



# City of Palo Alto

## City Council Staff Report

(ID # 6497)

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**Report Type: Consent Calendar**

**Meeting Date: 2/1/2016**

**Summary Title: Extension of Lease Agreements for the City Development Center at 285 Hamilton Avenue**

**Title: Approval of the Fifth Amendment to Extend the Lease with Thoits Bros., Inc. at 285 Hamilton Avenue, Suite 100 for a Period of 14 Months and Approval of the Second Amendment to Extend the Sublease with Thoits Bros., Inc., 285 Hamilton Avenue, Suite 200 for a Period Of 14 Months for Use by the City Development Center**

**From: City Manager**

**Lead Department: Administrative Services**

Staff recommends that Council

1. Approve and authorize the City Manager or his designee to execute the attached fifth amendment to the lease with Thoits Bros., Inc. (TBI) for the 6,361 square foot Development Center ground floor space at 285 Hamilton Avenue, Suite 100 to extend the lease from September 30, 2016 to December 4, 2017; and
2. Approve and authorize the City Manager or his designee to execute the attached second amendment of sublease agreement to extend the term agreement with Thoits Bros., Inc. (TBI) for the 3,991 square foot Development Center second floor space at 285 Hamilton Avenue, Suite 200 from September 30, 2016 to December 4, 2017.

### **Executive Summary**

The two proposed extensions of the tenancy agreements at the City Development Center at 285 Hamilton Avenue will provide the City with the continuous operation of the Development Center to provide services to the public. These amendments will align the termination dates of both agreements to December 4, 2017 to prevent service interruption due to ending of the lease and sublease agreements at different time periods. In addition, the City is granted an option to extend the term of the lease for the ground level, Suite 100, for an additional two (2) years after December 4, 2017. The landlord maintains the option of extending the lease for the second floor space, Suite 200, for an additional two (2) years after December 4, 2017.

## **Background**

The Development Center currently occupies 6,361 square feet on the ground floor (Suite 100) and, 3,991 square feet on the second floor (Suite 200) of the property, which is owned by Thoits Bros., Inc. (Landlord).

### **Suite 200**

The internet company, Survey Monkey, vacated its leased space on the second floor of 285 Hamilton Avenue because of its growth needs and offered to sublet this space to the City. In order to expand the Development Center operation and avoid over-crowding, on December 13, 2011, the City entered into a sublease agreement with Survey Monkey to occupy and use approximately 3,133 square feet of the second floor at 285 Hamilton Avenue.

The Survey Monkey lease agreement with the Landlord was to expire on September 30, 2016. On May 1, 2015, Survey Monkey and Thoits Bros reached an agreement to terminate the lease earlier and as the result, the existing sublease agreement between the City and Survey Monkey was transferred to an agreement between the City and Thoits Bros. On July 2015, Thoits Bros and the City reached an agreement to relocate the Development Center suite on the second floor of the building from Suite 280 to Suite 200, consisting of approximately 3,991 rentable square feet. The proposed new amendment will extend the term for Suite 200 to December 4, 2017.

### **Suite 100**

In early 1998, after receiving Council authorization to search for additional space to relieve overcrowding in the Civic Center, staff considered many possible locations and identified the space at 285 Hamilton Avenue as ideal for the City's Development Center. On September 22, 1998, the City Council approved an 8-year lease with Hamilton Palo Alto LLC for 6,361 square feet of space at 285 Hamilton Avenue for location of the City's Development Center (CMR 368:98). On May 18, 1999, the City Manager approved the first amendment to the lease, which expanded the original 6,361 square foot premises by approximately 702 square feet for a limited time, from March 1, 1999 until December 31, 1999, to provide temporary office space for City staff. On June 13, 2006, the City and Thoits Bros., Inc entered into amendment No. 2 to continue the Lease directly with the Landlord and to adjust rate and to extend the Lease term to January 31, 2012.

Amendment No. 3 of the Lease was executed on November 1, 2011 to extend the office lease until January 31, 2014 under the First Option to Extend clause. The City exercised its Second Option per terms and condition of the Lease to extend the Lease for twenty four (24) months to February 1, 2016. Later the Landlord and Tenant agreed to extend the lease for an additional eight (8) months to bring the total extension to thirty two (32) months to expire on September 30, 2016. The proposed new amendment will extend the term for Suite 100 to December 4, 2017.

## Discussion

The existing lease agreements for the different floors that are occupied by the Development Center and Palo Alto Fire Department will expire on September 30, 2016. The purpose of the amendments recommended in this report is to extend the term of both agreements for occupancy of the Development Center to ensure the continuation of operation of the Development Center without interruption and to amend the expiration date of the Lease with Thoits Brothers. In order to accomplish that goal, Real Estate Staff met with the Landlord representatives to discuss the amendment of the existing agreements. As a result, all parties came to agreement to extend the agreements to expire at the same time and to ensure extended leaseholds right for the City to remain at the Development Center until other options become available. Amendment of the agreements will add fourteen (14) months to the current term. The lease terms, rental rates, expiration dates and annual rate increases are summarized in the table below:

| Landlord/Suite Size          | Future Commencement Date | Lease Expiration Date | Rent Payment   | CPI Adjustment     | Options                                    |
|------------------------------|--------------------------|-----------------------|--|--------------------|--|
| TBI/100<br>6,361 square feet | September 30, 2016       | December 4, 2017      | 10/1/2016 to 1/31/2017<br>=\$47,262.00<br><br>2/1/2017 to 12/4/2017 =<br>\$48,662.00   | 3% annual increase | City can extend for two (2) more years     |
| TBI/200<br>3,991 square feet | September 30, 2016       | December 4, 2017      | 10/1/2016 to 11/30/2016<br>=\$22,588.93<br><br>12/1/2016 to 12/4/2017 =<br>\$23,266.60 | 3% annual increase | Landlord can extend for two (2) more years |

\*NNN refers to a triple net lease where tenants are responsible for proportional cost of property taxes, insurance, and maintenance of the building.

Should the space at 285 Hamilton be needed beyond December of 2017, the City would endeavor to negotiate with Landlord, TBI, more than a year before expiration of the terms to establish acceptable rates and duration time to extend the lease.

## Resource Impact

### Suite 100

The current monthly rental cost to lease 6,361 square feet for Suite 100 is \$47,262. The new agreement starting on October 1, 2016 will keep the current monthly rent charges until February 1, 2017, at which time the rent will increase by 3 percent to \$48,662 through December 4, 2017.

Common area maintenance (CAM) charges, (including property tax, insurance, assessments, building maintenance, gas, water, sewer and garage) to support occupancy expenses are

projected to be approximately \$1.15 per square foot or at 14.3% of the total cost of tenancy at this location. Anticipated CAM costs will run approximately \$7,355 per month or \$88,260 annually.

### **Suite 200**

The current monthly rental cost to lease 3,991 square feet for Suite 200 is \$22,589. The new agreement starting on October 1, 2016 will keep the monthly rent charge through December 1, 2016, at which time the rent will increase by 3 percent to \$23,266 per month through December 4, 2017.

Common area maintenance (CAM) charges, (including property tax, insurance, assessments, building maintenance, gas, water, sewer and garage) to support occupancy expenses are projected to be approximately \$1.00 per square foot or at 8.73% of the total cost of tenancy at this location. Anticipated CAM costs will run approximately \$4,020 per month or \$48,240 annually.

Rent expense for both floors is budgeted in the Development Services Department. The Long Range Financial Forecast contained \$984,000 in Fiscal Year 2017 for rent expenses for the Development Services Department. The recommendations included in this report anticipate total expenses for renting the Development Center of approximately \$850,000 in rent and \$136,500 for CAM charges in FY 2017, a total of \$986,500, or \$2,500 more than the Budgeted amount. It should be noted that CAM costs can fluctuate. Accordingly, the expenses associated with these two leases will continue to be monitored and any necessary adjustments will be brought forward for consideration by City Council.

### **Policy Implications**

The proposed lease extensions are consistent with the existing City policy. The continuation of the Development Center is consistent with goals of the Comprehensive Plan, which states the City's commitment to streamline the permit process in order to improve customer service and staff efficiency.

### **Environmental Review**

Leasing of existing office space involving no expansion of use is exempt from the California Environmental Quality Act review pursuant to CEQA Guideline Section 15301.

#### **Attachments:**

- Attachment A: Fifth Amendment to Lease\_The City of Palo Alto\_Suite 100\_285 Hamilton Ave (DOCX)
- Attachment B: Second Amendment to Sublease\_The City of Palo Alto\_Suite 200\_285 Hamilton Ave (DOCX)

ATTACHMENT A

FIFTH AMENDMENT TO OFFICE LEASE

This FIFTH AMENDMENT TO OFFICE LEASE (this "Fifth Amendment") is dated as of December \_\_, 2016 (the "Effective Date") by and between THOITS BROS., INC., a California corporation ("Landlord") and THE CITY OF PALO ALTO, a California municipal corporation ("Tenant").

WHEREAS, Landlord, as successor in interest to Hamilton Palo Alto, LLC, and Tenant are parties to that certain Office Lease dated October 18, 1998, as amended by that certain Amendment No. 1 to Office Lease dated May 18, 1999, as further amended by that certain Amendment No. 2 to Office Lease dated June 13, 2006, as further amended by that certain Amendment No. 3 to Office Lease dated November 1, 2011, and as further amended by that certain Amendment No. 4 to Office Lease dated September 3, 2013 (as amended, the "Lease"), for the lease of certain premises consisting of approximately 6,361 rentable square feet located on the first floor of the building, and commonly known as Suite 100, in the building located at 285 Hamilton Avenue, Palo Alto, California as more particularly described in the Lease (the "Premises"); and

WHEREAS, Landlord and Tenant wish to amend certain provisions of the Lease as further provided for herein;

NOW, THEREFORE, for good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree to amend the Lease as follows.

AGREEMENT

1. Definitions. Capitalized terms used in this Fifth Amendment shall have the same meaning ascribed to such capitalized terms in the Lease, unless otherwise provided for herein.
2. Extension. The Term of the Lease is hereby extended and shall expire on December 4, 2017.
3. Base Rent. Commencing on October 1, 2016, the Monthly Base Rent shall be payable according to the following schedule:

| Period                              | Approximate S.F. Base Rent | Monthly Base Rent |
|-------------------------------------|----------------------------|-------------------|
| October 1, 2016 – January 31, 2017  | \$7.43                     | \$47,262.00       |
| February 1, 2017 – December 4, 2017 | \$7.65                     | \$48,662.00       |

4. Renewal. So long as (i) there then exists no event of default either at the time of exercise or on the first day of the Extension Term (as hereinafter defined), (ii) this Lease is in full force and effect, and (iii) the Tenant named herein has not assigned this Lease and is in occupancy of

## ATTACHMENT A

the entire Premises, Tenant shall have the right and option to extend the Term hereof for one (1) additional twenty-four (24) month period (the "Extension Term") upon written notice to Landlord given not less than six (6) months and not more than nine (9) months prior to the Lease expiration date. The parties agree that if Tenant fails to exercise its option to extend the Term strictly within the time periods set forth in this Section, then Tenant's right to extend the Term shall automatically lapse and Tenant shall have no right to extend the Term. In the event that Tenant exercises the option granted hereunder, the applicable Extension Term shall be upon the same terms and conditions as are in effect under this Lease immediately preceding the commencement of such Extension Term except that the Base Rent due from the Tenant shall be increased at the same rate as provided herein and Tenant shall have no further rights or options whatsoever to extend the Term beyond the expiration of such Extension Term. Tenant acknowledges, confirms and agrees that it shall have no other right or option to extend or renew the Lease except as provided in this Section.

5. Real Estate Brokers. Tenant represents to Landlord that Tenant did not involve any broker in procuring this Fifth Amendment. Tenant hereby agrees to (A) forever indemnify, defend and hold Landlord harmless from and against any commissions, liability, loss, cost, damage or expense (including reasonable attorneys' fees) that may be asserted against or incurred by Landlord as a result of any misrepresentation by Tenant hereunder and (B) discharge any lien placed against the Property by any broker as a result of the foregoing.

6. Governing Law. This Fifth Amendment shall be governed by and construed in accordance with the laws of the State of California (without regard to conflicts of law).

7. Certified Access Specialist Inspection. California Civil Code Section 1938 requires Landlord to notify Tenant whether the Premises has undergone inspection by a Certified Access Specialist ("CASp"). Landlord hereby acknowledges that the Premises has not undergone such inspection.

8. Ratification of Lease. Except as modified hereby, all other terms and conditions of the Lease remain unchanged and in full force and effect and are hereby ratified and confirmed by the parties hereto. Tenant accepts the Premises in its "as is" and "where is" condition. Tenant represents and warrants to Landlord that as of the date of Tenant's execution of this Fifth Amendment: (a) Tenant is not in default under any of the terms and provisions of the Lease; (b) Landlord is not in default in the performance of any of its obligations under the Lease and Tenant is unaware of any condition or circumstance which, with the giving of notice or the passage of time or both, would constitute a default by Landlord; (c) Landlord has completed, to Tenant's satisfaction, any and all improvements to the Premises and has paid any and all allowances required of it under the Lease; and (d) Tenant has no defenses, liens, claims, counterclaims or right to offset against Landlord or against the obligations of Tenant under the Lease. Tenant acknowledges, confirms, and agrees that Tenant has no right or option to expand the Premises or to extend, renew or terminate the Lease, except as provided herein.

9. Limitation of Liability. Neither Landlord nor any officer, director, member or employee of Landlord nor any owner of the Building, whether disclosed or undisclosed, shall have any personal liability with respect to any of the provisions of the Lease, as hereby amended, or the Premises, and if Landlord is in breach or default with respect to Landlord's obligations under the Lease, as hereby amended, or otherwise, Tenant shall look solely to the interest of Landlord in the Building for the satisfaction of Tenant's remedies or judgments.

ATTACHMENT A

10. Entire Agreement. This Fifth Amendment, in conjunction with the Lease, constitutes the entire agreement of Landlord and Tenant with respect to the subject matter hereof and supersedes all oral and written agreements and understandings made and entered into by the parties prior to the date hereof.

11. Multiple Counterparts. This Fifth Amendment may be executed in multiple counterparts, all of which, when taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Fifth Amendment as of the Effective Date stated above.

TENANT:

LANDLORD:

THE CITY OF PALO ALTO,  
a California municipal corporation

THOITS BROS. INC.,  
a California corporation

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

Approved as to form:

\_\_\_\_\_

Office of the City Attorney

ATTACHMENT B

SECOND AMENDMENT TO SUBLEASE LEASE AGREEMENT

This SECOND AMENDMENT TO SUBLEASE AGREEMENT (this “Second Amendment”) is dated as of December \_\_\_, 2016 (the “Effective Date”) by and between THOITS BROS., INC., a California corporation (“Sublandlord”) and THE CITY OF PALO ALTO, a California municipal corporation (“Subtenant”).

WHEREAS, Sublandlord, as successor in interest to SurveyMonkey Inc., and Subtenant are parties to that certain Sublease Agreement dated December 14, 2011, as amended by that certain First Amendment to Sublease Agreement dated September 5, 2013 (as amended, the “Sublease”), for the lease of certain premises consisting of approximately 3,133 rentable square feet located on the second floor of the building, and commonly known as Suite 280, in the building located at 285 Hamilton Avenue, Palo Alto, California (the “Building”) as more particularly described in the Sublease (the “Premises”); and

WHEREAS, Subtenant and Sublandlord have relocated the Premises in the Building from Suite 280 to Suite 200, consisting of approximately 3,991 rentable square feet, making Subtenant’s share of Operating Expenses 8.73%;

WHEREAS, Sublandlord and Subtenant wish to amend certain provisions of the Sublease as further provided for herein;

NOW, THEREFORE, for good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Sublandlord and Subtenant hereby agree to amend the Sublease as follows.

AGREEMENT

1. Definitions. Capitalized terms used in this Second Amendment shall have the same meaning ascribed to such capitalized terms in the Sublease, unless otherwise provided for herein.
2. Extension. The Term of the Sublease is hereby extended and shall expire on December 4, 2017.
3. Base Rent. Commencing on October 1, 2016, the Monthly Base Rent shall be payable according to the following schedule:

| Period                              | Monthly Base Rent |
|-------------------------------------|-------------------|
| October 1, 2016 – November 30, 2016 | \$22,588.93       |
| December 1, 2016 – December 4, 2017 | \$23,266.60       |

4. Renewal. Sublandlord shall have the right and option to extend the Term hereof for one (1) additional twenty-four (24) month period (the “Extension Term”) upon written notice to



## ATTACHMENT B

Subtenant given not less than six (6) months and not more than nine (9) months prior to the Sublease expiration date. In the event that Sublandlord exercises the option granted hereunder, the Extension Term shall be upon the same terms and conditions as are in effect under this Sublease immediately preceding the commencement of such Extension Term except that the Base Rent due from the Subtenant shall be increased at the same rate as provided herein.

5. Real Estate Brokers. Subtenant represents to Sublandlord that Subtenant did not involve any broker in procuring this Second Amendment. Subtenant hereby agrees to (A) forever indemnify, defend and hold Sublandlord harmless from and against any commissions, liability, loss, cost, damage or expense (including reasonable attorneys' fees) that may be asserted against or incurred by Sublandlord as a result of any misrepresentation by Subtenant hereunder and (B) discharge any lien placed against the Property by any broker as a result of the foregoing.

6. Governing Law. This Second Amendment shall be governed by and construed in accordance with the laws of the State of California (without regard to conflicts of law).

7. Certified Access Specialist Inspection. California Civil Code Section 1938 requires Sublandlord to notify Tenant whether the Premises has undergone inspection by a Certified Access Specialist ("CASp"). Sublandlord hereby acknowledges that the Premises has not undergone such inspection.

8. Ratification of Sublease. Except as modified hereby, all other terms and conditions of the Sublease remain unchanged and in full force and effect and are hereby ratified and confirmed by the parties hereto. Subtenant accepts the Premises in its "as is" and "where is" condition. Subtenant represents and warrants to Sublandlord that as of the date of Subtenant's execution of this Second Amendment: (a) Subtenant is not in default under any of the terms and provisions of the Sublease; (b) Sublandlord is not in default in the performance of any of its obligations under the Sublease and Subtenant is unaware of any condition or circumstance which, with the giving of notice or the passage of time or both, would constitute a default by Sublandlord; (c) Sublandlord has completed, to Subtenant's satisfaction, any and all improvements to the Premises and has paid any and all allowances required of it under the Sublease; and (d) Subtenant has no defenses, liens, claims, counterclaims or right to offset against Sublandlord or against the obligations of Subtenant under the Sublease. Subtenant acknowledges, confirms, and agrees that Subtenant has no right or option to expand the Premises or to extend, renew or terminate the Sublease.

9. Limitation of Liability. Neither Sublandlord nor any officer, director, member or employee of Sublandlord nor any owner of the Building, whether disclosed or undisclosed, shall have any personal liability with respect to any of the provisions of the Sublease, as hereby amended, or the Premises, and if Sublandlord is in breach or default with respect to Sublandlord's obligations under the Sublease, as hereby amended, or otherwise, Subtenant shall look solely to the interest of Sublandlord in the Building for the satisfaction of Subtenant's remedies or judgments.

10. Entire Agreement. This Second Amendment, in conjunction with the Sublease, constitutes the entire agreement of Sublandlord and Subtenant with respect to the subject matter hereof and supersedes all oral and written agreements and understandings made and entered into by the parties prior to the date hereof.

11. Multiple Counterparts. This Second Amendment may be executed in multiple counterparts, all of which, when taken together, shall constitute one and the same instrument.

ATTACHMENT B

IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment as of the Effective Date stated above.

SUBTENANT:

THE CITY OF PALO ALTO,  
a California municipal corporation

By: \_\_\_\_\_

Name:

Title:

Approved as to form:

\_\_\_\_\_

Office of the City Attorney

SUBLANDLORD:

THOITS BROS. INC.,  
a California corporation

By: \_\_\_\_\_

Name:

Title: