

GENERAL SERVICES ADMINISTRATION
PUBLIC BUILDINGS SERVICE
SUPPLEMENTAL LEASE AGREEMENT

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AGREEMENT
3

DATE

Sept 16, 2010

TO LEASE NO. GS-09B-02392

ADDRESS OF PREMISES

41 Paseo De Yucatan, Rio Rico, AZ 85648 (Block A) and
address TBD Paseo De Yucatan (Block B) Rio Rico, AZ 85648,
as determined by Santa Cruz County.

THIS AGREEMENT, made and entered into this date by and between **NOGALES IMPERIAL, LLC**

whose address is **7825 Fay Avenue, Suite 250
La Jolla, CA 92037**

hereinafter called the Lessor, and the UNITED STATES OF AMERICA, hereinafter called the Government:

WHEREAS, the parties hereto desire to amend the above Lease.

NOW THEREFORE, these parties for the considerations hereinafter mentioned covenant and agree that the said Lease is amended to add Block B, increase the square footage, increase the rent and increase the total number of on-site parking spaces, effective upon execution, as follows:

Paragraphs 1, 3, 4, 6.A, 10, 15, and 21 are hereby revised and replaced with the following:

"1. The Lessor hereby leases to the Government the following described premises:

BLOCK A (): 24,152 rentable square feet (r.s.f.) yielding approximately 23,393 ANSI/BOMA Office Area square feet and related space located 41 Paseo De Yucatan, Rio Rico, AZ 85648 (with a legal description of Portion of Lot "L" (lot 1), Block 149, Rio Rico Estates #8, as determined by Santa Cruz County), Rio Rico, AZ 85648, together with fifty two (52) on-site secured parking spaces for () which is now identified as Block A.

BLOCK B (): 5,361 rentable square feet (r.s.f.) yielding approximately 3,070 ANSI/BOMA Office Area square feet of general use space and approximately 1,750 ANSI/BOMA Office Area square feet related of warehouse space for a total of 4,820 ANSI/BOMA Office Area square at address TBD on Paseo De Yucatan, Rio Rico, AZ 85648 (with a legal description of (with a legal description of Portion of Lot "L" (lot 3), Block 149, Rio Rico Estates #8, as determined by Santa Cruz County, together with five (5) on-site surface reserved parking spaces to be used for SUCH PURPOSES AS DETERMINED BY THE GENERAL SERVICES ADMINISTRATION."

"3. The Government shall pay the Lessor annual rent of \$1,280,569.07 at the rate of \$106,714.09 per month, which is broken down as follows:

For **Block A**, in arrears for years one (1) through fifteen (15). Rent for a lesser period shall be prorated.

	Annual Rent (years 1-10)	Monthly Rent (years 1-10)	Annual Rent (years 11-15)	Monthly Rent (years 11-15)
Shell Rental Rate	\$777,694.40	\$64,807.87	\$ 907,873.68	\$75,656.14
TI Rental Rate	\$130,179.28	\$10,848.27	\$ 0.00	\$ 0.00
Base Operating Cost Rate	\$140,081.60	\$11,673.47	\$ 140,081.60	\$11,673.47
Full Service Rent	\$1,047,955.28	\$87,329.61	\$1,047,955.28	\$87,329.61

For **Block B**, in arrears for years one (1) through fifteen (15). Rent for a lesser period shall be prorated.

	Annual Rent (years 1-10)	Monthly Rent (years 1-10)	Annual Rent (years 11-15)	Monthly Rent (years 11-15)
Shell Rental Rate	\$172,624.20	\$14,385.35	\$201,519.99	\$16,793.33
TI Rental Rate	\$ 16,726.32	\$ 1,393.86	\$ 0.00	\$ 0.00
Base Operating Cost Rate	\$ 43,263.27	\$ 3,605.27	\$ 31,093.80	\$ 2,591.15
Full Service Rent	\$232,613.79	\$19,384.48	\$232,613.79	\$19,384.48

Lessor *DC* Gov't *AG*

The Annual Rent is has the following unit costs (Block A - [REDACTED]):

	Years 1 - 10	Years 11 - 15
Tenant Improvements	\$5.39 / RSF	\$0.00 / RSF
Shell Rent	\$32.20 / RSF	\$37.59 / RSF
Operating Costs	\$5.80 / RSF	\$5.80 / RSF
Annual Rate	\$43.39 / RSF	\$43.39 / RSF

The Annual Rent is has the following unit costs (Block B - [REDACTED]):

	Years 1 - 10	Years 11 - 15
Tenant Improvements	\$3.12 / RSF	\$0.00 / RSF
Shell Rent	\$32.20 / RSF	\$37.59 / RSF
Operating Costs	\$8.07 / RSF	\$5.80 / RSF
Annual Rate	\$43.39 / RSF	\$43.39 / RSF

Rent checks shall be made payable to: Nogales Imperial, LLC, 7825 Fay Avenue, Suite 250, La Jolla, CA 92037"

- "4. The Government may terminate either Block A [REDACTED] or Block B [REDACTED] of this lease at any time by giving at least (90) days' prior notice after the tenth (10th) lease year, in writing to the Lessor. No rental shall accrue after the effective date of the termination. Said notice shall be computed commencing with the day after the date of mailing.
- "6. The Lessor shall furnish to the Government as part of the rental consideration, the following:
A. The total number of provided on site shall be eighty (80) parking spaces for Block A and thirteen (13) parking spaces for Block B."
- "10. **TAX ADJUSTMENT:** Pursuant to Paragraph 4.2, "Tax Adjustment GSAM 552.270-24," for purposes of tax escalation the Government occupies 100% of both Blocks A & B (29,513 RSF / 29,513 RSF)."
- "15. **TENANT IMPROVEMENT ALLOWANCE:** The Tenant Improvement allowance for Block A [REDACTED] is \$866,242.79 or \$37.03/ABOASF amortized at 8.75% over the ten (10) year firm term of the lease at the rate of \$5.39/RSF. The Tenant Improvement allowance for Block B [REDACTED] is \$111,286.82 (\$23.088551/ABOASF x 4,820 ABOASF) / 5,361 RSF = \$20.76/RSF in TI's which is amortized at 8.75% over the ten (10) year firm term of the lease at the rate of \$3.12/RSF."

The following are attached and made a part hereof:

- A. Sheet Number 1 to Lease GS-09B-02392 containing SF-2 paragraphs 21 through 23, 3 pages.
B. [REDACTED] Special Requirements, 5 pages.
C. Exhibit "A" - Site Plan of proposed Building, 1 page.
D. Exhibit "B" - Contracting Officer's Decision to omit LEED for Block B [REDACTED] 8 pages.

All other terms and conditions of the lease shall remain in force and effect.

IN WITNESS WHEREOF, the parties subscribed their names as of the above date.

LESSOR: NOGALES IMPERIAL, LLC

BY Paul R. Engh
Paul R. Engh

Managing Member
(Title)

IN THE PRESENCE OF (witnessed by:)

[Signature]
(Signature)

7825 Fay Ave., #250, La Jolla, CA 92037
(Address)

UNITED STATES OF AMERICA, General Services Administration, Property Acquisition & Realty Services

BY Sheila Johnson Contracting Officer
Sheila Johnson

"21. COMMISSION AND COMMISSION CREDIT:

The Lessor and the Broker have agreed to a cooperating lease commission of [REDACTED] of the first five years of the firm term value of this lease valued at \$6,402,845.35 and [REDACTED] of the second five years of the firm value of this lease valued at \$6,402,845.35. The total amount of the commission is [REDACTED]. The Lessor shall pay the Broker no additional commissions associated with this lease transaction. In accordance with SFO Section entitled "Broker Commission and Commission Credit", the Broker has agreed to forego [REDACTED] of the commission that it is entitled to receive in connection with this lease transaction ("Commission Credit"). The Commission Credit is [REDACTED] and shall be credited in three equal amounts of [REDACTED] over the first three monthly rent payments. Notwithstanding Paragraph 3 of this Standard Form 2, the Firm Term Rental payments shall be reduced to fully re-capture this Commission Credit. The reduction shall commence with the first month and continue as indicated as follows:

First Month's Rental Payment shall be [REDACTED] (or the monthly payment of \$106,714.09 minus commission rent credit of [REDACTED]).

Second Month's Rental Payment shall be [REDACTED] (or the monthly payment of \$106,714.09 minus commission rent credit of [REDACTED]).

Third Month's Rental Payment shall be [REDACTED] (or the monthly payment of \$106,714.09 minus commission rent credit of [REDACTED])."

The following paragraphs are hereby added to the SF-2:

22. The LEED requirement applies to BLOCK A - [REDACTED] - [REDACTED] only; The LEED requirement does not apply to BLOCK B - [REDACTED]. This is the Contracting Officers decision. A copy of that decision is attached.

23. The following shall be added Block B - [REDACTED]:

CONSTRUCTION SCHEDULE AND ACCEPTANCE OF TENANT IMPROVEMENTS (BLOCK B)

A. The construction schedule shall commence upon lease award, unless otherwise expressly agreed by the Lessor and Government as stated in the lease. The schedule shall be divided into seven tasks for each phase. These are: 1) the generation of the design intent drawings; 2) the Government's approval of the design intent drawings; 3) the Lessor's generation of the Government's construction documents; 4) the Government's review of the construction documents; 5) the TI submittal, review and Notice to Proceed (NTP) process; 6) the Lessor's construction of the subject leased area; and 7) the Government's acceptance of the Lessor's construction. Each of these tasks is detailed below. References to "approval" shall mean such approval granted by the GSA Contracting Officer. During the construction schedule, the Government may request regularly scheduled progress meetings and request that the Lessor keep meeting minutes of discussion topics and attendance. During design and construction, the Lessor may discover instances where the Government's directives conflict. In such cases, the Lessor shall immediately notify the GSA Contracting Officer so that the Government may issue a determination as to how to proceed beyond the building shell.

B. DESIGN INTENT DRAWINGS:

1. The Lessor shall prepare, as part of shell rent, and provide to the Government, for the Government's approval, design intent drawings detailing the Tenant Improvements to be made by the Lessor within the Government-demised area. The Government shall use best efforts to coordinate the provision of such information and details as required by the Lessor's architect to complete such drawings in a timely manner. Design intent drawings, for the purposes of this lease, are defined as fully-dimensioned drawings of the leased space which consist of enough information to prepare construction drawings including: 1) furniture, wall, door, and built-in millwork locations; telephone, electrical, and data outlet types and locations; and repositioned sprinklers, ceilings, and lighting, where impacted; 2) specifications necessary for calculation of electrical and HVAC loads; and 3) all finish and signage selections. Design intent drawings shall be due from the Lessor within **thirty (30) working days** from award.

2. **Review.** The Government retains the right to review, approve, and request modifications (if necessary) to the Lessor's design intent drawings prior to the Lessor's commencement of working/construction drawings. The Government's review and approval of the drawings is limited as to the drawings' conformance to the specific requirements of the SFO and the agency's needs as they apply to the specific leased space. The Government shall perform all reviews of design intent drawings within **fifteen (15) working days** of receipt of such from Lessor. Should the Government require that modifications be made to the Lessor's design intent drawings before approval can be granted, the Government shall state as such in writing to the Lessor, and the Lessor shall have **ten (10) working days** to cure all noted defects before returning the design intent drawings to the Government for a subsequent review. Upon approval of the design intent drawings, a notice to proceed shall be transmitted to the Lessor, and the Lessor shall commence working/construction drawings for the space. At the sole discretion of the Government, the Lessor may be required to submit a budget proposal, based on the Tenant Improvements and associated work as shown on the design intent drawings. This budget proposal shall be completed **within 10 working days** of the Government's request. Delay of receipt of such proposal shall result in a Lessor delay.

C. WORKING/CONSTRUCTION DRAWINGS:

The Lessor shall prepare, as part of the Tenant Improvement Allowance, final working/construction drawings for the improvements illustrated on the Government-approved design intent drawings. The working/construction drawings shall include all mechanical, electrical, plumbing, fire safety, lighting, structural, and architectural improvements scheduled for inclusion into the Government-demised area. Working/construction drawings shall also be annotated with all applicable specifications. The resulting product shall reflect requirements which are substantially the same as that specified by the Government-approved design intent drawings and shall incorporate neither extraneous additions nor deletions of requirements. The Lessor's working/construction drawings shall be due to the Government within **twenty (20) working days** of the Government's approval of the design intent drawings. Working/construction drawings shall clearly identify 1) Tenant Improvements already in place and 2) the work to be done by the Lessor or others.

D. REVIEW OF WORKING/CONSTRUCTION DRAWINGS:

The Government retains the right to review, and request modifications (if necessary) to, the Lessor's construction documents prior to the Lessor's commencement of interior construction. The Government's review of the construction documents is limited to the construction documents' conformance to the specific requirements of the SFO and to the approved design intent drawings. The Government shall perform all reviews of construction documents within **ten (10) working days** of receipt of such from the Lessor. Should the Government require that modifications be made to the Lessor's construction documents, the Government shall state such in writing to the Lessor, and the Lessor shall have **five (5) working days** to cure all noted defects before returning the construction documents to the Government for a subsequent review. Upon complete Government review for conformance of the construction documents to the design intent drawings, the Lessor shall obtain the necessary permits. Notwithstanding the Government's review of the construction documents, the Lessor is solely responsible and liable for the technical accuracy of the construction documents in meeting all requirements and provisions of the lease and the Government-approved design intent drawings. The Lessor shall obtain the necessary permits and may commence construction of the shell space.

E. TENANT IMPROVEMENTS PRICE PROPOSAL

Within **ten (10) working days** of Government review for conformance of the construction drawings, the Lessor must submit the written price proposal along with adequate cost and pricing data or the documentation of the competitive proposals (as described in the "Tenant Improvements Pricing Requirements" paragraph in this section) and for any costs or credits to the Government that are beyond the scope of the original SFO and its attachments. Any work shown on the construction documents that is building shell shall be clearly identified and priced as such. After negotiation and acceptance of the Tenant Improvements price, **A NOTICE TO PROCEED SHALL BE TRANSMITTED TO THE LESSOR**, and the Lessor shall commence construction of the Tenant Improvements.

F. CONSTRUCTION OF TENANT IMPROVEMENTS:

The Lessor shall construct all Tenant Improvements in accordance with 1) the Government reviewed working/construction drawings and 2) all terms and conditions of the SFO. The Lessor shall complete Tenant Improvements within **one hundred (100) working days** of receiving the notice to proceed from the Government. The Lessor shall furnish a detailed construction schedule (such as Critical Path Method) to the Government within 5 days of issuance of the notice to proceed. Such schedule shall also indicate the dates available for the Government contractors to install telephone/data lines or equipment. The Government reserves the right to access any space within the building during the conduct of interior construction for the purposes of performing inspections or for installing Government-furnished equipment. The Government shall coordinate with the Lessor the activity of Government contractors in order to minimize conflicts with, and disruption to, other contractors on site. Access shall not be denied to authorized Government officials including, but not limited to, Government contractors, subcontractors, or consultants acting on behalf of the Government with regard to this project.

G. ACCEPTANCE OF SPACE AND CERTIFICATE OF OCCUPANCY:

Ten (10) working days prior to the completion of interior construction, the Lessor shall issue written notice to the Government to inspect the space. The Government shall have **five (5) working days** to inspect and to either accept or reject the subject space.

1. Substantially completed space will be accepted by the Government subject to the completion of minor punch list items (see the Definitions paragraph of GSA Form 3517, General Clauses). Space which is not substantially complete will not be accepted by the Government. Should the Government reject the Lessor's space as not substantially complete as defined herein, the Lessor shall immediately undertake remedial action and when ready shall issue a subsequent notice to inspect to the Government.
2. The Lessor shall provide a valid Certificate of Occupancy, issued by the local jurisdiction, for the intended use of the Government and shall maintain and operate the building in conformance with current local codes and ordinances. If the local jurisdiction does not issue Certificates of Occupancy, the Lessor shall obtain the services of a licensed fire protection engineer to verify the offered space meets all applicable local codes and ordinances to ensure an acceptable level of safety is provided.

H. RENT COMMENCEMENT:

The rent commencement date (for each increment) shall be the date that space acceptance is made by the Government. Any rental paid by the Government prior to actual occupancy shall be less the cost for services and utilities.

I. LEASE COMMENCEMENT:

The Government shall issue GSA Form 276, Supplemental Lease Agreement, to establish the lease commencement date after the acceptance of all space, if different from the date previously established in the lease. In any case, the lease commencement date shall not be prior to the rent commencement date.