lessor) levied or assessed upon the Premises, any state or local business taxes or fees measured by or assessed upon gross rentals or receipts, and other governmental charges, general and special, including, without limitation, assessments for public improvements or benefits, that are, during the Term of this lease, assessed, levied, and imposed by any governmental authority upon the Premises. Real Property Taxes do not include any late fees or penalties, any municipal, county, state or federal net income, estate, succession, inheritance, sales, use or franchise taxes of Lessor

or documentary transfer taxes, or tax increases of any kind in connection with the transfer, sale, or change of ownership of all or part of the Premises.

8. Use. County may use the Premises for the purpose of conducting various functions of County and any other purpose permitted by law.
9. Obligation to Pay Utilities and Janitorial. County shall pay for all janitorial, gas, electricity, water, sewer, and refuse collection services provided to the Premises.
10. Parking. At no additional cost, County has exclusive use of that number of standard-size and compact parking spaces in the Parking Lot that are shown on the Final Plans, as defined in the Work Letter. In addition, County has non-exclusive use of any public parking that is constructed adjacent to the Property.
11. Maintenance and Repairs.
 - a. Latent Defects. Notwithstanding any other provision of this lease, Lessor is responsible for the repair or replacement of all structural and/or latent defects in the Building.
 - b. Structure of Building. Lessor is responsible for the structural integrity of the Building.
 - c. Roof of Building. During the 10-year warranty period established between the Lessor and its contractor(s), and to the extent covered under said warranty, Lessor shall keep the roof of the Building in good order, condition and repair. Thereafter, provided any Warrantied Defects have been resolved to the County's satisfaction, the County shall keep the roof of the Building in good order, condition and repair. A "**Warrantied Defect**" is a defect that is (i) covered by the warranty, and (ii) discovered during the warranty period.
 - d. Exterior of Building. During the 1-year warranty period established between the Lessor and its contractor(s) and to the extent covered under said warranty, Lessor shall keep the exterior of the Building in good order, condition and repair, including the exterior doors and their fixtures, closers and hinges, exterior windows, glass and glazing. Thereafter, provided any Warrantied Defects have been resolved to the County's satisfaction, the County shall keep the exterior of the Building in good order, condition, and repair. The County shall provide and maintain all security alarms, locks and key systems used in the Premises.
 - e. Building Systems. During the 1-year warranty period established between the Lessor and its contractor(s) and to the extent covered under said warranty, Lessor shall repair and maintain the interior electrical, lighting, water and plumbing systems in good order, condition and repair. Thereafter, provided any Warrantied Defects have been resolved to the County's satisfaction, the County shall repair and maintain the interior electrical, lighting, water and plumbing systems.

- f. HVAC. During the 1-year warranty period established between the Lessor and its contractor(s) and to the extent covered under said warranty, Lessor shall maintain and repair the heating, ventilating and air conditioning (HVAC) systems in the Building. Thereafter, provided any Warrantied Defects have been resolved to the County's satisfaction, the County shall maintain and repair the HVAC systems. The County is responsible for maintaining any supplemental cooling unit that it adds to serve the Building.
 - g. Parking; Exterior Lighting; Landscaping. The County shall maintain the Parking Lot, exterior lighting system, irrigation system and landscaping in good order, condition and repair, and shall provide pest and rodent control services to the exterior of the building.
 - h. Janitorial. County shall provide its own janitorial service to the Building, including exterior window cleaning.
 - i. Fire Extinguishers and Smoke Alarms. Lessor shall provide and install the necessary fire extinguishers and Smoke Alarms in the Building, as directed by the Fire Marshall, at no cost to County. County shall thereafter maintain, repair, and replace fire extinguishers and smoke alarms as required by fire code.
 - j. Services by County. If at any time during the Term, a County Representative, as defined in the Work Letter, determines that the Premises are in need of maintenance, construction, remodeling or similar service that is beyond Lessor's responsibilities under this lease, following receipt of a written request from the County Representative, Lessor shall perform such service at an agreed-upon cost to the County. In performing the service, Lessor shall consult with the County Representative and use either licensed insured contractors or employees of Lessor. Lessor shall obtain the County Representative's prior written approval of the scope, terms, and cost of any contracts. The County Representative may, by giving Lessor thirty (30) days prior written notice, change the level of service, terminate any or all service, or require that a service be performed by a different contractor.
12. Inspection. Lessor, or its proper representative or contractor, may enter the Premises at any reasonable time by prior appointment, which appointment must be scheduled at least 24 hours in advance, for the purpose of inspecting the interior of the Building or performing maintenance or repair services.
13. Perilous Conditions. If the County Representative becomes aware of a Perilous Condition, the County Representative will immediately notify Lessor of the Perilous Condition and Lessor shall use its best efforts to eliminate the Perilous Condition. For purposes of this lease, a "**Perilous Condition**" is a physical condition of the Premises that (i) in the opinion of the County Representative substantially and significantly threatens the health and safety of County employees and/or invitees, and (ii) is the responsibility of Lessor under the terms of this lease. The County Representative's

notice of a Perilous Condition may be delivered to Lessor by telephone or email as follows:

Contact: Charles Ching
Office Phone No.: (510) 215-2004
Cell Phone No.: (707) 386-8067
Email Address: charlesc@sanpabloca.gov

Lessor shall immediately address any condition reasonably constituting an emergency, whether Lessor learns of the condition through County or otherwise.

If Lessor fails to address a Perilous Condition within twenty-four (24) hours after County's notice or to immediately address an emergency situation, County may attempt to resolve the Perilous Condition or emergency situation. Lessor shall reimburse County for any costs incurred by County in addressing the Perilous Condition or emergency situation promptly upon receipt of County's invoice. If Lessor fails to reimburse County within ten business days of the receipt of County's invoice, County may deduct the amount of the invoice from Rent.

14. Quiet Enjoyment. Provided County is in compliance with the material terms of this lease, Lessor shall warrant and defend County in the quiet enjoyment and possession of the Premises during the Term.
15. Assignment and Sublease. County has the right to assign this lease or sublease the Premises or any part thereof at any time during the Term with the written approval of Lessor, which approval, if the assignment or sublease is to another public entity, will not be unreasonably withheld or delayed. Lessor's approval of an assignment or sublease to a private person or entity shall be at Lessor's sole discretion. Upon the assignment of the lease by County approved by the Lessor, the County will have no further obligation under the lease.
16. Alterations; Fixtures and Signs. County may (i) make any lawful and proper minor alterations to the Premises and (ii) attach fixtures and signs ("**County Fixtures**") in or upon the Premises. County may construct and install a sign on the Building and, in a location mutually acceptable to Lessor and County, erect a 4' x 4' exterior monument sign identifying the County as the occupant of the Building. Any County Fixtures will remain the property of County and may be removed from the Premises by County at any time during the Term. County is responsible for the cost of all alterations and County Fixtures. All alterations and County Fixtures are subject to Lessor's approval and must comply with existing code requirements and building standards.
17. Prior Possession. County has the right to install fixtures, telephones, alarm systems, and other items required to prepare the Premises for County's occupancy and to store furniture, supplies and equipment, provided such work and storage and can be effected without unduly interfering with Lessor's completion of any tenant improvements.

18. Insurance.
- a. Liability Insurance. Throughout the Term, County shall maintain in full force and effect, at its sole expense, a general self-insurance program covering bodily injury (including death), personal injury, and property damage, including loss of use. County shall provide Lessor with a letter of self-insurance affirming the existence of the aforementioned self-insurance program.
 - b. Self-Insurance Exclusion. County's self-insurance does not provide coverage for negligence, willful misconduct, or other intentional act, error or omission of Lessor, its officers, agents, or employees.
19. Surrender of Premises. On the last day of the Term, or sooner termination of this lease, County shall peaceably and quietly leave and surrender to Lessor the Premises, along with appurtenances and fixtures at the Premises (except County Fixtures), all in good condition, ordinary wear and tear, damage by casualty, condemnation, acts of God and Lessor's failure to make repairs required of Lessor excepted. County is not responsible for painting or for repairing or replacing any floor coverings in the Premises upon the expiration or earlier termination of this lease.
20. Waste, Nuisance. County may not commit, or suffer to be committed, any waste upon the Premises, or any nuisance or other act or thing that may disturb the quiet enjoyment of any other occupant of the Building.
21. Destruction. If damage occurs that causes a partial destruction of the Premises during the Term from any cause and repairs can be made within one hundred eighty days from the date of the damage under the applicable laws and regulations of governmental authorities, Lessor shall repair the damage promptly. Such partial destruction will not void this lease, except that County will be entitled to a proportionate reduction in Rent while such repairs are being made. The proportionate reduction in Rent will be calculated by multiplying Rent by a fraction, the numerator of which is the number of square feet that are unusable by County and the denominator of which is the total number of square feet in the Premises.
- If repairs cannot be made in one hundred eighty days, County will have the option to terminate the lease or request that Lessor make the repairs within a reasonable time, in which case, Lessor will make the repairs and Rent will be proportionately reduced as provided in the previous paragraph.
- This lease will terminate in the event of a total destruction of the Building or the Premises.
22. Hazardous Material. Lessor warrants to County that Lessor does not have any knowledge of the presence of Hazardous Material (as defined below) or contamination of the Building or Premises in violation of environmental laws. Lessor shall defend, save, protect and hold County harmless from any loss arising out of the presence of any

Hazardous Material on the Premises that was not brought to the Premises by or at the request of County, its agents, contractors, invitees or employees. Lessor acknowledges and agrees that County has no obligation to clean up or remediate, or contribute to the cost of clean-up or remediation, of any Hazardous Material unless such Hazardous Material is released, discharged or spilled on or about the Premises by County or any of its agents, employees, contractors, invitees or other representatives. The obligations of this Section shall survive the expiration or earlier termination of this lease. County will not bring any Hazardous Material of any unusual quantity onto the Premises.

“Hazardous Material” means any substance, material or waste, including lead based paint, asbestos and petroleum (including crude oil or any fraction thereof), that is or becomes designated as a hazardous substance, hazardous waste, hazardous material, toxic substance, or toxic material under any federal, state or local law, regulation, or ordinance.

23. Indemnification.

- a. County. County shall defend, indemnify and hold Lessor harmless from County’s share of any and all claims, costs and liability for any damage, injury or death of or to any person or the property of any person, including attorneys’ fees, caused by the willful misconduct or the negligent acts, errors, or omissions of County, its officers, agents or employees in using the Premises pursuant to this lease, or the County’s performance under this lease, except to the extent caused or contributed to by (i) the structural, mechanical, or other failure of buildings owned or maintained by Lessor, and/or (ii) the negligent acts, errors, or omissions of Lessor, its officers, agents, or employees.
- b. Lessor. Lessor shall defend, indemnify and hold County harmless from Lessor’s share of any and all claims, costs and liability for any damage, injury or death of or to any person or the property of any person, including attorneys’ fees, caused by the willful misconduct or the negligent acts, errors or omissions of Lessor, its officers, agents, employees, with respect to the Premises, or Lessor’s performance under this lease, or the Lessor’s performance, delivery or supervision of services at the Premises, or by the structural, mechanical or other failure of buildings owned or maintained by Lessor, except to the extent caused or contributed to by the negligent acts, errors, or omissions of County, its officers, agents, or employees.

24. Default.

The occurrence of any of the following events is a default under this lease:

- a. County.
 - i. County’s failure to pay Rent within ten business days after receipt of a written notice of failure (a **“Notice”**) from Lessor to County; provided, however, that County will have additional time if its failure to pay Rent is due to circumstances beyond its reasonable control, including, without

limitation, failure of the County's Board of Supervisors to adopt a budget. In no event may such additional time exceed seventy-five days from receipt of a Notice.

- ii. County's failure to comply with any other material term or provision of this lease if such failure is not remedied within thirty days after receipt of a Notice from Lessor to County specifying the nature of the breach in reasonably sufficient detail; provided, however, if such default cannot reasonably be remedied within such thirty day period, then a default will not be deemed to occur until the occurrence of County's failure to comply within the period of time that may be reasonably required to remedy the default, up to an aggregate of ninety days, provided County commences curing such default within thirty days and thereafter diligently proceeds to cure such default.

b. Lessor.

- i. Lessor's failure to complete the Tenant Improvements in accordance with the Work Letter.
- ii. Lessor's failure to perform any obligation under this lease if such failure is not remedied within thirty days after receipt of a Notice from County to Lessor specifying the nature of the breach in reasonably sufficient detail; provided, however, if such breach cannot reasonably be remedied within such thirty-day period, then a default will not be deemed to occur until the occurrence of Lessor's failure to perform within the period of time that may be reasonably required to remedy the breach, up to an aggregate of ninety days, provided Lessor commences curing such breach within thirty days and thereafter diligently proceeds to cure such breach.

25. Remedies.

- a. Lessor. Upon the occurrence of a default by County, Lessor may, after giving County written notice of the default, and in accordance with due process of law, reenter and repossess the Premises and remove all persons and property from the Premises.

b. County.

- i. If Lessor fails to meet the deadlines applicable to construction of the Tenant Improvements set forth in Section 17 of the Work Letter, County may terminate this lease by giving written notice to Lessor with no cost or obligation to County. Such termination is effective on the effective date of the written notice.
- ii. If within sixty (60) days after the Substantial Completion Date (as defined in the Work Letter) County has provided notice to Lessor of a design, material or

workmanship defect in the Building or the Tenant Improvements and Lessor has failed to promptly commence and diligently complete the remedy of such defect within thirty (30) days of receiving County's notice (or such reasonable additional time if the remedy will require more than thirty (30) days to complete), County may thereafter terminate this lease by giving written notice to Lessor with no cost or obligation to County. Such termination is effective on the effective date of the written notice.

- iii. Upon the occurrence of any other default by Lessor, County may proceed to repair or correct the failure and, at County's option, either deduct the cost thereof from Rent due to Lessor, or invoice Lessor for the cost of repair, which invoice Lessor shall pay in full promptly upon receipt.

26. Notices. Except as provided in Section 13 - Perilous Conditions, any notice required or permitted under this lease shall be in writing and sent by overnight delivery service or registered or certified mail, postage prepaid and directed as follows:

To Lessor: City of San Pablo
 13831 San Pablo Avenue
 San Pablo, CA 94806
 Attn: City Manager

To County: Contra Costa County
 Public Works Department
 Attn: Principal Real Property Agent
 255 Glacier Drive
 Martinez, CA 94553
 Facsimile: (925) 646-0288

Either party may at any time designate in writing a substitute address for that set forth above and thereafter notices are to be directed to such substituted address. If sent in accordance with this Section, all notices will be deemed effective (i) the next business day, if sent by overnight courier, or (ii) three (3) days after being deposited in the United States Postal system.

27. Lessor's Representation and Warranties. Lessor represents and warrants the following:

- a. Lessor is the owner of the Property.
- b. The person signing this lease is authorized to be the sole signatory on behalf of the Lessor.
- c. The Property is zoned to permit its use for the purposes contemplated by this lease.
- d. The Property is free of restrictions and encumbrances, except for those restrictions and encumbrances identified in the Preliminary Report issued by Old Republic Title

Company dated February 29, 2016 (the “**Title Report**”) that are acceptable to the County.

28. Right of First Refusal. Provided the County is not then in default under this lease, the County has a right of first refusal (“**Right of First Refusal**”) in the event Lessor (i) decides to sell the Property or (ii) receives any unsolicited offer from a third party offering to purchase the Property (a “**Third-party Offer**”) during the Term that the Lessor desires to accept. Upon determining to sell the Property or upon receiving a Third-party Offer, Lessor shall present either Lessor’s proposed price or the Third-party Offer price, as applicable (the “**Purchase Offer**”), to the County in writing.

In the case of the Lessor desiring to sell the Property without having received an unsolicited Third-party Offer, the County will then have the right to either purchase the Property at Lessor’s proposed price, or present Lessor with a counter-offer (“**County’s Counter-offer**”) within sixty (60) days after the County’s receipt of Lessor’s Purchase Offer. Upon the presentation of the County’s Counter-offer to Lessor, Lessor and the County agree to negotiate in good faith the County’s purchase of the Property. If the parties are unable to agree to a price within thirty (30) days from the date County presents Lessor with County’s Counter-offer, Lessor may sell the Property to any third party for any amount greater than County’s Counter-offer.

In the event that Lessor receives an unsolicited Third-party Offer to purchase the Property that Lessor desires to accept, Lessor shall present a copy of the written Third-party Offer to the County for its review. The County will then have thirty (30) days to match the terms of the Third-party Offer. If County declines to match the Third-party Offer, Lessor may complete the sale to that third-party at a price at least equal to that Third-party Offer.

If Lessor does not complete the sale to that third-party, then the County retains its Right of First Refusal to any subsequent sale by Lessor.

Lessor’s sale of the Property for a price lower than either the County’s Counter-offer or the Third-party Offer price is a default of this lease.

The County’s Right of First Refusal does not apply to any internal transfers, tax related restructuring or to any action by any Lessor lender.

29. Successors and Assigns. This lease binds and inures to the benefit of the heirs, successors, and assigns of the parties hereto.
30. Holding Over. Any holding over after the Term of this lease is a tenancy from month to month and is subject to the terms of this lease.
31. Accessibility. As of the date of this lease, the Premises has not been inspected by a Certified Access Specialist.

32. Time is of the Essence. In fulfilling all terms and conditions of this lease, time is of the essence.
33. Governing Law. The laws of the State of California govern all matters arising out of this lease.
34. Severability. In the event that any provision herein contained is held to be invalid or unenforceable in any respect, the validity and enforceability of the remaining provisions of this lease will not in any way be affected or impaired.
35. Recording. Upon the execution of this lease, the parties shall execute and record a Memorandum of Lease in substantial conformity with Exhibit B, in lieu of recording the entire lease. Upon the expiration or earlier termination of this lease, County shall execute a Memorandum of Lease Termination or Quitclaim Deed discharging any recording made pursuant to this Section 35.

[Remainder of Page Intentionally Left Blank]

36. Entire Agreement; Construction; Modification. Neither party has relied on any promise or representation not contained in this lease. All previous conversations, negotiations, and understandings are of no further force or effect. This lease is not to be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared it. This lease may be modified only by a writing signed by both parties.

The parties are executing this lease on the date set forth in the introductory paragraph.

COUNTY OF CONTRA COSTA, a political
subdivision of the State of California

CITY OF SAN PABLO

By: _____
Julia R. Bueren
Director of Public Works

By: _____
Matt Rodriguez
City Manager

RECOMMENDED FOR APPROVAL:

Attested by:

By: _____
Karen A. Laws
Principal Real Property Agent

By: _____
Charles Ching
Assistant to the City Manager

By: _____
David L. Silva
Supervisory Real Property Agent

APPROVED AS TO FORM:

APPROVED AS TO FORM
SHARON L. ANDERSON, COUNTY COUNSEL

By: _____
C. Nicole Murphy
City Attorney

By: _____
Kathleen M. Andrus
Deputy County Counsel

EXHIBIT A

Legal Description of Property

EXHIBIT A - 2

Legal Description of Premises
To be inserted when known

EXHIBIT B
FORM OF MEMORANDUM OF LEASE AGREEMENT

Recorded at the request of:
Contra Costa County

Return to:
Contra Costa County
General Services Department
2355 Glacier Drive
Martinez, CA 94553

Assessor's Parcel No. _____

MEMORANDUM OF LEASE

This Memorandum of Lease is dated _____, 201__, and is between the City of San Pablo, a municipal corporation of the State of California (“**Lessor**”), and the County of Contra Costa, a political subdivision of the State of California (“**County**”).

On _____, 201__, Lessor and County entered into a written lease (“Lease”) by which County agreed to lease the building commonly known as [insert address of building] from Lessor. The building being leased consists of approximately 7,000 square feet of floor space, and a parking lot. The real property where the building is located (“**Property**”) is legally described as shown on Exhibit A to this Memorandum of Lease.

The Lease is for a period of ten years, commencing on _____, 20__ and continuing to _____. County has two options to renew the Lease for a term of ten years for each option on certain conditions. County has a right of first refusal to purchase the Property during the term of the Lease.

This Memorandum of Lease does not constitute the Lease and is only an abbreviated form containing a summary of only a few of the terms. In the event that there is any inconsistency between this Memorandum of Lease and the Lease, the terms of the Lease prevail over the terms of this Memorandum of Lease.

COUNTY OF CONTRA COSTA, a
political subdivision of the State of California

CITY OF SAN PABLO a municipal a
corporation of the State of California

By: _____
Julia R. Bueren
Director of Public Works

By: _____
Name and Title

[Attach Notary Forms]

Exhibit A

Legal Description of Property

EXHIBIT C

FINAL SQUARE FOOTAGE CERTIFICATE

This Final Square Footage Certificate (“Certificate”) is dated _____, 20__, and is part of the lease dated _____, 20__, (the “Lease”) between the CITY OF SAN PABLO, a municipal corporation of the State of California (“Lessor”), and the COUNTY OF CONTRA COSTA, a political subdivision of the State of California (“County”), under which the County is leasing real property situated in San Pablo, California commonly known as the Plaza San Pablo, as more particularly described in the Lease.

Lessor and County mutually agree as follows:

1. Terms. All capitalized terms not defined in this Certificate have the meanings ascribed to them in the Lease. The provisions of this Certificate supplement the Lease and are specifically subject to the provisions of the Lease. If there is a conflict between the provisions of the Lease and the provisions of this Certificate, the provisions of the Lease control.
2. Actual Square Footage. Based on the Final Plans, the rentable square footage of the Building is _____ square feet.
3. Rent Calculation. Based on the rentable square footage of the Building, the following monthly Rent is payable during the Initial Term:

<u>Months</u>	<u>Rent Factor</u>	<u>Monthly Rent</u>
01 - 12	\$1.85	\$ _____
13 - 24	\$1.90	\$ _____
25 - 36	\$1.95	\$ _____
37 - 48	\$2.00	\$ _____
49 - 60	\$2.05	\$ _____
61 - 72	\$2.10	\$ _____
73 - 84	\$2.15	\$ _____
85 - 96	\$2.20	\$ _____
97 - 108	\$2.25	\$ _____
109 - 120	\$2.30	\$ _____

The parties are executing this Certificate as of the date first above written.

COUNTY

COUNTY OF CONTRA COSTA, a subdivision of the State of California

By: _____
Julia R. Bueren
Director of Public Works

LESSOR

CITY OF SAN PABLO, a municipal corporation of the State of California

By: _____
Name:
City Manager