

GENERAL SERVICES ADMINISTRATION
PUBLIC BUILDINGS SERVICE
SUPPLEMENTAL LEASE AGREEMENT

SUPPLEMENTAL AGREEMENT
NO. 2

DATE
7/15/13

TO LEASE NO.
GSB-11B-02310

ADDRESS OF PREMISES 5601 Fishers Lane
Rockville, MD 20850

THIS AGREEMENT made and entered into this date by and between Parklawn North Lot LLC

whose address is 4445 Willard Avenue, Suite 400
Chevy Chase, MD 20815

hereinafter called the Lessor, and the UNITED STATES OF AMERICA, hereafter 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, effective upon execution by the Government, as follows:

- Tenant Improvement Overage**
The Government has determined that the cost of tenant improvements directed by the Government will exceed the total Tenant Improvement Allowance of \$27,626,531.84 The Government is not willing to either reduce its tenant improvement requirements or increase the rent to amortize the Tenant Improvement Overage into the rent. The Tenant Improvement Overage is the cost to build out the space beyond the Tenant Improvement Allowance. Therefore, notwithstanding SFO Section 3.3.A.3. or anything to the contrary elsewhere in the Lease, the Government agrees to pay for the Tenant Improvement Overage via monthly payments (Advance Payments) to the Lessor in accordance with this SLA during construction of the tenant improvements up to not to exceed \$60,000,000, subject to Paragraph 5 below.
- Advance Payments Agreement:**
Upon negotiation of costs for the tenant improvements pursuant to Paragraph 6(C) of the Lease and acceptance of the tenant improvement price proposals by the Government, the Government shall issue a Notice to Proceed and the agreed cost of the tenant improvements shall be memorialized in fixed price award letters to be issued by GSA ("Notice to Proceed" or "NTP"). The NTPs shall identify whether the costs of the tenant improvements in question will be paid from the Tenant Improvement Allowance or shall be treated as part of the Tenant Improvement Overage to be paid as specified in this SLA, it being understood that the NTPs shall require the tenant improvements to be funded first from the Tenant Improvement Allowance.
- See Continuation Pages 2 – 4 attached hereto for additional terms and provision of this SLA.

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
BY _____
(Signature)

Rodney A. Lawrence
Authorized Signatory

(Title)

IN PRESENCE OF _____

(Witness)

4445 Willard Ave, Ste 400, Chevy Chase, MD 20815
(Address)

(Official Title)

CONTRACTING OFFICER - NCR

(Official Title)

- (a) The Lessor shall construct and install the tenant improvements in accordance with the Lease and subsequent NTP. The Government agrees to pay the Lessor a fixed price for the construction and installation of the Overage as identified in each NTP, which shall be payable to the Lessor in monthly payments in advance of substantial completion of the scope of work identified in such NTP as such work is incrementally completed, based on inspections by the Government. Each monthly advance payment shall be (i) paid by the Government within thirty (30) days of receipt of a proper invoice in accordance with the Prompt Payment Act and (ii) subject to the terms and conditions of FAR 52.232-5, as modified and incorporated into this SLA
- (b) Payment Terms
- a. Payment of Price. The Government shall pay the Lessor the agreed price for the tenant improvements as established by NTP. Prior to the issuance of each NTP, the Lessor shall provide a Schedule of Values allocating the total amount to be awarded in such NTP among the various trades and other subcategories comprising the work to be included in such NTP. Upon approval by the Government, the approved Schedule of Values shall be incorporated into the corresponding NTP.
 - b. Advance Payments. The Government will pay monthly invoices for the value of work completed, after inspection and verification by the Government as set forth below, minus 5% retainage for the verified work each month until the entire premises are accepted as substantially complete.
 - c. Inspection and Verification. The Lessor will submit a notice of inspection for work as completed, and no payments will be made until after inspection and verification of the work by the Government. Such notice of inspection shall include a preliminary draft of AIA Form G702 – Contractor's Application and Certification for Payment indicating, in reference to the relevant NTP and approved Schedule of Values, the percentage of work completed for each trade and subcategory, along with the corresponding dollar value assigned to such work, during the period for which payment is being sought. Upon receipt of such notice, the Government's inspector shall conduct an on-site inspection within 5 days to verify whether the work has been completed and whether it complies with the standards of quality established in the Lease, as approved by the Contracting Officer.
 - d. Following such inspection and verification by the Government of the percentages and values of work completed, the Lessor shall submit an invoice for advance payments, which shall include the following substantiation:
 - (i) A completed AIA Form G702 – Contractor's Application and Certification for Payment, indicating, in reference to the relevant NTP and approved Schedule of Values, the percentage of work completed for each trade and subcategory, along with the corresponding dollar value assigned to such work, during the period for which payment is being sought. Such AIA Form G702 shall be certified by both Lessor's General Contractor and Lessor's Architect and shall be accompanied by partial lien waivers from the General Contractor and Subcontractors for whom payment is requested.
 - (ii) A listing of the amount included for work performed by each subcontractor.
 - (iii) A listing of the total amount of each subcontract for tenant improvement work included in the work identified in the relevant Award Letter(s).
 - (iv) A listing of the amounts previously paid to each such subcontractor for the tenant improvement work.
 - (v) Additional supporting data in a form and detail reasonably required by the Contracting Officer.
- (c) In the determination of advance payment amounts, the Contracting Officer shall include material delivered on the site and preparatory work done. Materials delivered at locations other than the site can also be invoiced if the Lessor furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform this contract, e.g. bill of sale, photographs, or C.O.I.
- (d) Lessor Certification: Along with each request for advance payments, the Lessor shall furnish the following certification, or payment shall not be made.

I hereby certify, to the best of my knowledge and belief that,



- (1) The amounts requested are only for performance in accordance with the specifications, terms and conditions of the Lease and identified NTP;
- (2) All payments due to subcontractors and suppliers from previous payments received under the NTP has been made, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements and the requirements of Chapter 39 of Title 31, United States Code;
- (3) This request for advance payments does not include any amounts which the Lessor intends to withhold or retain from the subcontractor or supplier in accordance with the terms and conditions of the subcontract; and

(Name)

(Title)

(Date)

- (e) Refund of Unearned Amounts: If the Lessor, after making a certified request for advance payments, discovers that a portion or all of such request constitutes a payment for performance by the Lessor that materially fails to conform to the specifications, terms and conditions of required tenant improvements (hereinafter referred to as the "unearned amount"), the Lessor shall:
- (1) Notify the Contracting Officer of such performance deficiency; and
 - (2) Be obligated to pay the Government an amount equal to interest on the unearned amount from the 8th day after the date of receipt of the unearned amount until:
 - (i) The date the Lessor notifies the Contracting Officer that the performance deficiency has been corrected; or
 - (ii) The date the Lessor reduces the amount of any subsequent certified request for advance payments by an amount equal to the unearned amount.
- (f) Reimbursement for Bond Premiums: In making advance payments, the Government shall, upon request, reimburse the Lessor for the amount of premiums paid for performance and payment bonds (including coinsurance and reinsurance agreements, which applicable) after the Lessor has furnished evidence of full payment to the surety.
- (g) Liability and Reservation of Rights. Advance payments shall not be construed as:
- (1) Relieving the Lessor from the responsibility for all material and work upon which payments have been made or the restoration of any work; or
 - (2) Waiving the right of the Government to require the fulfillment of all of the terms of the Lease and Award Letters.
- (h) Final payment: The Government shall pay the full amount due the Lessor under the NTP after:
- (1) Completion and acceptance of all work and punchlist items (if applicable);
 - (2) Presentation of a proper invoice; and
 - (3) Presentation of release of all claims against the Government arising by virtue of the NTP, other than claims, in stated amounts, that the Lessor has specifically accepted from the operation of the release. A release may also be required of the assignee if the Lessor's claim to amounts payable under this Lease has been assigned under the Assignment of Claims Act of 1940 (31 U.S.C. 3727 and 41 U.S.C. 15).
- (i) Interest Computation on Unearned Amounts. In accordance with 31 U.S.C. 3903(c)(1), the amount payable under paragraph (g)(2) of this clause shall be



- (1) Computed at the rate of average bond equivalent rates of 90-day Treasury bills auctioned at the most recent auction of such bills prior to the date the Lessor receives the unearned amount; and
 - (2) Deducted from the next available payment to the Lessor.
- (j) Neither the Contracting Officer's determinations nor any payments made under this SLA shall constitute acceptance of space or acceptance of any portion of space as substantially complete under the requirements of Clause 10, *Delivery and Condition*, Clause 12, *Progressive Occupancy*, or Clause 20, *Acceptance of Space*, of the General Clauses (GSA Form 3517B) made a part of the Lease or under any other provision of the Lease related to the definition or procedures concerning the Government's acceptance of space as substantially complete.
- (k) At the time the Lessor substantially completes and delivers each phase of the leased premises for Government acceptance, and provided such portion of the leased premises is accepted by the Government as substantially complete, the Government will make a final payment with respect to the accepted phase that, together with all prior payments in advance of substantial completion of such phase, will equal the approved lump sum payment authorized by the Government in all applicable NTP for the portion of the Tenant Improvement Overage applicable to the phase in question, except that the Government will retain two (2) times the estimated value of any remaining punchlist work with respect to such phase until such work is finally completed and such final completion is confirmed by the Government.

3. Builder's Risk Insurance and Bonds:

- (a) In connection with the tenant improvements: (i) the Lessor shall provide, at the Government's cost, builder's risk insurance covering the replacement of any tenant improvement that is damaged prior to substantial completion and acceptance of such improvements due to an insurable act or event, and (ii) the Lessor shall cause its General Contractor to provide a performance and payment bond, at the Government's cost, covering all work related to the project. The Lessor shall also cause the Government to be named as a beneficiary on the policies, as a named additional insured, with waiver of subrogation. These bonds are intended to ensure that the tenant improvements will be completed and sub-contractors will be paid. The Government shall, upon receipt of an invoice submitted in accordance with General Clause 25 (INVOICE), reimburse the Lessor for the amount of premiums paid for performance and payment bonds (including coinsurance and reinsurance agreements, which applicable) after the Lessor has furnished evidence of full payment to the surety. General Clause 23 (PROMPT PAYMENT) will apply to this invoice.
- (b) Satisfactory evidence of the foregoing builder's risk insurance and performance and payment bonds shall be provided to the Government prior to submission of each invoice for advance payments.

4. Right of Entry: In the event the Lessor fails to perform all or a portion of the tenant improvement work in accordance with the Lease, the Government shall be entitled, but not obligated, to enter and finish the tenant improvement work not properly performed by the Lessor.

5. Notwithstanding any of the foregoing, no advance payments shall be made until the entire Tenant Improvement Allowance has been obligated by GSA.

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

