

WHEN RECORDED MAIL TO:

**CITY OF SAN LUIS
ATTN: CITY CLERK
P.O. BOX 1170
SAN LUIS, ARIZONA 85349**

CONFORMED COPY
2021-36476 RESOLUTION
09/29/2021 02:42:52 PM Pages: 12 Fees: \$15.00
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CAPTION HEADING:

Resolution

Resolution No. 2042

Agreement with Advanced Call Center Technologies, L.L.C. for an amendment to the April 1, 2007 lease.



Resolution

OFFICE OF THE
MAYOR
CITY OF SAN LUIS

No. 2042

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SAN LUIS, ARIZONA AUTHORIZING AND DIRECTING THE ENTERING INTO AN AGREEMENT WITH ADVANCED CALL CENTER TECHNOLOGIES, L.L.C. FOR AN AMENDMENT TO THE APRIL 1, 2007 LEASE.

BE IT RESOLVED by the Mayor and City Council of the City of San Luis, Arizona:

Section 1. that the Mayor and City Council deem it in the best interest of the City of San Luis and its residents that the city contract with Advanced Call Center Technologies, L.L.C. (referred to as "ACCT") for an Amendment to the April 2007 Lease;

Section 2. that a true copy of the Amendment is incorporated herein as though fully set forth again in full;

Section 3. that the Mayor or City Manager or his designees are authorized and directed to execute this Amendment on behalf of the City of San Luis and to take any and all actions as may be necessary to put the Amendment into effect; and

Section 4. that the San Luis City Clerk and her designee are authorized and directed to maintain this Amendment in the official files of the City Clerk and to deliver it to ACCT President Joseph Lembo and ACCT attorney A. John May, III.

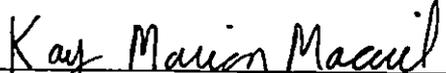
PASSED, ADOPTED and APPROVED by the Mayor and City Council of the City of San Luis, Yuma County, Arizona this 2nd day of May, 2018


Gerardo Sanchez, Mayor

ATTEST:


Sonia Cornelio, City Clerk

APPROVED AS TO FORM:


Kay Marion Macuil, City Attorney

FIRST AMENDMENT TO LEASE AGREEMENT

THIS FIRST AMENDMENT is effective as of May 1, 2018 by and between THE CITY OF SAN LUIS, ARIZONA (“**Landlord**”), and ADVANCED CALL CENTER TECHNOLOGIES, LLC, a Georgia limited liability company (“**Tenant**”).

BACKGROUND:

A. WHEREAS, Landlord (as assignee of The Industrial Development Authority of San Luis) and Tenant are parties to that certain Lease Agreement dated February, 2007 (the “**Lease**”), for certain commercial space in a building located at 580 North San Luis Plaza Drive, San Luis, Arizona; and

B. Landlord has recently advised Tenant that Arizona law, specifically A.R.S. §42-6201 through 6209 (the “**Act**”), requires that commercial tenants of real property owned by a government lessor pay an annual excise tax (as modified or amended in the future, the “**GPLET**”).

NOW, THEREFORE, in consideration of the mutual premises and intending to be legally bound, the parties hereto agree as follows:

1. Lease Term.

(a) The parties acknowledge and confirm that the Commencement Date, for purposes of the Lease, was April 1, 2007.

(b) The Lease Term shall be and hereby is extended to April 30, 2027.

2. Basic Rent.

The Basic Rent for the period from and after May 1, 2018 shall be as follows:

<u>Period</u>	<u>Monthly</u>	<u>Annual</u>
May 1, 2018 – April 1, 2022	\$50,000	\$600,000
May 1, 2022 – April 1, 2027	\$50,000	\$600,000

3. Options To Extend Term.

(a) Tenant shall have the option (collectively, the “**Extension Options**”) to extend the Term for two additional periods of five (5) years each (each an “**Option Period**”) by giving Landlord prior written notice of Tenant's election to exercise this option not more than twelve (12) months before the expiration of the Term as the same may have been extended and not less than three (3) months before the expiration of the Term as the same may have been extended. However, if there exists an uncured default on Tenant's part at the time of

the exercise of any Extension Option, Landlord may cancel Tenant's exercise of such Extension Option within fifteen (15) days of the date of Tenant's notice of the exercise of the Extension Option, in which case the Extension Option shall be of no further force or effect and all subsequent Extension Options shall be deemed canceled. Each Extension Option shall be on all the same terms of this Lease.

(b) Each of the Extension Options are personal to the named tenant herein and any Transfer of such tenant's interest in the Lease (other than a Permitted Transfer), whether or not consented to by Landlord, shall cause such Extension Option and any subsequent Extension Option to terminate and be of no further force or effect.

(c) During each Option Period, the Basic Rent shall be the sum derived by multiplying the Basic Rent in effect on May 1, 2022 by a fraction, the numerator of which shall be the Index (as hereinafter defined) for the month preceding the commencement of the applicable Option Period, and the denominator of which shall be the Index for May, 2022. The "Index" shall mean the Consumer Price Index for All Urban Consumers (CPI-U) – U.S. Average, All Items (1967 = 100), published by the Bureau of Labor Statistics of the U.S. Department of Labor. If this index is no longer published, the "Index" shall mean the index of consumer prices in the U.S. most closely comparable to the discontinued index, after making such adjustments in items included or method of compensation as may be prescribed by the agency publishing the same or as otherwise may be required to compensate for changes subsequent to the commencement date of the initial term hereof.

4. Taxes.

(a) Tenant agrees to pay the GPLET for the 2018 calendar year and each calendar year during the Term thereafter in accordance with the Act.

(b) Landlord shall promptly reimburse Tenant for any payment by Tenant of GPLET with respect to the Premises for any calendar year prior to January 1, 2018, plus any interest thereon, provided that any reimbursement for the GPLET assessed for the 2017 calendar year shall be limited to fifty percent (50%) of the GPLET paid by Tenant, plus any interest thereon (each, a "**Past GPLET Reimbursement**"). In lieu of receiving a Past GPLET Reimbursement, Tenant may elect in its discretion to apply any outstanding Past GPLET Reimbursement amount against any Basic Rent or Additional Rent then due under the Lease.

(c) Landlord shall promptly reimburse Tenant from time to time for (i) fifty percent (50%) of any payment of GPLET by Tenant with respect to the Premises, and (ii) any personal property tax imposed on Tenant's personal property at the Premises now or hereafter imposed by the City of San Luis, in either case for any period commencing January 1, 2018 (each such payment a "**Future GPLET Reimbursement**"). A personal property tax imposed by the City of San Luis on Tenant's personal property at the Premises that would be subject to the reimbursement obligation of this Section 4(c) shall not include any tax that the City of San Luis is required to impose under Federal or state law except to the extent that the City receives the benefit of the proceeds of such tax. In lieu of receiving a Future GPLET Reimbursement, Tenant may elect in its discretion to apply any outstanding Future GPLET Reimbursement amount against any Basic Rent or Additional Rent then due under the Lease.

5. Supplemental Equipment. Landlord shall have no obligation to provide new or replacement Supplemental Equipment to Tenant; provided that Tenant shall have the right to use and possess the Supplemental Equipment previously provided by Landlord under the Lease.

6. Parking. If Landlord leases any other part of the Building, then Landlord shall, simultaneous with such lease, expand the Parking Lot with additional parking spaces sufficient to maintain the same number of parking spaces for use by Tenant's employees as exist on the date of this First Amendment.

7. Security Deposit. The amount of the Security Deposit shall be and hereby is reduced from \$100,000 to \$0.

8. Landlord Waiver. At the request of Tenant or any Lender of Tenant, Landlord shall execute, acknowledge and deliver a Landlord's waiver in a form of Exhibit A hereto or otherwise reasonably satisfactory to Tenant or Tenant's Lender; (1) releasing any right or interest, and waiving any future right or interest Landlord, has or may acquire in any collateral which Tenant's Lender may require for security of any loan or other financing to Tenant and (2) granting such lender to enter upon the Premises and take possession of and remove any such collateral, provided however that such right of entry shall be granted only upon Tenant's default under its loan or other financing with such Lender and after prior written notice has been provided to Landlord by such Lender. Tenant's Lender shall mean (i) a secured lender only with respect to Tenant's equipment, personal property or trade fixtures, or (ii) Tenant's primary creditor.

9. Compliance. Landlord acknowledges and confirms that Tenant has complied with all of its obligations under the Lease prior to the date hereof, and waives and releases all claims with respect to any non-compliance with any of such obligations.

10. Defined Terms. All capitalized terms used herein and not otherwise defined herein shall have the definitions given in the Lease.

11. Confirmation. As amended and supplemented by this First Amendment, the Lease is in all respects ratified and confirmed, and the Lease shall be read together with this First Amendment and construed as one and the same instrument so that all of the rights, remedies, terms, conditions, covenants and agreements of the Lease, except as herein expressly amended and supplemented, shall apply and remain in full force and effect.

12. Counterparts. This First Amendment may be executed in two or more counterparts, each of which shall be deemed an original, and each of the parties hereto may become a party hereto by executing a counterpart hereof. This First Amendment and any counterpart so executed shall be deemed to be one and the same instrument. It shall not be necessary in making proof of this First Amendment or any counterpart hereof to produce or account for any to the other counterparts.

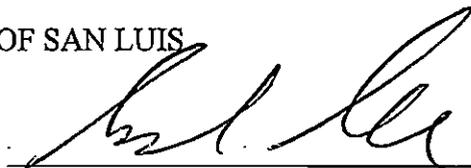
13. Governing Law. This First Amendment shall be governed by, and construed in accordance with, the laws of the State of Arizona without regard to conflict of law principles.

14. Successors and Assigns. This First Amendment shall inure to the benefit of, and be binding upon, the successors and assigns of the parties hereto.

(signature page follows)

IN WITNESS WHEREOF, intending to be legally bound hereby, the parties have caused this First Amendment to be executed on the date first above written.

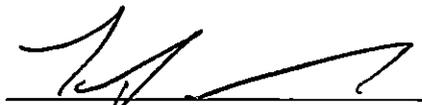
CITY OF SAN LUIS

By: 

Name: Gerardo Sanchez

Title: Mayor

ADVANCED CALL CENTER TECHNOLOGIES,
LLC

By: 

President

EXHIBIT A

LANDLORD WAIVER

This **LANDLORD WAIVER** dated as of [●] (the “**Agreement**”), is executed by **The City of San Luis** (the “**Landlord**”), whose address is _____, San Luis, Arizona, to and for the benefit of [●] (the “**Lender**”), whose address is [●].

RECITALS:

A. The Landlord is the owner of real property commonly known as 580 North San Luis Plaza Drive, San Luis, Arizona (the “**Premises**”) and has leased the Premises to Advanced Call Center Technologies, LLC, a limited liability company organized and in good standing in the State of Georgia (the “**Tenant**”), pursuant to that certain Lease Agreement dated as of February, 2007 (together with any renewals, extensions, amendments, modifications, substitutions or replacements thereof, the “**Lease**”).

B. The Tenant has granted to the Lender a security interest in Tenant’s inventory, equipment, accounts receivable and other personal property which may from time to time be located in and on the Premises (the “**Collateral**”) as security for any and all loans which the Lender has made or may make to the Tenant from time to time (collectively, the “**Loans**”).

C. The Lender is willing to make the Loans only if the Landlord waives any claims, demands or rights which the Landlord may have or acquire with respect to such Collateral.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Landlord hereby agrees with the Lender as follows:

AGREEMENTS:

1. The Landlord hereby unconditionally subordinates to the security interest of the Lender any and all liens, claims, demands or rights, however arising, including without limitation, the right to levy, distrain, sue, execute or sell for unpaid rent or otherwise, which the Landlord now has or may hereafter acquire with respect to any or all of the Collateral (whether such property is now or hereafter located on or in the Premises), and all of the proceeds thereof, whether by statute under the laws of the State of Arizona, or by virtue of the Lease, or by virtue of the Tenant’s occupation of the Premises. The Landlord shall not take any action except in connection with a forcible entry and detainer action initiated by Landlord following the Tenant’s default under the Lease to enforce any liens, statutory or otherwise, with regard to the Collateral or the Premises, without the prior written consent of the Lender.

2. Subject to all the provisions of this Agreement, the Landlord recognizes and acknowledges that the Lender’s security interest in the Collateral is superior to any lien, right or claim of title of any nature which the Landlord now has or hereafter may have or assert in or to the Collateral by statute, the Lease, any other agreement or otherwise.

3. The Landlord agrees that the Collateral (a) is and shall remain the personal property of the Tenant, and (b) is not and shall not become or be deemed to be fixtures affixed to the Premises, provided, however, the Collateral shall not include any fixture, alteration or improvement specifically contemplated to remain part of the Premises or become the property of Landlord under the Lease

4. The Landlord agrees to give the Lender written notice of the occurrence to the address set forth above of any event which, with the giving of notice or passage of time or both, could result in the creation of the right of the Landlord to terminate the Lease or to accelerate any rent due thereunder. The Landlord agrees that, with respect to any default which arises as a result of the failure by the Tenant to pay a sum of money required by the Lease to be paid by the Tenant, Landlord will allow the Lender to cure such monetary default by the Tenant for ten (10) calendar days after the date of the Lender's receipt of written notice (as determined in accordance with Section 10 of this Agreement) required to be given to Lender by this Section. Nothing contained in this Agreement will, as between the Landlord and the Tenant, (i) extend or create any right to cure any default except as expressly provided in the Lease, or (ii) limit, restrict, alter or modify the rights of the Landlord under the Lease which are available to the Landlord as result of the occurrence of a default under the Lease by the Tenant. In the event of a termination of the Lease, whether upon a default by the Tenant under the Lease or otherwise, or the Landlord recovers possession of the Premises by any means, the Lender shall remove the Collateral from the Premises within ninety (90) days after the date of the Lender's receipt of written notice thereof from the Landlord. The Tenant agrees and acknowledges that a default by the Tenant under the Lease shall constitute a default under the documents evidencing and securing the Loans.

5. Upon receipt by the Landlord of a written notice from the Lender (the "**Lender Notice**") containing a certification to the Landlord that (i) the Tenant is in default under any document or agreement evidencing or securing the Loans, and (ii) Lender is entitled to take possession of the Collateral, the Lender, through its authorized representatives, may enter the Premises at any time and from time to time, and maintain, store, sell or remove the Collateral, or conduct a sale or sales of the Collateral on the Premises and that the Lender shall have no obligation to the Landlord except the obligation to pay the Landlord a reasonable rental for the Premises for the period after the Lender Notice and during which the Lender is in possession of the Premises. The Tenant hereby unconditionally and irrevocably authorizes the Landlord to (a) rely upon the validity and correctness of any such notice from the Lender, and (b) following Landlord's receipt of the Lender Notice, grant and allow access by the Lender (or its agents, attorneys or representatives) to the Premises without any duty or obligation to make inquiry of the Lender or to oversee or monitor in any way the activities of the Lender in the Premises. The Tenant hereby unconditionally releases the Landlord from any such claim, allegation or assertion by the Tenant so long as the Landlord receives the written notice from Lender required by this section. If the Landlord obtains possession of the Premises and any significant Collateral remains on the Premises, the Landlord shall notify the Lender in writing that the Landlord has obtained possession of such Collateral and shall allow the Lender access to the Premises in order to remove the Collateral from the Premises within ninety (90) days after the date of written notice thereof from the Landlord. In the event that the Lender removes any or all of the Collateral from the Premises, the Lender shall repair any damage to the Premises resulting from the removal of any of the Collateral. If the Lender does not remove the Collateral from the Premises within ninety (90) days of the date of the Lender's receipt of written notice from the Landlord, then the Collateral shall be

deemed abandoned by the Lender and the Landlord shall not have any further obligations under this Agreement to allow the Lender access to the Premises to obtain and remove the Collateral. As used herein, a 'reasonable rental for the Premises' shall be based upon the last applicable monthly rental provided for in the Lease. Any entry by Lender to the Premises shall be during normal business hours. Landlord shall have the right to have a representative present during any access by Lender to the Premises.

6. The Lender may, without affecting the validity of this Agreement, extend, amend or in any way modify the terms of payment or performance of any of the Tenant's obligations and liabilities to the Lender, without the consent of the Landlord and without giving notice thereof to the Landlord.

7. The parties hereto hereby express their intention to be legally bound by this Agreement and acknowledges receipt of benefit therefrom. This Agreement shall inure to the benefit of the successors and assigns of Lender and shall be binding upon the heirs, personal representatives, successors and assigns of the Landlord and the Tenant. This Agreement represents the whole agreement between the parties relating to the matters set forth herein, and may be amended only in writing signed by all parties.

8. The laws of the State of Arizona shall govern the validity, interpretation and enforcement of this Agreement.

9. This Agreement shall continue in force until all of the Loans are paid and satisfied in full and the Lender has no further interest in any of the Collateral.

10. Any notices, communications and waivers under this Agreement shall be in writing and shall be (a) delivered in person, (b) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (c) sent by recognized overnight express carrier, addressed in each case as follows:

To the Landlord: **The City of San Luis**

San Luis, AZ
Attention: City Manager

To the Lender: [●]

or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this section shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight, express carrier, then on the next federal banking day immediately following the day sent, and (iii) if sent by registered or certified mail, then on the earlier of the third federal banking day following the day sent or when actually received.

11. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered

shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

12. In no event shall this instrument be recorded in any public records.

[SIGNATURE PAGE IMMEDIATELY FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Landlord Waiver as of the date first above appearing.

LANDLORD:

THE CITY OF SAN LUIS

_____, City Manager

CONSENTED AND AGREED TO: TENANT:

ADVANCED CALL CENTER TECHNOLOGIES,
LLC

By: _____
Name: _____
Title: _____

LENDER:

[•]

By: _____
Name: _____
Title: _____