

WORK LETTER

Health Services Department - WIC
Plaza San Pablo Business Center
San Pablo, California

_____, 2016

This work letter (“**Work Letter**”) is part of the lease (“**Lease**”) executed concurrently herewith between the CITY OF SAN PABLO, a municipal corporation of the State of California, as lessor (“**Lessor**”), and the COUNTY OF CONTRA COSTA, as tenant (“**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 herein have the meanings ascribed to them in the Lease. The provisions of this Work Letter 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 Work Letter, the provisions of the Lease control. Whenever the approval of the County is required hereunder, approval is required of the County’s Director of Public Works or her designee (the “**County Representative**”).
2. Scheduled Completion Date. Lessor covenants and agrees that it will cause the Substantial Completion Date, as defined below, to occur no later than September 30, 2018 (the “**Scheduled Completion Date**”).
3. Base Building Work.
 - a. Lessor, at Lessor’s cost and expense, will cause the core and shell of the Building to be constructed on the Premises (such work, the “**Base Building Work**”). The Base Building Work includes, but is not limited to, construction of the Building, including the following elements: (a) sealed concrete floors (without floor coverings), (b) finished perimeter walls ready for paint (including windows, window frames, and exterior doors), (c) a heating and air conditioning system including ductwork and Allerton controls, (d) finished ceramic floors and walls in restrooms, (e) closets for telephone and electrical systems (but not the telephone systems themselves), (f) Building mechanical, electrical, and plumbing systems within the Building core only, (g) interior core walls, (h) fire alarms and fire suppression sprinkler systems in the Building, as required by code, (i) all items necessary for the Building to satisfy the provisions of the Americans with Disabilities Act (ADA), including, without limitation, washrooms, elevators, drinking fountains, and the parking area, (j) all code-required items relating to the other elements of the core building, such as exit

- signs, speakers, fire doors, and any other life-safety support system, (k) dry wall and tape of interior columns, (l) a direct and securable access to the main point of entry (“MPOE”) for communication service to the building and an AT&T-approved pathway to curbside for the MPOE.
- b. Lessor shall perform the Tenant Improvements, as defined below, in accordance with the County’s specifications and standards, which will be incorporated into the Final Plans, as defined below.
- c. The estimated cost of completing the Base Building Work is \$300 per square foot (the “**Base Estimate**”). Lessor will provide to County a copy of the Contractors bid for the Base Building Work. If, as a result of the competitive bidding process described in Section 6 (Contractor) below, the cost of completing the Base Building Work exceeds the Base Estimate, the County shall elect one of the following options:
- i. Through consultation with the Architect, modifying the Interim Final Plans, as defined below, to cause the cost of completing the Base Building Work to be equal to, or less than, the Base Estimate. Any change to the Interim Final Plans must be approved by the County.
 - ii. Recalculating the Rent due under the Lease by increasing the Rent Factors shown on Exhibit C to the Lease. Any such increase will be equal to the result obtained by multiplying the Rent Factors by the Base Adjustment Factor. The “**Base Adjustment Factor**” is an amount that is equal to the result obtained by dividing (i) the cost of completing the Base Building Work by (ii) the Base Estimate. For example, if the cost of completing the Base Building Work is \$315, the Base Adjustment Factor would be 1.05. ($\$315 \div \300 .) If the Rent Factors are adjusted in accordance with this section, the parties shall incorporate such adjustments in the Lease by (x) modifying Exhibit C to the Lease to reflect the changes in the Rent Factors, (y) labeling the modified exhibit as Exhibit C-1, and (z) replacing Exhibit C to the Lease with Exhibit C-1.
 - iii. Terminating the Lease, including this Work Letter.
4. Tenant Improvements. Subject to the conditions set forth below, Lessor shall cause the improvements to the Building that are described on Schedule 1 attached hereto and incorporated herein (the “**Tenant Improvements**”) to be constructed and installed in accordance with (i) the Space Plans, as defined below, (ii) the Construction Schedule, attached hereto as Schedule 3 – Construction Schedule, and (iii) the Final Plans, as defined below.

For purposes of this Work Letter, “**Construction Schedule**” means the schedule that (i) has been provided by the Contractor, as defined below, and has been agreed upon by Lessor and County, (ii) identifies the work to be accomplished to complete the Base Building Work and Tenant Improvements and the sequence of that work, and (iii) sets

forth the dates by which certain components of the work must be completed. If the Lessor and County have not agreed upon the Construction Schedule within thirty (30) days of receipt thereof from the Contractor, either party may terminate the Lease and this Work Letter 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.

5. Allowance. The total cost of completing the Tenant Improvements (the “**Total Cost**”) is estimated to be \$900,000.00. The Total Cost is comprised of the fees and costs connected with the Tenant Improvements that are approved by County, including, but not limited to: hard construction costs, architect and design fees, contractor fees, engineering fees, and the cost of plans and permits obtained in connection with the Tenant Improvements.

The Lessor is providing the County with an allowance in the amount of \$25.00 per square foot of the Building (the “**Allowance**”) to be applied to the Total Cost. For example, if the total square footage of the Building is 7,000, then the Allowance will be in the amount of \$175,000.00. The County is responsible for payment of the amount by which the Total Cost exceeds the Allowance. The Lessor shall make payments to the Contractor for construction of the Tenant Improvements in accordance with Section 10 (Progress Payments). Once the Lessor has paid all of the Allowance to the Contractor in accordance with Section 10 (Progress Payments), the County shall reimburse Lessor for payments made to the Contractor. The total amount reimbursed to Lessor by the County will equal the result obtained by subtracting the Allowance from the Total Cost. Such reimbursements are to be made in accordance with Section 10 (Progress Payments).

If, subsequent to the execution of this agreement, the County requests, in writing, changes to the Final Plans that increase the cost of constructing the Tenant Improvements, such additional costs will be added to the Total Cost and the County will reimburse Lessor for such additional costs as set forth herein.

6. Contractor. Lessor shall use a competitive bid package approved by the County to select a contractor that is acceptable to the County (the “**Contractor**”) to construct the Tenant Improvements. Lessor shall provide a copy of all proposals and bids related to the construction of the Building and the Tenant Improvements to County. Lessor shall permit County to attend any meetings between Lessor and potential contractors that precede the award of a contract. Lessor shall cause Contractor to obtain all licenses and permits necessary to effect the construction of the Building and the Tenant Improvements and, upon completion of the Building and the Tenant Improvements, any required occupancy permits.
7. Contractor Warranties. Lessor is responsible for obtaining, at a minimum, the warranties described in Section 11 of the Lease (Maintenance and Repairs) from its contractors, subcontractors and suppliers, as applicable.
8. Plans. Lessor and County are entering into the Lease prior to agreeing on written space plans for the build-out of the Tenant Improvements (the “**Space Plans**”). Lessor and

County shall cooperate in good faith to finalize the Space Plans without delay. County shall fully cooperate by providing Lessor, its architects, engineers, and contractors with timely information and approvals of plans, drawings, and specifications. Any acts by County to delay or otherwise act negligently or in bad faith in approving the Space Plans and/or cooperating with Lessor in the design and construction of the Tenant Improvements will result in a Tenant Delay (as hereinafter defined) under this Work Letter. Upon agreement by Lessor and County on the Space Plans, a true and correct copy of the Space Plans will be attached to this Work Letter as Schedule 2.

9. Modifications to the Plans.

- a. Lessor and County acknowledge that the Space Plans may not depict certain structural elements of the Building and/or various elements of the Building systems that may necessitate modifications to the Space Plans and specifications for the Tenant Improvements (collectively “**Structural Modifications**”). Furthermore, any final plans and specifications for the construction of the Tenant Improvements may require modification to account for Applicable Laws and Restrictions. “**Applicable Laws and Restrictions**” means all laws (including, without limitation, the Americans with Disabilities Act), building codes, ordinances, regulations, title covenants, conditions, and restrictions, and casualty underwriters’ requirements applicable to the Building and the Tenant Improvements.
- b. Within sixty (60) days after the date the Space Plans have been agreed upon by Lessor and County and attached to this Work Letter as Schedule 2, Lessor shall cause to be prepared final plans and specifications in substantial conformity with the Space Plans, taking into account (a) Structural Modifications, (b) the requirements of the Applicable Laws and Restrictions, (c) other modifications resulting from physical constraints of the Building, and (d) modifications requested by County and consented to by Lessor, which consent may not be unreasonably withheld (the “**Interim Final Plans**”). Once the cost of the Base Building Work has been reviewed in accordance with Section 3.c. of this Work Letter and any resulting changes have been agreed to by County and Lessor, the Interim Final Plans will be deemed the “**Final Plans**.” Once completed, the Final Plans will be attached to this Work Letter as Schedule 4.
- c. Any and all modifications of, or amendments to, the Space Plans and the Final Plans (including all working drawings and other supplements thereto, but excluding immaterial field changes and Structural Modifications), are subject to the prior written approval of County. Material "or equal" items or substitute items provided for in the specifications forming part of the Final Plans are subject to the prior written approval of County, which approval may not be unreasonably withheld or delayed. Samples of such “or equal” or substitute materials, together with any additional supplemental information that may be necessary for County's review, are to be submitted to County in a timely manner.

10. Progress Payments. The Lessor shall pay the Contractor for work performed in constructing the Tenant Improvements at the twenty-five percent (25%), fifty percent

(50%), seventy-five percent (75%) and ninety percent (90%) completion points (each such payment a “**Progress Payment**”). Each completion point will be determined by Lessor’s architect (the “**Architect**”) and confirmed by the County Representative.

- a. Basis of Payment. Subject to Section 10.b. below (Progress Payment Retention), the amount of each Progress Payment is to be equal to the approved cost of the work performed, as established by the Cost Schedule, less any amounts previously paid.
 - b. Progress Payment Retention. The Lessor shall retain an amount equal to ten percent (10%) of each Progress Payment (the “**Retention**”). The Retention will be paid when the Tenant Improvements have received final inspection and all Punchlist (defined below) items have been completed to the County’s satisfaction.
 - c. Reimbursement. The County shall reimburse the Lessor for each Progress Payment and the Retention within ten business days after receipt of all of the following:
 - i. An invoice from the Lessor for the respective Progress Payment that is accompanied by (i) copies of invoices from the Contractor and suppliers that support the amount for which the Lessor seeks reimbursement, and (ii) any other documentation reasonably requested by the County.
 - ii. With respect to reimbursement for the Retention, a copy of all lien releases from all contractors and suppliers.
11. Inspections. The County and its representatives may enter the Property at all reasonable times for the purpose of inspecting the progress of construction of the Building and Tenant Improvements.
12. Compliance with Laws; Standards of Performance. Lessor, at its expense as part of the Allowance, shall (i) obtain all approvals, permits and other consents required to commence, perform and complete the Tenant Improvements, and, if applicable, shall deliver a certificate of occupancy to County, and (ii) shall cause the Tenant Improvements to be constructed in accordance with the following performance standards: the Building and the Tenant Improvements are to be constructed by qualified well-trained, adequately supervised workers, in a good and workmanlike manner, free from design, material and workmanship defects in accordance with the Final Plans and all Applicable Laws and Restrictions (the “**Performance Standards**”). Lessor warrants that the Building and all Tenant Improvements shall be constructed in accordance with the Performance Standards. Notwithstanding anything to the contrary in the Lease or this Work Letter, County’s acceptance of possession of the Building does not waive this warranty and Lessor shall promptly remedy all violations of the warranty at its sole cost and expense.
13. Completion Notice; Inspection; Substantial Completion Date.

- a. When Lessor deems construction of the Building and the Tenant Improvements to be Substantially Complete, as defined below, Lessor shall tender delivery to County by delivering a “**Completion Notice**” in substantial conformity with Schedule 5. For purposes of this Work Letter, the phrase “**Substantially Complete**” means (i) construction of the Building and the Tenant Improvements have been substantially completed in accordance with the Final Plans and Applicable Laws and Restrictions, (ii) there is no incomplete or defective work that unreasonably interferes with County’s use of the Building, (iii) all necessary government approvals for legal occupancy of the Building have been obtained (including, if applicable, a Certificate of Occupancy), and (iv) all utilities are hooked up and available for use by County.
 - b. Upon receipt of the Completion Notice, a representative of the County, a representative of Lessor, and the Architect will immediately inspect the Building and the Tenant Improvements for the purpose of establishing that the Building and the Tenant Improvements are Substantially Complete. Once County and the Architect are satisfied that the Building and the Tenant Improvements appear to be Substantially Complete, both shall so indicate by countersigning the Completion Notice. The Building will be deemed delivered to County on the day that both County and the Architect have countersigned the Completion Notice (the “**Commencement Date**” and the “**Substantial Completion Date**”).
14. Punchlist. County has sixty days from the Substantial Completion Date to provide Lessor with a written list of any items that are defective, incomplete, or do not conform to the Final Plans or to Applicable Laws and Restrictions (a “**Punchlist**”). County may augment the Punchlist at any time on or before ten days after the Substantial Completion Date. County’s failure to specify any item on the Punchlist, however, does not waive Lessor’s obligation to construct the Building and the Tenant Improvements in accordance with this Work Letter. Lessor shall remedy all items on the Punchlist as soon as practicable and in any event within thirty days of Lessor receiving the Punchlist. If Lessor fails to remedy all items on the Punchlist within the thirty-day period (exempt as to items, if any, that require more than thirty days to complete), then County may, upon twenty days prior notice to Lessor, complete any Punchlist items and deduct the cost of such work from the Rent next coming due under the Lease until County is reimbursed in full.
15. Delay. The Commencement Date will be delayed by one day for each day of delay in the completion of the Tenant Improvements that is caused by a Lessor Delay, as defined below. The Commencement Date will not be delayed due to a County Delay, as defined below. No Lessor Delay or County Delay will be deemed to have occurred unless and until the party claiming the delay provides written notice to the other party specifying the action or inaction that constitutes a Lessor Delay, or County Delay, as applicable. If such action or inaction is not cured within one day after receipt of the notice, then a Lessor Delay, or County Delay, as set forth in the notice, will be deemed to have occurred commencing as of the date the notice is received and continuing for the number of days the completion of the Tenant Improvements is in fact delayed as a direct result of such action, inaction or event.

- a. The term “**Lessor Delay**” means any actual delay in the completion of Tenant Improvements that is caused solely by any of the following: (i) Lessor not responding to requests for authorization or approval within the time period provided for a response to such request or, if no such time is stated, beyond a reasonable time therefor, and (ii) the acts or failures to act, whether willful, negligent, or otherwise, of Lessor, its agents, or contractors, to the extent contrary to the terms hereof.
- b. The term “**County Delay**” means any actual delay in the completion of the Tenant Improvements that is caused solely by any of the following: (i) changes in the Final Plans requested by County, (ii) the County not furnishing information or giving any approvals or authorizations within the time limits set forth for such performance in this Work Letter, or if no time is set forth for such performance in this Work Letter, then a reasonable time therefor, and (iii) the acts or failures to act, whether willful, negligent, or otherwise, of County, its agents, or contractors, to the extent contrary to the terms hereof.

16. County's Work.

- a. Any item of work not shown in the Final Plans, including, for example, telephone and data service or furnishings (“**County’s Work**”), may be performed by County through contractors selected by County and approved by Lessor, which approval may not be unreasonably withheld or delayed. Upon a timely request by County, Lessor shall perform the County’s Work through contractors selected by Lessor and approved by County. If Lessor performs the County’s Work, County shall reimburse Lessor for the full cost thereof upon receipt by County of receipted invoices for work performed or materials supplied. If County performs all or any portion of the County’s Work, Lessor shall allow County prompt and reasonable access to the Building, provided, in Lessor's reasonable opinion, the County’s Work can be performed by County without undue interference with the completion of the Tenant Improvements.
- b. Lessor shall furnish water, electricity, adequate elevator service and HVAC to the Building during the performance of any of County’s Work during normal working hours of the Tenant Improvement project, without charge to County.

17. County’s Right to Terminate. County may terminate the Lease and this Work Letter by delivering a written termination notice to Lessor upon the occurrence of any of the following events:

- a. A permit required for construction of the Building has not been issued on or before the last day for issuance of the permits specified in the Construction Schedule.
- b. A permit required for construction of the Tenant Improvements has not been issued on or before the last day for issuance of the permits specified in the Construction Schedule.

- c. Lessor fails to execute a construction contract for the Building with a general contractor on or before June 1, 2017.
- d. Lessor fails to cause construction of the Tenant Improvements to commence on or before March 31, 2018.
- e. The Substantial Completion Date does not occur on or before the Scheduled Completion Date (as the same may be adjusted for County Delays in accordance with this Work Letter) and Lessor fails to Substantially Complete the Tenant Improvements on or before the fifth day after written notice by County to Lessor of its intent to terminate pursuant to this section.

18. Construction Period Insurance.

- a. Throughout the construction of the Tenant Improvements and the County's Work, if the County's Work is performed by Lessor, Lessor shall carry and shall cause all contractors and their subcontractors to carry the insurance set forth below covering all occurrences on the Property and in or about the Building, and the County shall be named as a party assured, together with the Lessor, contractor or subcontractor, as the case may be:
 - i. Workers' compensation insurance in statutory limits;
 - ii. Lessor: Commercial general liability insurance, including contractual liability, owners and contractors protective liability for a period of one year after substantial completion, with limits of not less than \$2,000,000 per occurrence;
 - iii. Contractors and Subcontractors: Commercial general liability insurance, including contractual liability, owners and contractors protective liability for a period of one year after substantial completion, with limits of not less than \$1,000,000 per person and \$1,000,000 per occurrence;
 - iv. Comprehensive automobile liability in minimum limits of \$500,000 for bodily injury or death to one person and \$1,000,000 for bodily injury or death in any one occurrence and \$500,000 per occurrence for property damage;
 - v. Employer's liability insurance in minimum limits of \$1,000,000 per occurrence for bodily injury or disease; and
 - vi. Excess liability insurance over the insurance required by subsections (ii), (iii), (iv), and (v) of this section with combined, minimum coverage of \$2,000,000.
- b. All insurance required by this Section 18 may be carried in whole or in part under a blanket policy (or policies). Lessor agrees to require each contractor and

subcontractor to furnish Lessor with evidence reasonably satisfactory to Lessor of the maintenance of the required insurance coverage, with assurances that it will not be cancelled without fifteen days advance written notice to Lessor, and, in the case of blanket insurance, setting forth that the Building and the work with respect thereto is covered by the blanket policy and specifying the amount of coverage relating thereto. Upon the request of the County Representative, Lessor shall provide to the County Representative evidence of the maintenance of the required insurance coverage that is reasonably satisfactory to the County Representative.

19. Risk of Loss.

- a. If the Building or any portion of the Tenant Improvements or County's Work is damaged or destroyed prior to the Substantial Completion Date, the County may terminate the Lease if, in the reasonable opinion of the Architect, the Building cannot be restored and the Tenant Improvements cannot be Substantially Completed prior to 180 days after the Scheduled Completion Date. If the Lease is terminated pursuant to this section, Lessor shall cause its insurance to pay County an amount that is equal to the cost of constructing the County's Work paid by County prior to the casualty.
- b. If the Building or the Tenant Improvements are damaged or destroyed prior to the Substantial Completion Date and the Lease is not terminated pursuant to this section, Lessor shall promptly and diligently cause its contractor to restore the Building and complete construction of the Tenant Improvements.

20. Pre-Move-In Cleaning. Lessor shall clean and ventilate the Building immediately prior to County moving into the Building.

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21. Time of the Essence. Time is of the essence in fulfilling all terms and conditions of this Work Letter.

The parties are executing this Work Letter as of the date hereinabove set forth.

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

CITY OF SAN PABLO

By: _____
Julia 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

SCHEDULE 1

TENANT IMPROVEMENTS

SCHEDULE 2

SPACE PLANS

SCHEDULE 3

CONSTRUCTION SCHEDULE

SCHEDULE 4

FINAL PLANS

SCHEDULE 5

FORM OF COMPLETION NOTICE

To: Contra Costa County

From: City of San Pablo

Date:

Re: Completion Notice

This notice is provided in compliance with Section 13 of that certain Work Letter dated _____ between the City of San Pablo, as Lessor, and Contra Costa County (the "Work Letter").

All terms not otherwise defined herein have the meaning ascribed to them in the Work Letter.

Tender by Lessor

Lessor hereby represents that it has completed construction of the Tenant Improvements in substantial conformity with the Final Plans.

Lessor hereby tenders the Building for delivery to County.

City of San Pablo

By: _____

Its: _____

Certification by Architect

The undersigned, a duly authorized representative of [Architect], hereby represents that (s) he has inspected the Tenant Improvements and determined them to be in substantial conformity with the Final Plans.

[Architect]

By: _____

Its: _____

Date: _____

Certification by Contra Costa County

The undersigned, a duly authorized representative of Contra Costa County, hereby represents that the County has caused the Tenant Improvements to be inspected and has determined them to be in substantial conformity with the Final Plans.

Contra Costa County

By: _____

Its: _____

Date: _____