

OFFICE LEASE

between

96 NORTH THIRD STREET, LLC,
as Landlord

and

CITY OF SAN JOSE,
as Tenant

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EXHIBIT A - Floor Plan(s)

EXHIBIT B - Work Letter

OFFICE LEASE

BASIC LEASE INFORMATION *(Lease Summary)*

Lease Date: December 1, 2019

Building Address: 96 N 3rd Street, Suite 150 San Jose, CA 95112

Landlord: 96 NORTH THIRD STREET, LLC,
A California Limited Liability Company

Address of Landlord: 96 N 3rd Street, Suite 150 San Jose, CA 95112

Tenant: CITY OF SAN JOSE,
a Municipal Corporation of the
State of California

Address of Tenant: 200 East Santa Clara Street, San Jose, CA 95113

Rentable Area of Premises (Section 1.1): 2,298 rentable square feet

Suite and/or Floors (Section 1): Suite 150

Term (Section 1.2): Sixty (60) months

Commencement Date: The later of: December 1, 2019 or the date on which the
Tenant Improvements as described in Exhibit B to this
Lease are substantially completed and the Premises is
delivered to Tenant

Expiration Date: November 30, 2024, unless extended

Monthly Base Rent (Section 3):

Year	Monthly Base Rent	Annual Escalation
1	\$8,043.00 (\$3.50 per SF)	0%
2	\$8,295.78 (\$3.61 per SF)	3%
3	\$8,525.58 (\$3.71 per SF)	3%
4	\$8,801.34 (\$3.83 per SF)	3%
5	\$9,054.12 (\$3.94 per SF)	3%

Monthly Base Rent shall be full service and shall include all utilities, gas, water, sewer, refuse

clean-up, janitorial service, operating expenses and building maintenance.

Use (Section 4): General Office

Security Deposit (Section 21): \$9,055.00

Each reference in the Lease to the Summary shall mean the respective information set forth above and shall be deemed to incorporate all of the terms provided under the particular Lease paragraph pertaining to such information. To the extent there is any conflict between the provisions hereof and any more specific provision of this Lease, the Lease provision shall control.

LEASE

THIS LEASE (this "Lease") is entered into, as of this ____ day of _____, 2019 by and between 96 NORTH THIRD STREET, LLC, a California limited liability company ("**Landlord**"), and CITY OF SAN JOSE, a municipal corporation of the State of California ("**Tenant**"), and shall be effective upon the full execution by Landlord and Tenant and subject to approval by the City of San Jose's City Council.

Landlord and Tenant hereby agree as follows.

1. PREMISES.

1.1 Lease of Premises. Subject to the contents of this Lease, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord those premises ("**Premises**") in the building described in the Summary ("**Building**"), as shown on the floor plan(s) attached as Exhibit A to this Lease (the "**Floor Plan**") and more particularly described in the Work Letter (defined below) attached as Exhibit B to this Lease. Landlord shall cooperate with Tenant or its representative on a final architectural plan before start of construction.

1.2 Parking (Tenant's Option). During the term hereof, Landlord shall, at Tenant's sole discretion and option, provide to Tenant and its employees a license to use up to two (2) non-exclusive parking spaces for parking. The two (2) parking spaces shall be situated in the garage located in the Building. Tenant shall bear no expense for said parking space(s) until such time, if any exists, as Tenant elects to use said parking space(s). If Tenant elects to utilize said parking spaces, the cost will be billed monthly to Tenant at the existing market rate, in addition to the Monthly Base Rent. Tenant shall provide written notice of its intent to use said parking spaces(s) to Landlord and Landlord shall have thirty (30) days to provide Tenant access to and use of any parking space(s) Tenant has properly requested. At the time of the execution of this Lease, Tenant has not exercised its option for use of any parking spaces and, therefore, Landlord is under no obligation to provide access or use of any parking spaces pending notice from Tenant as described above.

2. TERM.

2.1 Initial Term. The term of this lease (the "**Term**") commences on the later of the **December 1, 2019**, or the date on which the Tenant Improvements (defined below) as described in Exhibit B to this Lease (the "**Work letter**") are substantially completed and the Premises are delivered to Tenant (the "**Commencement Date**"). The Term of this Lease shall begin on the Commencement Date and extend until **November 30, 2024**, unless otherwise modified pursuant to the terms of this Lease (the "**Expiration Date**"). Tenant shall not pay any Rent until the Commencement Date. Landlord shall permit Tenant to access the Premises prior the Commencement Date at no cost as provided in Section 5.2; however, all other provisions of this Lease shall apply and be of full force and effect during any period of such early access. If the Landlord fails to deliver possession of the Premises by December 31, 2019, the failure may be treated as a material breach, with no curing period, at the sole discretion of the Tenant.

2.2 Option to Extend. Landlord hereby grants to Tenant one (1) option to extend the Term of this Lease beyond the Expiration Date for sixty (60) months (the “**Extension Term**”). The “Term” as extended by the Extension Term(s) shall be collectively referred to herein as the “**Maximum Term**”.

- (a) Exercise. Tenant must exercise the Option to Extend, if at all, by giving Landlord written notice of such exercise not less than 180 days prior to the Expiration Date. The Extension Term shall be on the same terms and conditions as contained herein, except that (i) there shall be no further right to renew or otherwise extend the Term, the Extension Term, or the Maximum Term and (ii) Base Rent during the Extension Term shall be the fair market rental value determined pursuant to Section 2.2(b), below.
- (b) Extension Term Base Rent. Base Rent for the Extended Term shall be established by mutual agreement of the parties as to the fair market rental value of the Premises no later than 120 days prior to the expiration of the Initial Term. If the parties are not able to agree upon the then fair market rental value of the Premises, then the fair market rental value of the Premises shall be determined in accordance with the following procedure. Each party shall make its own determination of the fair market rental amount for the Premises and notify the other no later than ten (10) days thereafter, which written determination may include such supporting documentation, broker's opinions, comparable information and the like as a party may wish. The two parties' written determinations of value shall be submitted to a licensed commercial real estate broker who shall have at least ten (10) years' experience in leasing office space in Santa Clara County, California. The broker must not have acted as an agent or received a commission for lease or sale of real property for either party for the prior five (5) year period. The parties shall mutually agree on the broker. If the parties are unable to agree on a single broker within fifteen (15) days after the date on which the later written determination of value was prepared and served, then they shall each appoint one broker having the foregoing qualifications, and the two brokers shall pick a third person having similar qualifications (provided that such person may not have been one previously submitted by either party), and that third person shall be the lone broker. The determination by the selected broker shall be limited solely to the issue of determining which party's figure is the closest to the actual fair market rental amount for the Premises, using the parameters of this Section. The broker shall not have the power to set a different Base Rent from the two figures submitted by the parties, and must select the submitted position that most nearly approximates the broker's own determination of the fair market rent for the Extended Term. The broker shall have the right to conduct his or her own research, or to request clarifying information or other support from the parties. All communications between the broker and any party or its agents or consultants shall be sent to all parties concurrently. The broker shall use best efforts to submit his or her decision in writing within thirty (30) days of the commencement of this process. The costs of the brokers shall be split fifty-fifty between Landlord and Tenant.

- (c) Amendment to Lease. If Tenant properly exercises the Option to Extend, Landlord

and Tenant shall execute and deliver an amendment to this Lease setting forth such fact and the amount of Base Rent for the Extension Term.

- (d) Relationship to Other Provisions. If Tenant properly exercises the Option to Extend, such exercise shall apply to the original Premises and to any additional space leased hereunder.

3. RENT; ADDITIONAL CHARGES.

3.1 Tenant will pay to Landlord during the Term the monthly Base Rent specified in the Summary ("**Base Rent**") beginning on the Commencement Date, and no other additional rent or charges to Tenant, in consecutive monthly installments on or before the first day of each calendar month, in advance, at the address specified for Landlord in the Summary, or such other place as Landlord may designate in writing, without any prior demand and without any deductions or set off. If either the Commencement Date or the Expiration Date occurs on a day other than the last day of a calendar month, then the rental for such fractional month will be prorated based on a thirty (30) day month.

3.2 If Tenant fails to pay any Base Rent or other amounts due to Landlord under the terms of this Lease (which amounts are sometimes referred to herein, together with Base Rent, as "**Rent**") within ten (10) days after the date on which Landlord shall have provided notice of any deficiency, such unpaid amounts will be subject to a late payment charge equal to ten percent (10%) of the unpaid amounts in each instance within five (5) calendar days after the receipt of such notice of deficiency. The late payment charge has been agreed upon by Landlord and Tenant, after negotiation, as a reasonable estimate of the additional administrative costs and detriment that will be incurred by Landlord as a result of any such failure by Tenant, the actual costs thereof being extremely difficult if not impossible to determine. The late payment charge constitutes liquidated damages to compensate Landlord for its damages resulting from such failure to pay and shall be paid to Landlord together with such unpaid amounts.

4. USE.

4.1 Tenant shall use and occupy the Premises solely for the use specified in the Summary and for no other use or purpose. Tenant (in its capacity as "Tenant" hereunder rather than in its capacity as a governmental entity) shall take no action, nor permit any action to be taken, in or about the Premises that will in any way increase the existing rate of or affect any fire or other insurance upon the Building or any of its contents, or cause cancellation of any insurance policy covering all or any part of the Building or any of its contents, or which will in any way injure or interfere with the rights of other tenants or occupants of the Building, nor shall Tenant (in its capacity as "Tenant" hereunder, rather than in its capacity as a governmental entity) use or allow the Premises to be used for any unlawful or objectionable purpose, nor cause, maintain or permit any nuisance in, on or about the Premises, nor commit nor suffer to be committed any waste in, on or upon the Premises.

4.2 Tenant shall have a non-exclusive right to use the common area of the Building ("**Building's Common Area**") including, but not limited to, the Building's lobby,

hallways, elevators, stairwells, parking areas, restrooms, and outdoor areas as needed for ingress and egress to the Building and Premises or commonly used by building tenants.

4.3 Landlord acknowledges that Tenant intends to conduct its normal business operations in the Premises weekdays from 8:00 a.m. to 6:00 p.m. ("Normal Business Hours"). Anytime other than the above stated Normal Business Hours shall be defined as "After Hours").

5. CONSTRUCTION OF PREMISES; BUILDING CHANGES.

5.1 Landlord shall perform the work and make the installations in the Premises substantially as set forth in the Work Letter. Landlord reserves the right, at any time and from time to time, to make alterations, additions, repairs, or improvements to or in or to decrease the size or area of all or any part of the Building, the Building's Common Area, the fixtures and equipment therein and the areas outside the Building, and the Common Area, and to change the arrangement and/or location of entrances or passageways, doors, corridors, elevators, stairs, toilets and other public parts of the Building, provided that any such alterations or additions shall not materially diminish the quality or quantity of services being provided to the Premises or adversely affect the functional utilization of the Premises.

5.2 Subject to the terms of the Work Letter and subject to the Parties having signed this Lease prior to November 1, 2019 (Landlord's signature needed prior to October 29, 2019 for council approval), Landlord shall commence and at all times diligently pursue such commercially reasonable actions as may be necessary to substantially complete the improvements described in the Work Letter (the "**Tenant Improvements**") on or before **December 1, 2019**. Subject to the terms of this Lease and the Work Letter, Tenant may enter the Premises ("**Early Access Right**") prior to the Landlord tendering possession of the Premises so that Tenant may commence installation of Tenant's data cabling, furniture, fixtures and equipment; provided, however, that (i) Tenant shall provide Landlord with no less than forty-eight (48) hours prior written notice of its election to exercise Tenant's Early Access Right; and (ii) Tenant and all Tenant's contractors and/or subcontractors shall not interfere with the Landlord's or Landlord's contractors' and/or subcontractors' efforts to complete the improvements to be constructed by Landlord, and Landlord reserves the right to require Tenant to schedule Tenant's Early Access Right work in a manner that minimizes interference with the services of any of the parties involved. The date upon which the Tenant Improvements are substantially completed shall be known as the "**Delivery Date**." The parties acknowledge and agree that the anticipated Delivery Date is **December 1, 2019** and that in no event shall the Delivery Date be later than **December 1, 2019** unless otherwise agreed by Landlord and Tenant. Landlord represents, acknowledges and agrees to pursue completion of the Tenant Improvements on or before such date.

6. ALTERATIONS.

6.1 Tenant shall not make or permit any alterations, installations, additions or improvements, structural or otherwise (collectively, "**Alterations**"), in or to the Premises or the Building or the Building systems without Landlord's prior written consent, which Landlord may give or withhold in Landlord's sole discretion; provided, however, if Landlord has not approved or disapproved any Alterations within fifteen (15) business days after Tenant's request therefor (which request shall be accompanied by plans and specifications for such Alterations sufficiently

detailed to permit Landlord to approve or disapprove such work), then Landlord shall be deemed to have approved such Alterations.

6.2 All appurtenances, fixtures, improvements, equipment, additions and other property attached to or installed in the Premises at any time (including Tenant's Alterations) shall be and remain the property of Landlord, and shall not be removed by Tenant unless requested by Landlord. All items installed in the Premises by or for the account of Tenant, without expense to Landlord, and which can be removed without damage to the Premises or the Building (collectively, "**Tenant's Property**") shall be and remain the property of Tenant and may be removed by it at any time during the Term; provided, however, any equipment or other property for which Landlord has granted any allowance or credit to Tenant or which is a replacement for items originally provided by Landlord at Landlord's expense shall not be considered Tenant's Property. Upon the Expiration Date of this Lease, Tenant shall remove from the Premises all of Tenant's Property. Tenant shall repair or pay the cost of repairing any damage to the Premises or to the Building resulting from such removal. Any of Tenant's Property remaining in the Premises after the Expiration Date of this Lease may be retained by Landlord as its property or it may be disposed of by Landlord as permitted by applicable law.

7. REPAIRS AND MAINTENANCE.

7.1 Tenant shall, at all times during the Term and at Tenant's sole expense, keep all of the Premises in good condition and repair, except for ordinary wear and tear. Tenant waives its rights to make repairs at the expense of Landlord or to vacate the premises in lieu of such repairs except as set forth in this Lease. Tenant shall at the end of the Term surrender the Premises to Landlord in the same condition as when received, except for ordinary wear and tear and Alterations. Landlord has no obligation and has made no promise to alter, remodel, improve, repair, decorate or paint all or any part of the Premises, the Building or the Common Area except as specifically set forth in the Work Letter and this Lease.

7.2 Landlord shall repair and maintain the structural portions of the Building, the Building systems and the Common Area. If the necessity for such maintenance and repairs is in any way caused by the intentional acts, neglect, fault or omission of Tenant or its employees or invitees, Tenant shall pay promptly to Landlord the reasonable and actual out of pocket direct cost of such repairs, provided that Landlord commences any required repairs promptly following notice of the need for such repairs from Tenant and proceeds in a diligent manner to complete such repairs. Notwithstanding the foregoing, Landlord shall not be liable for any failure to make any such repairs or to perform any such maintenance unless Landlord receives notice of the need for such repairs or maintenance from Tenant and fails to make such repairs or perform such maintenance for a reasonable period of time following such notice by Tenant. Rent shall not abate nor shall Landlord be liable as a result of any injury to or interference with Tenant's business arising from the making of any repairs, or the performance of any maintenance, in or to any portion of the Building, the Premises or the Common Area, except as expressly set forth below.

7.3 In the event that Landlord is unable to supply any of the Building's sanitary, electrical, heating, air conditioning, water, or parking as provided in Section 1.2 of this Lease (collectively, "Essential Services") and such Essential Services are disrupted for a period of three (3) consecutive business days without a reasonable effort from the Landlord to address and correct

the issues, and such disruption materially impairs Tenant's ability to carry on its operations in the Premises, the Rent due hereunder shall be abated, retroactively effective as of the first business day of such material interference with Tenant's operations, based upon the extent to which such inability to supply Essential Services materially impairs Tenant's ability to carry on its operations in the Premises. Such abatement shall continue until the Essential Services have been restored to the extent that the lack of any remaining services no longer materially impairs Tenant's ability to carry on its business in the Premises. Tenant shall not be entitled to such abatement to the extent that Landlord's inability to supply Essential Services to Tenant is caused by Tenant, its employees, contractors or agents in the course of performing their official duties, or by circumstances beyond Landlord's reasonable control.

8. LIENS. Tenant (in its capacity as "Tenant" hereunder, rather than in its capacity as a governmental entity) shall keep the Premises and the Building free from any liens arising out of any work performed, material furnished or obligations incurred by or for Tenant. attorney's fees, costs, and expenses) shall be payable to Landlord by Tenant upon demand. Landlord shall have the right at all times to post and keep posted on the Premises any notices permitted or required by law or that Landlord shall deem proper for the protection of Landlord, the Premises, and the Building, from mechanics' and materialmen's liens. Tenant shall give to Landlord at least ten (10) business days prior written notice of commencement of any repair or construction on the Premises.

9. COMPLIANCE WITH LAWS AND INSURANCE REQUIREMENTS.

9.1 By executing this Lease Landlord represents and warrants that the Building and all other items which the Landlord is obligated to construct, repair and or maintain hereunder, the Premises and every part thereof that Tenant is obligated to keep or maintain pursuant to this Lease, are and shall be in good operating condition and is free from any water intrusion and/or water damage and that the structural elements of the roof, bearing walls and foundation of the Building are and shall be free from material defect on the Delivery Date. In the event that it is determined that this warranty has been violated, then it shall be the obligation of the Landlord, in addition to all other remedies available to Tenant hereunder, after receipt of written notice from Tenant setting forth with specificity the nature of the violation, to promptly rectify such violation, at Landlord's sole cost. Landlord further warrants that, to Landlord's actual knowledge, the improvements comprising the Premises and the Building: (a) comply with applicable building codes; (b) comply with all applicable Laws, ordinances, rules, regulations, orders, certificates of occupancy, conditional use or other permits, variances, covenants and restrictions of record, and requirements of any fire insurance underwriters, rating bureaus or government agencies; and (c) are, to its knowledge, free from any and all environmental hazards as of the Delivery Date. If the Premises do not comply with said warranty, Landlord shall, promptly after receipt of written notice from Tenant setting forth with specificity the nature and extent of such non-compliance, rectify the same at Landlord's sole cost.

9.2 Tenant, at Tenant's cost and expense, shall comply with all laws, orders and regulations of federal, state, county and municipal authorities relating to the Premises or the use or occupancy thereof, except that Tenant shall not be required to make any structural Alterations in order to comply or to correct existing non-complying conditions in the Premises, if any, unless

such Alterations shall be necessitated by Tenant's Alterations, or by the acts, omissions or negligence of Tenant or its servants, employees, contractors, agents, visitors or licensees.

10. SUBORDINATION. Without the necessity of any additional document, this Lease shall be subject and subordinate at all times to: (a) all reciprocal easement agreements and all ground leases or underlying leases which may now exist or hereafter be executed affecting the Building, the land on which the Building is located or the Common Area, or any of the foregoing, and (b) the lien of any mortgage or deed of trust which may now exist or hereafter be executed in any amount for which the Building, land on which the Building is located, ground leases or underlying leases, or Landlord's interest or estate in any of said items, is specified as security. Notwithstanding the foregoing, Landlord shall have the right to subordinate or cause to be subordinated to this Lease any of the items referred to in clause (a) or (b) above. In the event that any ground lease or underlying lease terminates for any reason or any mortgage or deed of trust is foreclosed or a conveyance in lieu of foreclosure is made for any reason, Tenant shall, notwithstanding any subordination, attorn to and become the tenant of the successor in interest to Landlord (provided such successor expressly agrees in writing to be bound to all future obligations by the terms of this Lease and subject to the condition that such successor Landlord agrees to recognize Tenant) and, upon Landlord's request, Tenant shall execute and deliver an instrument to evidence such attornment. Upon such request for attornment, Tenant's rights hereunder shall continue in full force and effect as a direct Lease between the successor Landlord and Tenant upon all of the terms, conditions and covenants as set forth in this Lease. Tenant shall execute and deliver, upon reasonable demand by Landlord and in the form reasonably requested by Landlord, any additional documents evidencing the priority or subordination of this Lease with respect to any such ground leases, underlying leases, reciprocal easement agreements or similar documents or instruments, or with respect to the lien of any such mortgage or deed of trust; provided, however, Tenant's obligation to deliver the foregoing document is conditioned on Tenant's receiving from any such ground lessee, party to a reciprocal easement agreement, mortgagee, or beneficiary under a deed of trust, a nondisturbance agreement reasonably acceptable to Tenant. Tenant's Director of Economic Development or its designee shall be the party authorized to execute and deliver such subordination agreement on behalf of Tenant.

11. DAMAGE AND DESTRUCTION.

11.1 If the Premises or the Building are damaged by fire or other casualty, Landlord shall repair the same, provided that repairs can be made within one hundred eighty (180) days after the date of damage. In this event, this Lease shall remain in full force and effect except that Tenant shall be entitled to a proportionate reduction of Rent while repairs are being made based upon the extent to which damage and the making of repairs by Landlord shall interfere with the business carried on by Tenant in the Premises. Within twenty (20) days after the date of damage, Landlord shall notify Tenant whether or not repairs can be made within one hundred eighty (180) days after the date of damage. If Landlord determines that repairs cannot be made within one hundred eighty (180) days from the date of damage, Landlord shall have the option within thirty (30) days after the date of damage either to: (a) notify Tenant of Landlord's intention to repair damage and diligently prosecute repairs, in which event this Lease shall continue in full force and effect and the Rent shall be reduced as provided herein, subject to Tenant's rights to terminate this Lease as described in Section 11.2 below; or (b) notify Tenant of Landlord's election to terminate this Lease as of a date specified in such notice, which date shall be not less than sixty

(60) days after such notice is given. In the event of such notice to terminate, this Lease shall terminate on the date specified in such notice and the Rent shall be reduced based upon the extent to which such damage interfered with the business carried on by Tenant in the Premises up to the date of termination.

11.2 (a) If, (i) the Premises or the Building are damaged by fire or other casualty, (ii) Landlord notifies Tenant that repairs of such damage cannot be made within one hundred and twenty (120) days, Tenant may elect to terminate this Lease upon thirty (30) days' written notice to Landlord, which notice must be given to Landlord by Tenant within thirty (30) days after the date of Landlord's notice to Tenant described in (ii) above.

(b) If, (i) the Premises or the Building are damaged by fire or other casualty, (ii) Landlord notifies Tenant that repairs of such damage can be made within one hundred and twenty (120) days, (iii) Tenant cannot conduct normal business operations in the Premises during such time, and (iv) at the end of such one hundred and twenty (120) day period such damage has not been repaired to such an extent that Tenant is then able to resume normal business operations at the Premises, then Tenant may elect to terminate this Lease upon thirty (30) days' written notice to Landlord, which notice must be given to Landlord within five (5) business days after the end of such one hundred and twenty (120) day period.

11.3 Landlord shall not be required to repair any damage by fire or other cause to the property of Tenant, or any damage caused by the negligence of Tenant, its contractors, agents, licensees or employees or make any repairs or replacements of any items located or installed on the Premises by, or at the expense of, Tenant (excluding, however, the improvements described in Exhibit B attached hereto and incorporated by reference herein). Tenant shall not be entitled to any compensation or damages from Landlord for loss of use of all or any part of the Premises for any damage to Tenant's business or profits, or for any disturbance to Tenant caused by any casualty or the restoration of the Premises following such casualty, except as may be set forth in Sections 7, 11 and 16 hereof. A total destruction of the Building shall automatically terminate this Lease.

12. EMINENT DOMAIN. If all or any part of the Premises shall be taken as a result of the exercise of the power of eminent domain or any transfer in lieu thereof, this Lease shall terminate as to the part so taken as of the date of taking, and, in the case of a partial taking, by any entity other than the City of San Jose, Tenant shall have the right to terminate this Lease as to the balance of the Premises by written notice to Landlord within thirty (30) days after such date; provided, however, a condition to Tenant's right to terminate shall be that Tenant's use of the balance of the Premises is substantially handicapped, impeded or impaired by the taking. If any material part of the Building shall be taken, Landlord shall have the right to terminate this Lease by written notice to Tenant within thirty (30) days of the date of taking. In the event of any taking, Landlord shall be entitled to any and all compensation, damages, income, rent, awards, or any interest therein whatsoever which may be paid or made in connection therewith, and Tenant shall have no claim against Landlord for the value of any unexpired term of this Lease or otherwise; provided, Landlord shall have no claim to any portion of the award that is specifically allocable to Tenant's relocation expenses or the interruption of or damage to Tenant's business. In the event of a partial taking of the Premises which does not result in a termination of this Lease, the Rent thereafter to be paid shall be equitably reduced.

13. ASSIGNMENT AND SUBLETTING.

13.1 Tenant shall not directly or indirectly, voluntarily or by operation of law, sell, assign, encumber, pledge or otherwise transfer or hypothecate its interest in or rights with respect to the Premises or Tenant's leasehold estate hereunder (collectively, "**Assignment**"), or permit all or any portion of the Premises to be occupied by anyone other than Tenant or sublet all or any portion of the Premises or transfer a portion of its interest in or rights with respect to Tenant's leasehold estate hereunder (collectively, "**Sublease**") without Landlord's prior written consent in each instance, which consent shall not be unreasonably withheld. The foregoing Landlord consent is a condition precedent to the enforceability of any such Assignment or Sublease, and any attempt by Tenant to Assign or Sublease the Premises without Landlord's prior written consent shall be void and of no force or effect.

13.2 If Tenant desires at any time to enter into an Assignment or a Sublease, Tenant shall first give notice to Landlord of its desire to do so, which notice shall contain (a) the name and address of the proposed assignee or subtenant, (b) the nature of the proposed assignee's or subtenant's business to be carried on in the Premises, (c) the terms and provisions of the proposed Assignment or Sublease and (d) such financial information as Landlord may reasonably request concerning the proposed assignee or subtenant.

13.3 At any time within twenty (20) business days after Landlord's receipt of the notice specified in Section 13.2, Landlord may by notice to Tenant elect to (a) consent to the Sublease or Assignment, or (b) disapprove the Sublease or Assignment; Landlord's failure to respond to the notice within the time prescribed shall be deemed a disapproval of the applicable Sublease or Assignment). Landlord and Tenant agree that it shall be reasonable for Landlord to withhold its consent to any proposed Assignment or Sublease if the proposed assignee or sublessee does not intend to occupy the Premises for its own business purposes. If Landlord consents to the Sublease or Assignment within such twenty (20) day period, Tenant may thereafter within sixty (60) days after Landlord's consent enter into such Assignment or Sublease with such approved assignee or sublessee upon the terms and conditions set forth in the notice furnished by Tenant to Landlord pursuant to Section 13.2. No Assignment or Sublease shall be binding on Landlord until Tenant delivers an executed copy of such Assignment or Sublease to Landlord.

13.4 No consent by Landlord to any Assignment or Sublease by Tenant shall relieve Tenant of any obligation to be performed by Tenant under this Lease, whether arising before or after the Assignment or Sublease. The consent by Landlord to any Assignment or Sublease shall not relieve Tenant from the obligation to obtain Landlord's express written consent to any other Assignment or Sublease. Any Assignment or Sublease that fails to comply with this Section 13 shall be void. The acceptance of Rent by Landlord from a proposed assignee or sublessee shall not constitute consent to such Assignment or Sublease by Landlord.

14. UTILITIES AND SERVICES.

14.1 Landlord agrees to furnish to the Premises, subject to the rules and regulations of the Building; (a) at all times, electricity for normal lighting and office machines, freight and passenger elevator service, and water for lavatory and drinking purposes; and (b) at all times to all of the Premises heat and air-conditioning required in Landlord's reasonable judgment for the comfortable use and occupation of the Premises (and in amounts not inconsistent with

amounts provided in comparable office buildings in downtown San Jose). Landlord also shall provide sufficient janitorial service for general office use, during Normal Business Hours. If any additional charges are incurred by Landlord due to providing janitorial services during normal Business Hours (as opposed to After Hours), Tenants shall reimburse Landlord for the additional reasonable out-of-pocket expenses incurred. Landlord shall not be liable for, and Tenant shall not be entitled to, any reduction of Rent (except as described in Section 7.3 above) by reason or on account of: (a) the installation, use of or interruption of use of any equipment in connection with the furnishing of any of the foregoing services except as a result of Landlord's negligence; (b) the failure to furnish or delay in furnishing any of the foregoing services when such failure is caused by accident, breakage, repairs, strikes, lockouts, or other labor disturbances or labor disputes of any character, or by any other cause, similar or dissimilar, beyond the reasonable control of Landlord, or by the making of any repairs or improvements to the Premises, or to the Building, or any portion of either; or (c) the limitation, curtailment, rationing or restrictions on use of water, electricity, gas or any other utility serving the Premises or the Building by any utility or governmental agency. If Tenant requests additional or after-hours heating or air conditioning, Landlord shall provide such service provided that Tenant pays Landlord's reasonable charge for such services.

14.2 Tenant shall not use any apparatus or device in the Premises using in excess of 120 volts, that will in any way increase the amount of electricity usually furnished or supplied for the use of the Premises as general office space; nor connect with electric current, except through existing electrical outlets in the Premises, any apparatus or device, for the purpose of using electric current; provided, however, Tenant shall be permitted to use a reasonable number of photocopiers which require 200 volts to the extent necessary in the normal course of Tenant's business. If Tenant shall require water or electric current in excess of the amount usually furnished or supplied for the use of the Premises as general office space, Tenant shall first procure the prior consent of Landlord to the use of such excess water or electric current, which consent shall not be unreasonably withheld. Tenant may use computers, printers, fax machines, and other office equipment in quantities customarily used in general office use.

15. DEFAULT.

15.1 Any failure to pay any Rent as and when due, or any failure to perform or comply with any, covenant or condition of this Lease, shall constitute a default by Tenant under this Lease; provided, however, Tenant shall have a period of ten (10) days from the date of written notice from Landlord within which to cure any default in the payment of Rent. Tenant shall have a period of thirty (30) days from the date of written notice from Landlord within which to cure any other default described in this Section 15.1; provided, however, as to any curable default that is not reasonably susceptible to cure within such thirty (30) day period, Tenant shall have an additional sixty (60) days to cure such default provided that Tenant shall have commenced the cure of such default within such thirty (30) day period and diligently prosecuted the completion of such cure thereafter. Any notice served hereunder will run concurrently with any required statutory notice.

15.2 Upon the occurrence of a default by Tenant which is not cured by Tenant within the applicable grace period, Landlord shall have the following rights and remedies in addition to all other rights or remedies available to Landlord at law or in equity:

- (a) The rights and remedies provided by California Civil Code section 1951.2, including, but not limited to, the right to terminate Tenant's right to possession of the Premises and to recover the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of rental loss for the same period that the Tenant proves could be reasonably avoided, as computed pursuant to subsection (b) of said section 1951.2.
- (b) The rights and remedies provided by California Civil Code section 1951.4, which allow Landlord to continue this Lease in effect and to enforce all of its rights and remedies under this Lease, including the right to recover rent as it becomes due, for so long as Landlord does not terminate Tenant's right to possession; acts of maintenance or preservation, efforts to relet the Premises or the appointment of a receiver upon Landlord's initiative to protect its interest under this Lease shall not constitute a termination of Tenant's right to possession.
- (c) The right to enter the Premises and remove therefrom all persons and property, save such property in a public warehouse or elsewhere at the cost of and for the account of Tenant, and sell such property and apply the proceeds therefrom pursuant to applicable California law.
- (d) Upon no less than 120 days prior written notice, terminate Tenant's right to possession and use of the Premises and/or terminate this Lease, in which case Tenant shall immediately surrender possession of the Premises to Landlord.

16. INDEMNITY: TENANT'S INSURANCE.

16.1 Tenant agrees to indemnify and hold Landlord harmless from and against any and all loss, cost, liability, damage and expense, incurred in connection with or arising from: (a) any default by Tenant in the observance or performance of any of the terms, covenants or conditions of this Lease on Tenant's part to be observed or performed; or (b) the use or occupancy or manner of use or occupancy of the Premises by Tenant, or any person, or entity claiming through or under Tenant; or (c) any acts, omissions or negligence of Tenant or of the contractors, agents, servants, employees, visitors or licensees of Tenant, in, on or about the Premises or the Building. The foregoing indemnity shall not apply to any loss, cost, liability, damage or expense to the extent caused by the negligence or misconduct of Landlord, its contractors, agents, or employees. Tenant's obligations under this Section 16.1 shall survive the termination of the Lease.

16.2 (a) For so long as the City of San Jose is the Tenant under this Lease, Tenant may self-insure its obligations under Section 16.2(b). If the City of San Jose assigns all or any portion of its interest in this Lease or enters into any Sublease with respect to the Premises, each such assignee and sublessee shall be required to carry the insurance required of Tenant under Section 16.2(b).

(b) Tenant shall procure at its cost and expense and keep in effect during the Term comprehensive general liability insurance, including, without limitation, contractual liability for Tenant's indemnity obligation contained in Section 16.1 and specific coverage of

risks arising out of any activities of Tenant pursuant to Sections 6 and 7, with a combined single limit of liability in an amount equal to the amount set forth in the Summary. Such coverage shall be in a comprehensive general liability-form with at least the following endorsements to the extent such endorsements are generally available: (i) deleting any employee exclusion on personal injury coverage, (ii) including employees as additional insured, (iii) providing for blanket contractual coverage, broad form property damage coverage and products completed operations coverage (where applicable), (iv) deleting any liquor liability exclusions, and (v) providing for coverage of employee's automobile non-ownership liability. Such insurance shall name Landlord and any other party designated by Landlord as an additional insured (provided such additional insured has an interest in the Premises or Building), shall specifically include the liability assumed hereunder by Tenant, shall provide that it is primary insurance and not excess over or contributory with any other valid, existing and applicable insurance covering the same loss carried by Landlord or any other party, shall provide for severability of interests, shall further provide that an act or omission of one of the named insured which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period, and shall provide that Landlord will receive thirty (30) days' written notice from the insurer prior to any cancellation or change of coverage. Tenant shall deliver policies of such insurance or certificates thereof to Landlord on or before the Commencement Date, and thereafter at least thirty (30) days before the expiration dates of expiring policies; and in the event Tenant shall fail to procure such insurance, or to deliver such policies or certificates, Landlord may, at its option, procure same for the account of Tenant, and the cost thereof shall be paid to Landlord within five (5) days after delivery to Tenant of bills therefore. Tenant shall be responsible, at its cost and expense, for separately insuring Tenant's property.

16.3 Landlord shall indemnify and hold Tenant harmless from and against any and all loss, cost, liability, damage and expense, including, without limitation, reasonable attorney's fees and costs, arising out of any injury to any person or property in or about the Premises, the Building, the Building Common Area and the Common Area incurred in connection with or arising from the negligence or misconduct of Landlord or Landlord's contractors, agents, or employees. Landlord shall not be responsible for, and Tenant hereby waives all claims against Landlord for, injury, loss or damage, including, without limitation, those related to theft, burst, stopped or leaking water, gas, sewer or steam pipe or gas, fire, oil or electricity in, on or about the Premises or the Building, which result from any cause whatsoever other than Landlord's negligence or misconduct or the negligence or misconduct of Landlord's contractors, agents, or employees; subject, however, to Tenant's right to abatement of Rent as set forth in Section 7.3 hereof.

16.4 Notwithstanding anything to the contrary contained herein, to the extent of insurance proceeds received with respect to the loss., Landlord and Tenant each hereby waive any right of recovery against the other party and against any other party maintaining a policy of insurance with respect to the Building or any portion thereof or the contents of any of the same, for any loss or damage maintained by such other party with respect to the Building, or the Premises or any portion of any thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other party.

17. ACCESS TO PREMISES; QUIET ENJOYMENT. Landlord, its agents and representatives shall have the right to enter the Premises upon twenty-four (24) hours prior notice, forty-eight (48) if notice is given on a weekend or state or federal holiday, and, except in cases of emergency, after giving Tenant reasonable notice for any purpose deemed necessary or desirable by Landlord; provided, however, under no circumstances shall Landlord be permitted to access any hard copy or electronic files kept in secured file rooms, cabinets, drawers desks, closets or in any other secured area or space. If any work is to be performed in the Premises After Hours including routine janitorial service and other such services, but excluding emergency repairs as necessary, Landlord shall provide Tenant with 48-hours' advance notice of such work. Rent shall not abate as a result thereof. Landlord shall use reasonable efforts to minimize any interference with Tenant's use of the Premises for its normal business purposes. Tenant hereby waives any claim for damages for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises or any other loss caused by Landlord's entry except to the extent Landlord has not used reasonable efforts to minimize any interference with Tenant's use of the Premises for its normal business purposes in connection with such entry or to the extent that rent may be abated pursuant to Section 11 herein. No entry by Landlord which is permitted pursuant to the terms of this Lease shall be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction, actual or constructive, of Tenant from the Premises or any portion thereof.

18. NOTICES. Except as otherwise provided by law, all notices or other communications required or permitted by this Lease or by law to be served on or given to either party to this Lease by the other party shall be in writing and shall be deemed served when personally delivered to the party to whom they are directed or, in lieu of personal service, upon deposit in the United States Mail, certified or registered mail, return receipt requested, postage prepaid, addressed as follows:

To the LANDLORD: 96 Third Street, LLC
96 N 3rd Street, Suite 150
San Jose, CA 95112

To the CITY: Office of Economic Development – Real Estate Services
City of San José
200 E. Santa Clara Street, 12th Floor
San Jose, CA 95113

Attn. Real Estate Manager

With a Copy to: Office of the City Attorney
City of San José
200 E. Santa Clara Street, 16th Floor
San José, CA 95113

Attn. Real Estate Attorney

Landlord or Tenant may designate new or additional addresses under this section by notice given to the other in accordance with the provisions of this Section.

19. ESTOPPEL CERTIFICATES. Tenant, at any time and from time to time upon not less than ten (10) days' prior written notice from Landlord, will execute, acknowledge and deliver to Landlord a commercially reasonable form of estoppel certificate. Any such certificate may be relied upon by Landlord and by any prospective purchaser or mortgagee considering the purchase of or a loan on all or any part of the Building or any interest therein. Tenant's Director of Economic Development or its designee shall be the representative of Tenant authorized to execute and deliver any such estoppel certificate pursuant to this Section 19.

20. SECURITY DEPOSIT. Upon execution of this Lease, Tenant shall transfer the Security Deposit as set forth in the Lease Summary to Landlord to serve as the security deposit for this Lease. Landlord shall retain this sum as a security deposit for the faithful performance of all terms, covenants, and conditions of this Lease. Upon the occurrence of any default by Tenant under this Lease (and following the applicable grace period, if any, specified in Section 15.1 above), Landlord may apply all or part of such amount to remedy such default. Should Landlord use any portion of the security deposit, Tenant shall forthwith replenish the security deposit to the original amount of the Security Deposit. No trust relationship shall be created with respect to the security deposit and Landlord assumes no responsibility and makes no representation or warranties regarding the amount of interest which may (or may not) accrue on the security deposit during the Term. If Tenant shall fully and faithfully perform every provision of this Lease, the remaining balance of the security deposit, if any, shall be returned to Tenant (or, at landlord's option, to the last assignee of Tenant's interest hereunder) within thirty (30) days after the Expiration Date. In the event of termination of Landlord's interest in this lease, Landlord may transfer the security deposit to Landlord's successor in interest and, upon such transfer; Landlord shall be relieved of any and all liability for or obligation with respect to the security deposit.

21. FORCE MAJEURE. If either Landlord or Tenant is unable to fulfill or is delayed in fulfilling any of their respective obligations under this Lease, by reason of acts of God, accidents, repairs, labor disputes, inability to obtain utilities or materials or by any other reason beyond its reasonable control (collectively, "**Force Majeure Delay**"), then such party shall be excused from performing such obligation for so long as such Force Majeure Delay exists. Landlord and Tenant shall not be relieved of their respective obligations by virtue of the inability of the other party to perform an obligation as a result of a Force Majeure Delay. Tenant shall not have a claim for any inconvenience, annoyance, interruption, injury or loss to or interference with the use and occupancy or quiet enjoyment of the Premises, or any loss or damage occasioned thereby, by virtue of the inability of the Landlord to perform an obligation as a result of a Force Majeure Delay. Nothing in this Section, however, abrogates the right of Tenant to an abatement of rent pursuant to Section 11.

22. MISCELLANEOUS.

22.1 The words "Landlord" and "Tenant" as used herein shall include the plural as well as the singular. If there is more than one Tenant, the obligations under this Lease imposed on Tenant shall be joint and several. The captions preceding the articles of this Lease have been inserted solely as a matter of convenience and such captions in no way define or limit the scope or intent of any provision of this Lease.

22.2 The terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of Landlord and Tenant and, except as otherwise provided herein, their respective personal representatives and successors and assigns; provided, however, that upon the sale, assignment or transfer by Landlord named herein (or by any subsequent landlord) of its interest in the Building as owner or lessee, including any transfer by operation of law, Landlord (or such subsequent landlord) shall be relieved from all subsequent obligations and liabilities arising under this Lease subsequent to such sale, assignment or transfer.

22.3 Any provision of this Lease which shall prove to be invalid, void, illegal or unenforceable shall in no way affect, impair or invalidate any other provisions of this Lease, and such other provisions and this Lease shall remain in full force and effect.

22.4 This Lease shall be construed and enforced in accordance with the laws of the State of California.

22.5 This instrument, including the exhibits attached hereto, which are made a part of this Lease, contains the entire agreement between the parties and all prior negotiations and agreements are merged herein. Tenant hereby acknowledges that neither Landlord nor Landlord's agents have made any representations or warranties with respect to the Premises, the Building or this Lease except as expressly set forth herein.

22.6 If Tenant shall retain possession of the Premises or any part thereof without Landlord's consent following the expiration or sooner termination of this Lease for any reason, then Tenant shall pay to Landlord one hundred percent (100%) of the Rent in effect immediately prior to the date of such expiration or termination for the first thirty (30) days of such holding over and Tenant shall pay to Landlord one hundred and twenty-five percent (125%) of the Rent in effect immediately prior to the date of such expiration or termination for any holding over by Tenant after such thirty (30) day period.

22.7 Time is of the essence of this Lease and each and all of its provisions in which performance is a factor.

22.8 The waiver by Landlord or Tenant of the other party's failure to perform or observe any provision of this Lease shall not be deemed to be a continuing waiver of such provision or a waiver of any subsequent failure to perform or observe the same or any other such provision, and no custom or practice which may develop between the parties during the Term shall be deemed a waiver of, or in any way affect, the right of Landlord or Tenant to insist upon performance and observance by the other party in strict accordance with the terms of this Lease. The subsequent acceptance of rent hereunder by Landlord shall not be deemed to be a waiver of any preceding failure of Tenant to perform or observe any provision of this Lease, other than the failure of Tenant to pay the particular rent so accepted, irrespective of any knowledge on the part of Landlord of such preceding failure at the time of acceptance of such rent.

22.9 Upon Tenant's paying the Rent and observing and performing all of the provisions of this Lease, Tenant shall be entitled to the quiet enjoyment of the Premises for the entire Term, subject to the provisions of this Lease.

22.10 Tenant covenants and agrees that no diminution of light, air or view by any structure that may hereafter be erected (whether or not by Landlord) shall entitle Tenant to any reduction of the Rent under this Lease, result in any liability of Landlord to Tenant, or in any other way affect this Lease or Tenant's obligations hereunder.

22.11 This Lease may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same instrument.

22.12 Each person signing below warrants and guarantees that s/he is legally authorized to execute this Agreement on behalf of the respective party and that such execution shall bind said party to the terms of this Agreement.

23. TERMINATION RIGHT. Tenant may terminate the Lease (A) if the Tenant Improvements are not substantially completed and the Premises delivered to Tenant on or before December 31, 2019 (pursuant to Section 2.1, above), or (B) by giving Landlord no less than one hundred eighty (180) days prior written notice of such termination, which shall be effective on the date set forth in such notice, but in no event shall Landlord receive less than one hundred eighty (180) actual days' notice. Nothing in the foregoing termination right shall operate as a waiver of Landlord's rights against tenant at law or in equity, and further, if Tenant terminates this Lease under subsection (B), above, Tenant shall be pay to Landlord a sum equal to the cost of the Tenant Improvements and any broker's commission(s) related to this Lease (the "Termination Recoupment"), which Termination Recoupment shall be amortized according to a straight-line monthly amortization schedule.

24. BROKERS.

24.1 Landlord hereby agrees to indemnify, defend and hold Tenant harmless from claims for any commission or finders' fee charges by any real estate broker or other person or entity arising from an agreement, whether express or implied, between Landlord and such broker or other person or entity or otherwise arising from the conduct of Landlord.

24.2 Tenant hereby agrees to indemnify, defend and hold Landlord harmless from claims for any commission or finders' fee charges by any real estate broker or other person or entity, arising from an agreement, whether express or implied, between Tenant and any broker or other person or entity.

[SIGNATURES APPEAR ON THE NEXT PAGE]

IN WITNESS HEREOF Landlord and Tenant have executed this Lease the day and year first written above.

LANDLORD:

96 NORTH THIRD STREET, LLC,
a California Limited Liability Company

BY: 96 NORTH THIRD STREET, LLC
a California Limited Liability Corporation
Authorized Property Manager
as agent for Landlord named above

TENANT:

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

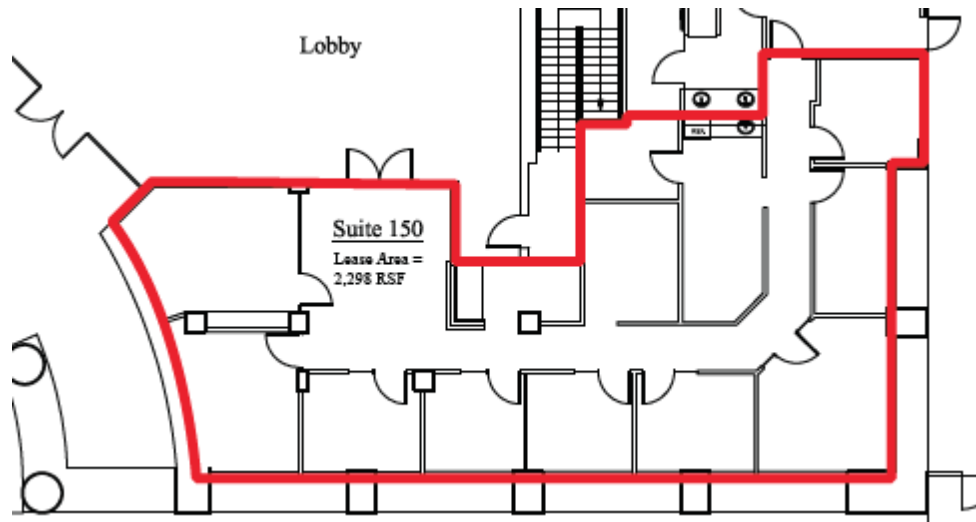
BY: _____
NAME: _____
ITS: _____

APPROVED AS TO FORM:

BY: _____
CAMERON DAY
Deputy City Attorney

EXHIBIT A

Floor Plan of Premises



*not to scale

EXHIBIT B

Work Letter

Prior to Tenant's occupancy of the Premises, Landlord shall, at Landlord's sole cost and expense, perform the following items of work as more particularly shown on **Exhibit A** of this Lease:

1. Installation of a new receptionist area that includes
 - a. Extension of the existing receptionist desk so that it extends and connects across to the end of the room (desk must be ADA compliant)
2. Installation of new glass security windows that covers the length of the receptionist desk
3. Installation of a badge/lock system for the back access door
4. Installation of the Independent Police Auditor logo on the front glass door
5. Installation of a sound system for the front entry door (sound activates when anyone enters)
6. Replace any damaged floor covering in the Premises with materials similar in look and feel to the existing floor covering and perform any touch-up painting necessary as a result of Landlord's work.

Prior to commencement of the work described above, Landlord shall work with Tenant and its representatives to agree upon the location of data outlets to be installed by Tenant.