

Resolution No. 2018-10-16-1402

STOCKTON CITY COUNCIL**RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A LEASE AMENDMENT WITH WILLIAM J. HOFFMAN, AS DULY APPOINTED RECEIVER (LANDLORD), FOR 400 EAST MAIN STREET**

The City purchased the Waterfront Office Towers at 501 and 509 West Weber Avenue in January 2018, to serve as the City's future City Hall; and

The City no longer needs the first floor space it is currently leasing at 400 East Main Street; and

Landlord has agreed to execute a Lease Amendment reducing the space the City is leasing by 19,491, which is the entirety of the first floor leased space at 400 East Main Street, and offer a prepayment discount for the balance of the space the City will retain under the current lease; and

Reducing the space leased by the City and making a one-time prepayment for the balance of the leased space will result in significant savings to the City; now, therefore,

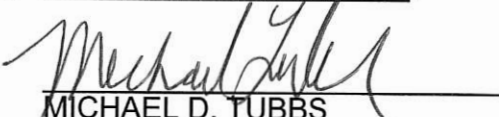
BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

1. The City Manager is hereby authorized to execute a Lease Amendment between the City of Stockton and William J. Hoffman, duly appointed Receiver (Landlord), for 400 East Main Street, attached as Exhibit 1 and incorporated by this reference.

2. Amendments to the Fiscal Year 2018-19 Annual Budget are authorized to add an expense appropriation from the General Fund available fund balance to be used for the one-time payment of the Rent Obligation Balance estimated to be \$3,897,934 with actual amount subject to change based on final effective date of the Lease Amendment and increase the General Fund rent revenue appropriation by \$175,563.

3. The City Manager is hereby authorized to take whatever actions are necessary and appropriate to carry out the purpose and intent of this Resolution.

PASSED, APPROVED, and ADOPTED October 16, 2018.


MICHAEL D. TUBBS
Mayor of the City of Stockton

ATTEST:

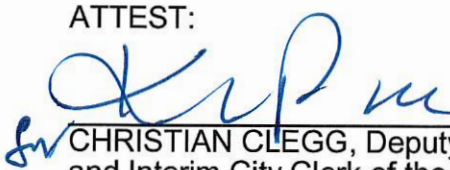

CHRISTIAN CLEGG, Deputy City Manager
and Interim City Clerk of the City of Stockton



EXHIBIT 1

**FIRST AMENDMENT TO STANDARD OFFICE LEASE
(400 East Main Street)**

This First Amendment to Standard Office Lease (400 East Main Street), dated as of _____, 2018 (this "**First Amendment**") is by and between WILLIAM J. HOFFMAN, duly appointed Receiver ("**Landlord**"), and THE CITY OF STOCKTON, a municipal corporation ("**Tenant**"), with reference to the following:

RECITALS

A. Pursuant to that certain Standard Office Lease, dated February 25, 2015, by and between Landlord and Tenant (the "**Original Lease**"), Landlord leases the Premises (as more specifically defined in the Original Lease, which shall hereinafter be referred to herein as the "**Original Premises**") to Tenant. Each initially capitalized term not otherwise defined herein shall have the meaning set forth for such term in the Original Lease.

B. Landlord and Tenant desire to decrease the size of the Original Premises leased to Tenant pursuant to the Original Lease and to amend and modify certain other provisions and conditions of the Original Lease, all as more specifically set forth herein. Except as expressly amended or modified by the provisions and conditions of this First Amendment, it is intended by Landlord and Tenant that the Original Lease shall remain unchanged and otherwise in full force and effect. The Original Lease, as modified by the terms of this First Amendment, shall hereinafter be referred to as the "**Lease**".

AGREEMENT

NOW, THEREFORE, Landlord and Tenant hereby agree as follows:

1. **Defined Terms.** The meaning of certain defined terms in the Original Lease shall be modified as follows:

(a) **Premises.** Subject to Tenant's payment of the First Floor Termination Fee (as such term is hereinafter defined), effective as of **November 1, 2018** (the "**Retained Premises Commencement Date**"), the term "**Premises**" shall mean (i) a portion of the third (3rd) floor of the Building consisting of approximately **25,755** rentable square feet, commonly known as Suite 310, (iii) the entire fourth (4th) floor of the Building consisting of approximately **25,730** rentable square feet, commonly known as Suite 400 and (iii) a portion of the seventh (7th) floor of the Building consisting of approximately **9,344** rentable square feet, commonly known as Suites 701 and 760, for a total Premises, as of the Retained Premises Commencement Date, comprised of 60,829 rentable square feet ((i) through (iii) collectively, as used in this First Amendment, the "**Retained Premises**"). From and after the Retained Premises Commencement Date, the term "**Premises**", as used in the Original Lease (including as such Original Lease is amended by this First Amendment), shall mean the Retained Premises.

The Retained Premises is shown on **Exhibit A** attached hereto and made a part hereof. Landlord and Tenant accept the calculation of 60,829 rentable square feet for the Retained Premises and 19,491 rentable square feet for the Give Back Space (as hereinafter defined) as final.

(b) **Basic Monthly Rent.** Beginning on the Retained Premises Commencement Date, Basic Monthly Rent for the Retained Premises shall be as follows:

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<u>Period</u>	<u>Basic Monthly Rent</u>	<u>Gross Annual Rent</u>
Retained Premises Commencement Date- February 28, 2019	\$58,791.02	\$705,492.24
March 1, 2019-February 29, 2020	\$78,831.57	\$945,978.84
March 1, 2020-February 28, 2021	\$78,911.09	\$946,933.08
March 1, 2021-February 28, 2022	\$78,992.12	\$947,905.44
March 1, 2022-February 28, 2023	\$79,073.91	\$948,886.92
March 1, 2023-March 31, 2023	79,073.91	N/A
Extension Term : April 1, 2023-March 31, 2024	\$94,615.15	\$1,135,381.80
Extension Term 2: April 1, 2024-March 31, 2025	\$94,699.21	\$1,136,390.52
Extension Term 3: April 1, 2025-March 31, 2026	\$107,657.18	\$1,291,886.16
Extension Term 4: April 1, 2026-March 31, 2027	\$107,744.28	\$1,292,931.36

Notwithstanding anything to the contrary contained in this First Amendment or in the Original Lease, Landlord has agreed to permit Tenant, in lieu of making Basic Monthly Rent payments in accordance with Article 2 of the Original Lease, to pay all of Tenant's outstanding Basic Monthly Rent obligations for the period beginning on the Retained Premises Commencement Date and ending on the Lease Expiration Date (not including any Basic Monthly Rent obligations that Tenant may owe to Landlord if Tenant chooses to exercise one or more of Tenant's Extension Options), discounted at the discount rate of three and one half percent (3.5%) (such amount, as discounted, the "**Retained Premises Prepaid Rent Amount**"), for a Retained Premises Prepaid Rent Amount equal to Three Million Seven Hundred Ninety One Thousand Seven Hundred Fifty One and 09/100 Dollars (\$3,791,751.09). Tenant shall deliver the Retained Premises Prepaid Rent Amount by wire transfer, cashier's check or other immediately available funds to Landlord no later than ten (10) days following the execution of this First Amendment. Notwithstanding anything to the contrary contained in this First Amendment or in the Original Lease, Landlord and Tenant acknowledge and agree that the Retained Premises Prepaid Rent Amount shall be deemed earned at the time that it is delivered by Tenant to Landlord in accordance with the terms of this First Amendment and is a material inducement to Landlord's agreement to enter into this First Amendment and permit Tenant to terminate the Lease with respect to the Give Back Space, and in no event shall Landlord be required to return all or any portion of such Retained Premises Prepaid Rent Amount in the event the Lease is terminated at any time prior to the Expiration Date in accordance with the terms of the Lease, unless Tenant would be permitted to abate Basic Monthly Rent resulting from a Landlord default pursuant to Section 13.3(b) of the Original Lease, in which case, Tenant shall be refunded an amount equal to the Basic Monthly Rent that Tenant would have been able to abate under the terms of Section 3.3(b) of the Original Lease, discounted at the discount rate of three and one half percent (3.5%).

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(c) Security Deposit. Landlord agrees to reduce the amount of the Security Deposit set forth in the Original Lease, which Landlord and Tenant agree is Two Hundred Nine Thousand Three Hundred Fourteen and 78/100 Dollars (\$209,314.78), to an amount equal to One Hundred Fifty Eight Thousand Five Hundred Twenty One and 03/100 Dollars (\$158,521.03) (the "**Reduced Security Deposit Amount**"), such that (i) from and after the Retained Premises Commencement Date, the term "Security Deposit" as used in the Lease shall mean a security deposit in an amount equal to the Reduced Security Deposit Amount, and (ii) no later than thirty (30) days after the Retained Premises Commencement Date, Landlord shall return to Tenant an amount equal to the amount of the original Security Deposit minus the Reduced Security Deposit Amount.

(d) Permitted Uses. From and after the date hereof, Item 9 of the Basic Lease Provisions shall be deleted in its entirety and replaced with the following:

"9. PERMITTED USES: General office use, operation of an information technology center, and all related uses thereto, subject to existing zoning restrictions and the terms hereof, including, but not limited to, those set forth in Article 7 (the "Permitted Uses")."

2. Give Back Space. Landlord and Tenant acknowledge and agree that the Original Premises was comprised of the Retained Premises and a portion of the ground floor of the Building, consisting of approximately 19,491 rentable square feet, commonly known as Suites 102, 119 and 124 (collectively, the "**Give Back Space**"). Landlord has agreed to permit Tenant to terminate the Original Lease, solely with respect to the Give Back Space, subject to Tenant paying to Landlord by wire transfer, cashier's check or other immediately available funds concurrently with the execution of this First Amendment, the First Floor Termination Fee (as hereinafter defined). As used herein "**First Floor Termination Fee**" means an amount equal to fifty percent (50%) of the Basic Monthly Rent to be paid for the Give Back Space during the period beginning on the Retained Premises Commencement Date and ending on March 31, 2023 (the "**Lease Expiration Date**"), which amount Landlord and Tenant acknowledge and agree is Six Hundred Fifty Seven Thousand Four Hundred Ninety Eight and 38/100 Dollars (\$657,498.38).

3. Parking. Effective as of the date hereof, Item 10 of the Basic Lease Provisions shall be deleted in its entirety and replaced with the following:

"10. PARKING: As part of Tenant's consideration under this Lease, Tenant shall be entitled to one-hundred and five (105) parking spaces located in the Parking Garage during the Term of this Lease (collectively, "Tenant's Spaces"), of which seventy-five (75) of Tenant's Spaces shall be unreserved parking spaces and thirty (30) of Tenant's Spaces shall be reserved parking spaces (such Tenant's Spaces, the "Reserved Spaces"). The Reserved Spaces shall be located within that portion of the Parking Garage depicted on Exhibit "E" attached hereto and made a part hereof; provided, however, that Landlord shall have the right to temporarily relocate such Reserved Spaces for purposes of maintaining, repairing, restoring, altering or improving the Parking Garage and maintaining the safety of the Parking Garage and/or the Project. Landlord reserves the right to separately charge Tenant's guests and visitors for parking; provided, however, that Tenant's visitors shall be permitted to use, at no additional charge, any of Tenant's Spaces that are not being used by Tenant at the time

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such visitor wishes to park at the Building, as determined by Landlord (or any agent or employee thereof) in its reasonable discretion."

As of the date hereof, Exhibit "E" attached to the Original Lease is hereby deleted in its entirety and replaced with Exhibit E attached hereto and made a part hereof.

(a) **Effect of Prior Parking Provisions.** Landlord and Tenant hereby acknowledge and agree that any provisions contained in the Original Lease, to the extent contrary to, or inconsistent with, the provisions of Paragraph 3 above shall be deemed amended by the provisions of Section 3 above.

4. **Type and Nature of Tenant's Business.** Effective as of the date hereof, Item 11 of the Basic Lease Provisions is hereby deleted in its entirety and replaced with the following:

"11. **TYPE/NATURE OF TENANT'S BUSINESS:** Government offices and technology center and the operation of services consistent with or necessary to the operation thereof."

5. **Extension Options.** Landlord and Tenant hereby acknowledge and agree that Tenant's Extension Option rights, as contained in Section 1.2 of the Original Lease, shall remain in full force and effect, notwithstanding Tenant's termination of the Lease solely with respect to the Give Back Space; provided, however, each Extension Option shall be for the entirety of the Retained Premises, and the Basic Monthly Rent for each Extension Term shall be as set forth in Section 1(b), above.

6. **Tenant's Signage Rights.** Beginning on the date hereof, each of Section 3.1 ("Tenant's Right to Exterior Building Signs"), Section 3.2 ("Tenant's Installation of Signs"), Section 3.3 ("Removal, Repair and Restoration"), Section 3.4 ("Maintenance of Tenant's Signs") and Section 3.7 ("Rights Personal to Tenant") of the Original Lease shall be deleted its entirety and replaced with the following: "Intentionally Omitted", and in no event shall any such Section of the Original Lease be of any further force or effect from and after the date hereof. Notwithstanding the foregoing, Tenant shall remove, no later than thirty (30) days after the Retained Premises Commencement Date, at its sole cost and expense, each of Tenant's Signs (as such term is defined in the Original Lease), repair any damage caused by such removal and restore those parts of the Building on which Tenant's Signs were located to the condition that existed before the installation of Tenant's Signs, ordinary wear and tear and damage due to casualty excepted. Such removal, repair and restoration shall be in accordance with the procedures and requirements of Article 6 of the Original Lease, except to the extent in conflict with this Section 6.

7. **Building Security; Premises Security.** As of the date hereof, Section 4.10 of the Original Lease shall be deleted in its entirety and replaced with the following:

"4.10 **Building Security; Premises Security.** Tenant shall be permitted, at its sole discretion, cost and expense, to maintain and operate an additional security system or service within the Premises (including, but not limited to, placing additional security personnel within the Premises), which may, upon Tenant's election, function as the primary security for the Premises (the "Optional Primary Security"). Upon such an election by Tenant, employees and contractors operating such Optional Primary Security for the Premises shall coordinate with Landlord and any employees and contractors operating any Building security system to ensure that (i) such Optional Primary Security

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does not interfere with, or unduly burden, the operation of any Building security system, and (ii) to the extent such Optional Primary Security (or any portion thereof) is in the form of an electronic security system rather than additional security personnel, Landlord (or Landlord's property manager) has reasonable access to such Optional Primary Security (or applicable portion thereof), to ensure such Optional Primary Security (or applicable portion thereof) does not unduly burden or interfere with any other tenant's use or occupancy of the Building. Notwithstanding the foregoing, Tenant shall remain responsible for any costs for which Tenant is required to reimburse Landlord under the terms hereof in connection with Landlord's maintenance and provision of any Building security."

8. **Effect of the Give Back Space on Other Lease Provisions.** From and after the date hereof, as a result of Tenant terminating the Lease solely with respect to the Give Back Space in accordance with the terms of this First Amendment, Landlord and Tenant acknowledge and agree as follows:

(a) Section 6.4 ("Cafeteria") shall be deleted in its entirety and replaced with "[Intentionally Omitted]",

(b) each of Sections 7.2(b) through (d) shall be deleted in its entirety and replaced with "[Intentionally Omitted]", and none of the foregoing Sections shall be of any further force or effect from and after the Retained Premises Commencement Date,

(c) all but the first sentence of Section 7.2(a) shall be deleted in its entirety and shall be of no further force or effect, and

(d) the following parenthetical shall be deleted in its entirety from Section 9.1 and shall be of no further force or effect: "(including, but not limited to, any additional expense that may be incurred by Landlord in connection with Tenant's use of Suite 124 as the City Council Chambers, which expense Landlord would not otherwise have incurred if Suite 124 was used solely for general office purposes between the hours of approximately 7:00 a.m. and 6:00 p.m.)".

9. **Brokers.** Landlord has entered into an agreement with CBRE, Inc. ("Landlord's Broker"), pursuant to which Landlord has granted to Landlord's Broker the exclusive right to lease space in the Building. Landlord shall pay any commissions or fees that are payable to Landlord's Broker with respect to this First Amendment in accordance with the provisions of a separate commission contract. Landlord shall have no further or separate obligation for the payment of commissions or fees to any other real estate broker, finder or intermediary. Tenant represents that it has not had any dealings with any real estate broker, finder or intermediary with respect to this First Amendment, other than Landlord's Broker. Subject to the foregoing, each party hereto shall indemnify and hold harmless the other party hereto from and against any and all damages, liabilities, losses, costs and expenses (including, but not limited to, reasonable attorneys' fees and related costs) resulting from any claims that may be asserted against such other party by any real estate broker, finder or intermediary other than Landlord's Broker, arising from any act of the indemnifying party in connection with this First Amendment.

10. **Release; Waiver.** Tenant, on behalf of itself, and its officials, officers, agents, employees and/or other representatives, as of the date hereof, hereby discharges and releases Landlord, and its members, officers, shareholders, divisions, subsidiaries, agents, managers, contractors, servants, employees and invitees, except to the extent of such party's recklessness or willful misconduct, from all

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of its past and future claims, demands, damages, obligations, losses, liabilities, costs and expenses (including attorneys' fees and expenses) directly or indirectly related to or arising out of or in connection with the Original Lease. Tenant expressly waives the provisions of California Civil Code Section 1542, which provides:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

11. **No Further Modification.** Except as specifically set forth in this First Amendment, all of the terms and provisions of the Original Lease remain unmodified and in full force and effect, and, except as expressly amended or modified hereby, all terms and provisions of the Original Lease are hereby incorporated herein by reference thereto. Notwithstanding the foregoing, Landlord hereby reserves all rights and remedies Landlord may have as to the date hereof arising from any acts or omissions of Tenant occurring under the Original Lease. All references to the "Lease" in the Original Lease shall mean the Original Lease, as amended by this First Amendment.

12. **Estoppe!** As of the date hereof, Tenant acknowledges and agrees that Landlord has performed all obligations required of Landlord under the Lease, and there are no offsets, counterclaims or defenses of Tenant under the Original Lease existing against Landlord. Tenant further acknowledges and agrees that no events have occurred that, with the passage of time or the giving of notice, or both, would constitute a basis for an offset, counterclaim or defense against Landlord, and that the Original Lease, as amended hereby, is in full force and effect.

13. **Counterparts.** This First Amendment may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument. The parties hereto agree to accept a digital image of this First Amendment, as transmitted via facsimile, email or other electronic means, as executed, as a true and correct original and admissible as best evidence for the execution and delivery of same by the parties hereto.

[Signatures Continue on Next Page]

EXHIBIT 1

IN WITNESS WHEREOF, the undersigned have executed this First Amendment as of the first date written above.

LANDLORD

William J. Hoffman,
as Receiver

By: _____
Name:
Title:

TENANT

THE CITY OF STOCKTON,
a municipal corporation

By: _____
Name:
Title:

EXHIBIT E

Location of Reserved Spaces

[See Attached]