

K21-106

**SECOND AMENDMENT TO SECOND LEASE TO LEASE AGREEMENT
(FOR SUITE 650)**

This **SECOND AMENDMENT TO SECOND LEASE TO LEASE AGREEMENT (FOR SUITE 650)** (this "Second Amendment") is made and entered into effective retroactively as of the 1st day of December, 2019 by and between **EAST SKELLY LLC**, a Delaware limited liability company ("Lessor"), and **THE CITY OF NEW ORLEANS**, a body politic and corporate ("Lessee").

WITNESSETH:

WHEREAS, Lessor and Lessee entered into that certain Office Lease Agreement dated February 1, 2010, as amended by that certain Second Amendment to Lease dated June 30, 2011, that certain Second Amendment to Lease dated June 30, 2012, that certain Third Amendment to Lease dated June 30, 2013, that certain Fourth Amendment to Lease dated June 1, 2015, that certain Fifth Amendment to Lease Agreement dated June 1, 2016, that certain Sixth Amendment to Lease Agreement dated June 1, 2017, and that certain Seventh Amendment to Lease Agreement dated effective as of January 1, 2018, for the lease of (i) approximately 3,826 rentable square feet of space located in Suite 1170 on the 11th floor of the building located at 1515 Poydras Street, New Orleans, Louisiana 70112 (the "Building"), and as more particularly described in the Existing Lease ("Suite 1170"), and (ii) approximately 4,672 rentable square feet of space located in Suite 650 on the 6th floor of the Building, and as more particularly described in the Existing Lease ("Suite 650"); and

WHEREAS, Lessee had requested, and Lessor had agreed, to separate Lessee's lease of Suite 1170 and Suite 650 into two separate documents; and

WHEREAS, Lessor and Lessee entered into that certain Second Lease to Lease Agreement (for Suite 650) made and entered into effective as of June 1, 2018 (the "Original Second Lease"), as amended by that certain First Amendment to Second Lease to Lease Agreement made and entered into effective retroactively December 31, 2018 (the "First Amendment"), and collectively with the Original Second Lease and this Second Amendment, the "Second Lease"; and

WHEREAS, the current term of Lessee's lease of Suite 650 expires on November 30, 2019; and

WHEREAS, Lessor and Lessee desire to extend the term of the Second Lease to June 30, 2021; and

WHEREAS, Lessor and Lessee have agreed to execute this Second Amendment in order to memorialize the foregoing.

NOW, THEREFORE, in consideration of the mutual covenants and obligations of the parties contained in this Second Amendment and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee hereby agree as follows:

1. Incorporation. The above recitals are true and complete and are incorporated herein by this reference, and this Second Amendment shall be construed in light thereof.
2. Definitions. Capitalized terms, unless otherwise defined herein, shall have the meanings ascribed to such terms in the Existing Lease.
3. Term. (a) The term of Lessee's lease of Suite 650 shall be extended for a period of nineteen (19) months, commencing on December 1, 2019 and expiring on June 30, 2021 (that portion of the term of the Second Amendment commencing on December 1, 2019 and continuing through June 30, 2021 shall hereinafter be referred to as the "Second Extended NOPD Lease Term"). All references in the Second Amendment to the "term", "Term" or "Lease Term" of the Second Amendment shall hereafter be deemed to include the Second Extended NOPD Lease Term.

(b) Lessee agrees to accept Suite 650 in "As-Is" "Where-Is" condition. Lessor shall have no obligation to make any alterations or improvements to Suite 650 or provide Lessee with any funds or allowances for the improvement or alteration of Suite 650.

(c) Notwithstanding anything to the contrary contained in the Existing Lease, effective as of December 1, 2019 (the "Commencement Date"), Base Rent payable by Lessee to Lessor for the lease of Suite 650 only shall be in the amounts as follows, including accrued escalations:

RENTAL PERIOD	RENTAL RATE	MONTHLY BASE RENT	ANNUAL BASE RENT
December 1, 2019 through June 30, 2021	\$18.50/sq ft./yr	\$7,202.67	\$86,432.00

All payments of Base Rent shall be paid in accordance with the terms of the Existing Lease. Lessee shall continue to pay Lessor for any additional rent and/or taxes required pursuant to the terms of the Lease and applicable to Suite 650, including, without limitation, Base Rent Adjustment (as defined in the Existing Lease).

4. Termination by Lessor. Lessor may terminate the lease at any time by providing 90 days' written notice to the Lessee. Such notice must include notice that the Lessor will modify the use of the Building so that no space is available for Lessee.

5. Termination by Lessee. Lessee may terminate the lease at any time by providing 90 days' written notice to the Lessor. Such notice must include notice that the City did not appropriate funding for the Lease for 2021, or the public purpose requiring the City to relocate to another location.
6. Brokers. Lessor and Lessee warrant each to the other that they have not dealt with any broker(s) or any other person claiming any entitlement to any commission in connection with this Second Amendment except Jones Lang LaSalle Americas, Inc., which represents Lessor ("Lessor's Broker"). Lessor and Lessee agree to indemnify and save each other harmless from and against any and all claims, suits, liabilities, costs, judgments and expenses, including reasonable attorneys' fees, for any leasing commissions or other commissions, fees, charges or payments resulting from or arising out of their respective actions in connection with this Second Amendment except as to Lessor's Broker.
7. Ratification; Miscellaneous. The terms of the Original Second Lease, shall remain enforceable in accordance with its terms. Terms and provisions of the Original Second Lease which are not expressly modified by this Second Amendment shall remain in full force and effect and shall govern Lessee's lease of Suite 650. As amended by this Second Amendment, all of the terms, conditions and provisions of the Original Second Lease are hereby ratified and affirmed in all respects. To the extent any terms, conditions and obligations contained in this Second Amendment conflict with the terms in the Original Second Lease, those in this Second Amendment shall control. This Second Amendment may be executed by facsimile or email/pdf and in any number of counterparts all of which taken together shall constitute one and the same instrument and any of the parties or signatories hereto may execute this Second Amendment by signing any such counterpart. In the event any term or provision of this Second Amendment is determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or be construed or deleted as such authority determines, and the remainder of this Second Amendment shall remain in full force and effect. Lessor and Lessee hereby represent and warrant to each other that all consents or approvals required for the execution, delivery and performance of this Second Amendment have been obtained and that each party has the right and authority to enter into and perform its covenants contained in this Second Amendment.
8. Cost Recovery. In accordance with Section 2-8.1 of the Municipal Code entitled "Cost recovery in contracts, cooperative endeavor agreements, and grants," to the maximum extent permitted by law, the Contractor shall reimburse the City or disgorge anything of value or economic benefit received from the City if the Contractor fails to meet its contractual obligations.
9. Invoices.

(a) The Contractor must submit invoices monthly (unless agreed otherwise between the parties to this Agreement) to the City electronically, via its supplier portal, for goods or services provided under this Agreement no later than 10 calendar days following the end of the period covered by the invoice. Untimely invoices may result in delayed payment for which the City is not liable. At a minimum, each invoice must include, at a minimum, the following information:

- i. Name of Contractor;
- ii. Date of Invoice;
- iii. Invoice Number;
- iv. Contract or Purchase Order Number issued by the City (i.e. K#);
- v. Name of the City Department to be invoiced (i.e. City Civil Service);
- vi. Description of the Services completed.

(b) Invoices will be processed in accordance with the terms and conditions contained in Invitation to Bid N. 4411-01966.

(c) All invoices must be signed by an authorized representative of the Contractor under penalty of perjury attesting to the validity and accuracy of the invoice.

(d) The City may require changes to the form of the invoice and may require additional supporting documentation to be submitted with invoices

10. **Payment.** Unless otherwise agreed by the City, payment terms are NET 30 days upon providing that goods and/or services described under this Agreement have been delivered, installed (if required), rendered, and/or accepted and upon receipt by the City of properly submitted invoice via the City's supplier portal.

11. **Non-Solicitation Statement.** The Lessor swears that it has not employed or retained any company or person, other than Lessor's Broker or a bona fide employee working solely for it, to solicit or secure this Second Amendment. The Lessor has not paid or agreed to pay any person, other than Lessor's Broker or a bona fide employee working for it, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from this Second Amendment.

12. **Electronic Signature and Delivery.** The Parties agree that a manually signed copy of this Second Amendment and any other document(s) attached to this Second Amendment delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Second Amendment. No legally binding obligation shall be created with respect to a party until such party has delivered or caused to be delivered a manually signed copy of this Second Amendment.

IN WITNESS WHEREOF, Lessor and Lessee have caused this Second Amendment to be duly executed under seal effective as of the day and year first above written.

LESSOR:

EAST SKELLY LLC,
a Delaware limited liability company

By: FCA PARTNERS, LLC
a North Carolina limited liability company,
its Manager

By:

Name: Edward M. Cherry

Date: 2-12-2021

Title: Manager

LESSEE:

CITY OF NEW ORLEANS, a body politic and
corporate

By:

Name: LaToya Cantrell, Mayor

Date: March 31, 2021

Title: Mayor

Form and Legality Approved:

By:

Name:

Law Department