

U.S. GOVERNMENT  
LEASE FOR REAL PROPERTY

DATE OF LEASE: November 16, 2010 LEASE No. GS-09B-02311

THIS LEASE, made and entered into this date between **Cottle Holdings, LLC**

whose address is: 6150 Cottle Road  
San Jose, California 95123-5103

and whose interest in the property hereinafter described is that of OWNER, hereinafter called the LESSOR, and the UNITED STATES OF AMERICA, hereinafter called the GOVERNMENT:

WITNESSETH: The parties hereto for the considerations hereinafter mentioned, covenant and agree as follows:

1. The Lessor hereby leases to the Government the following described premises:  
9,668 rentable square feet (r.s.f.), yielding 9,668 ANSI/BOMA Office Area square feet and related space located on the First (1<sup>st</sup>) and Second (2<sup>nd</sup>) Floors at 6140 Cottle Road, San Jose, California 95123, depicted on the attached floor plans (Exhibit A) (the "Premises") together with three (3) onsite reserved surface parking spaces, as depicted on the attached Exhibit "B", to be used for SUCH PURPOSES AS DETERMINED BY THE GENERAL SERVICES ADMINISTRATION.
2. **TO HAVE AND TO HOLD** the said Premises with their appurtenances for the term beginning on March 1, 2011 through February 28, 2026, subject to termination and renewal rights as may be hereinafter set forth. This Lease shall succeed Lease No. GS-09B-97622 upon the beneficial occupancy date of March 1, 2011. Rent shall commence without the amortized Tenant Improvements as referenced in Paragraph 16. Upon completion of the Tenant Improvements, a subsequent Supplemental Lease Agreement shall be drafted to memorialize the actual Tenant Improvement amount amortized into the rent.
3. PARAGRAPH 3 IS INTENTIONALLY OMITTED.
4. The Government may terminate this lease in whole or in part effective any time after the tenth (10<sup>th</sup>) year of this lease by giving at least ninety (90) days' prior notice in writing to the Lessor. No rental shall accrue after the effective date of termination. Said notice shall be computed commencing with the day after the date of mailing.
5. PARAGRAPH 5 IS INTENTIONALLY OMITTED.
6. The Lessor shall furnish to the Government as part of the rental consideration, the following:
  - A. The Government shall have the right to use 37 of the 71 parking spaces depicted on attached Exhibit "B". Three (3) parking spaces will be marked "reserved" pursuant to Paragraph 10.16 of the SFO.
  - B. All labor, materials, equipment, design, professional fees, permit fees, inspection fees, utilities, construction drawings (including, without limitation, plans and specifications), construction costs and services and all other similar costs and expenses associated with making the space, common areas, and related facilities ready for occupancy in accordance with the requirements of this lease and the Government's approved Design Intent Drawings; provided that the Government shall make payments for lump sum items identified in the attachment sheets in the amounts specified therein. Rent is subject to adjustment in accordance with Paragraph 3.3, "Tenant Improvement Rental Adjustment" of the SFO. All cost associated with services, utilities, maintenance, repair, replacement, inspections, improvements and other requirements as required by the Solicitation For Offers No. 6CA0650 and its attachments.
  - C. Adequate space for telecommunications antennae and transmission devices in accordance with Paragraph entitled, "Telecommunications: Local Exchange Access," of the Solicitation for Offers.
7. The following are attached and made a part hereof:

All terms, conditions, and obligations of the Lessor and the Government as set forth in the following:

  - a) The Solicitation For Offers Number 6CA0650 (pages 1 - 50) (all references to SFO shall also refer to any Special Requirements and Amendments);
  - b) Special Requirements (pages 1-36);
  - c) GSA Form 3517, General Clauses (pages 1-2);
  - d) GSA Form 3518, Representations and Certifications (pages 1-7);
  - e) Sheets No. 1-3 containing Paragraphs 9-24;
  - f) First generation Blue-Line Plan (Exhibit "A", 1 page)
  - g) Exhibit "B" Parking Plan (2 pages)

Initials: Bu & MS  
Lessor Government

8. The following changes were made in this lease prior to its execution:

Paragraphs 3 and 5 of this STANDARD FORM 2 were deleted in their entirety. Paragraphs 9 through 24 have been added.

IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names as of the date first above written.

LESSOR: COTTLE HOLDINGS, LLC

BY *Birney*  
(Signature)

\_\_\_\_\_  
(Signature)

IN PRESENCE OF:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Address)

UNITED STATES OF AMERICA: **GENERAL SERVICES ADMINISTRATION, Public Buildings Service:**

BY *Megan M. Hoffman*  
CONTRACTING OFFICER, GSA

Initials: *B* & *MS*  
Lessor Government

SHEET NUMBER 1 ATTACHED TO AND FORMING A PART OF LEASE NO. GS-09B-02311

9. The Government shall pay the Lessor annual rent as follows:

For years 1 through 5, annual rent not to exceed \$174,024.00 (\$18.00 per rentable square foot) at the rate of \$14,502.00 per month in arrears. The amortized tenant improvement cost will be added in a subsequent SLA. The rent consists of the following components:

1. Shell Rate of \$11.25 per RSF per year
2. Base Operating Cost of \$6.75 per RSF per year

For years 6 through 10, annual rent not to exceed \$232,032.00 (\$24.00 per rentable square foot) at a rate of \$19,336.00 per month in arrears.

1. Shell Rate of \$17.25 per RSF per year
2. Base Operating Cost of \$6.75 per RSF per year

For years 11 through 15, annual rent not to exceed \$272,637.60 (\$28.20 per rentable square foot) at a rate of \$22,719.80 per month in arrears.

1. Shell Rent of \$21.45 per RSF per year
2. Base Operating Cost of \$6.75 per RSF per year

Lessor is providing six (6) months of free rent (warm lit shell, real estate taxes and operating costs only) at the beginning of the first lease year.

Rent for a lesser period shall be prorated. Rent shall be payable to:

**Cottle Holdings, LLC**  
6150 Cottle Road  
San Jose, California 95123-5103

10. The Lessor shall have 90 working days from the receipt of the Government's Notice to Proceed to complete the build-out of the entire space. All items specified in Lease Agreement and as delineated on the Government Approved Design Intent Drawings shall be provided by the Lessor.
11. **TAX ADJUSTMENT:** Pursuant to Paragraph 4.2, "Tax Adjustment," for purposes of tax escalation, the Government occupies 9,668 / 9,668 rentable square feet (100%).
12. **OPERATING COST:** Pursuant to Paragraph 4.3, "Operating Costs", the base rate for purposes of operating cost escalation is established at \$6.75 per rentable square foot per annum.
13. **ADJUSTMENT FOR VACANT PREMISES:** Pursuant to Paragraph 4.4, "Adjustment for Vacant Premises", in the event of the Government vacating in whole or in part prior to lease expiration, the rental will be reduced by \$1.37 per rentable square foot per annum for operating expenses.
14. **OVERTIME USAGE:** Pursuant to Paragraph 4.6, "Overtime Usage", upon request by the GSA Field Office Manager, the Lessor shall provide heating, ventilation, and air-conditioning (HVAC) at any time beyond normal service hours (7:00 a.m. – 5:30 p.m., Monday through Friday, and except Federal Holidays ("Normal Hours")), at a rate of \$25.00 per hour. The Lessor will not charge the Government if Lessor otherwise provides these services to other building tenants during the Government's overtime hours. The Lessor must submit a proper invoice quarterly to GSA Building Manager or designee located at 345 Middlefield Road, Menlo Park, California 94025, to receive payment.
15. **24 HOUR ROOMS:** The Overtime Usage rate specified above shall not apply to any portion of the Premises that is required to have heating and cooling 24 hours per day as specified by the Lease. The charges for heating and cooling of these areas, more specifically, the Government's ADP room located on the 2<sup>nd</sup> floor (approximately 226 rentable square feet) shall be provided at the rate of \$2.39 per rentable square foot (based on the annual electrical load of \$23,066 divided by 9,668 rentable square feet) or \$.0625 per hour.

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Lessor & Government

SHEET NUMBER 2 ATTACHED TO AND FORMING A PART OF LEASE NO. GS-09B-02311

16. **TENANT IMPROVEMENT ALLOWANCE:** The maximum Tenant Improvement Allowance has been established by Paragraph 3.2, "Tenant Improvements Included in Offer." The amortization period shall be determined upon acceptance and occupancy of the entire premises, and will be calculated by subtracting the number of months required to complete the space from the ten (10) year firm term. The Tenant Improvement Allowance shall be amortized at an interest rate (amortization rate) of 0% per year.

Notwithstanding the Special Space Requirements attached to this lease, the following specific tenant improvement items are identified:

- a. Repaint the entire office space.
- b. Replace existing carpet.
- c. Replace all vinyl tiles.
- d. Replace any window coverings that are not in good repair.
- e. Add second elevator/lift to the building.

17. **BUDGET AND PRICE PROPOSALS/CONSTRUCTION SCHEDULE:**

- A. The price proposal required to be provided by Lessor in SFO Paragraph 5.11 (E), "Tenant Improvements Price Proposal," must be based upon the results of a competitive proposal process meeting all of the requirements of SFO Paragraph 5.11, B (1) through (9), entitled, "Tenant Improvements Pricing Requirements." The Government has the right, but not the obligation, to accept cost or pricing data as described in GSA Form 3517 in lieu of a competitive price proposal.
- B. Failure to submit these budget and price proposals referenced above will constitute Lessor delay. In the event that either the budget proposal or price proposal exceeds the Tenant Improvement Allowance specified in the Lease, then the construction schedule shall be revised to afford the Government sufficient time to review and resolve the difference.
- C. The construction schedule required in Paragraph 5.11 (F), "Construction of Tenant Improvements," of the SFO shall also include adequate time for additional review by the Government of revised design intent drawings and Working Drawings/Construction Drawings. All references to "working days" in Paragraph 5.11, "Construction Schedule and Acceptance of Tenant Improvements" of the SFO shall not include the period from December 15 through January 1 of any calendar year.
- D. In addition to the submission requirements specified under Paragraph 5.11, "Construction Schedule and Acceptance of Tenant Improvements," Lessor shall provide to the Government the final total costs of the completed Tenant Improvements in CSI format ten (10) working days prior to "Substantial Completion". The space will not be considered acceptable for inspection until the Government receives the final tenant improvement costs.

18. **ACCEPTANCE OF SPACE:**

- A. The following is added to Paragraph 5.11 G (1), "Acceptance of Space and Certificate of Occupancy": Subsequent Government inspections and notification of the results of such inspections shall be made in accordance with the foregoing procedure. Time frames for subsequent inspections will be established by the Government.
- B. Any items that have been identified at the acceptance of the space as punchlist items to be completed or corrected and which do not affect beneficial occupancy shall be completed by the Lessor within 30 calendar days of acceptance.
- C. Neither the Government's acceptance of the Premises for occupancy or acceptance of related appurtenances, nor the Government's occupancy of the Premises, shall be construed as a waiver of any requirement or right of the Government under this lease, or as otherwise prejudicing the Government with respect to any such requirement or right, or as an acceptance of any latent defect or condition.

19. **OCCUPANCY REPORTS:**

- A. Building Systems: As part of its obligations under SFO, Paragraph 8.2 "Building Systems," of the SFO, the Lessor shall furnish at no cost to the Government a required building system report prior to the Government's occupancy of the Premises.
- B. Acoustical Requirements: As part of its obligations under SFO, Paragraph 6.8 "Acoustical Requirements" of the SFO, the Lessor shall furnish at no cost to the Government a required acoustical report prior to the Government's occupancy of the Premises.

20. **UNAUTHORIZED IMPROVEMENTS:** All questions pertaining to this lease agreement shall be referred in writing to the General Services Administration Contracting Officer. This contract is between GSA and the Lessor. GSA assumes no financial responsibility for any cost incurred by the Lessor except as provided by the terms of the lease agreement or authorized in writing by the GSA Contracting Officer. **If Lessor delivers space with improvements not authorized or requested in writing by the GSA Contracting Officer, then Lessor shall not be entitled to compensation.**

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Lessor                      Government

SHEET NUMBER 3 ATTACHED TO AND FORMING A PART OF LEASE NO. GS-09B-02311

21. Wherever the words "Offeror", "Lessor" or "successful offeror" appear in this Lease, they shall be deemed to mean "Lessor"; wherever the words "solicitation", "Solicitation for Offers", or "SFO" appear in this Lease, they shall be deemed to mean "this Lease"; wherever the words "space offered for lease" appear in this Lease, they shall be deemed to mean "Premises".

22. COMMISSION AND COMMISSION CREDIT:

The Lessor and the Broker have agreed to a cooperating lease commission of [REDACTED] of the firm term value of this lease for years 1 through 5 and [REDACTED] of the firm term value of this lease for years 6 through 10. 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 the "Broker Commission and Commission Credit" paragraph, 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]. The Lessor agrees to pay the Commission less the Commission Credit to the Broker in accordance with the "Broker Commission and Commission Credit" paragraph in the SFO attached to and forming a part of this lease.

Notwithstanding Paragraph 9 of this Standard Form 2, the shell rental payments due and owing under this lease shall be reduced to fully recapture this Commission Credit. The reduction in shell rent shall commence with the first month of the rental payments and continue as indicated in this schedule for adjusted Monthly Rent:

Seventh Month's Rental Payment \$18,506.16 minus prorated Commission Credit of [REDACTED] equals [REDACTED] adjusted Seventh Month's Rent.

Eighth Month's Rental Payment \$18,506.16 minus prorated Commission Credit of [REDACTED] equals [REDACTED] adjusted Eighth Month's Rent.

Ninth Month's Rental Payment \$18,506.16 minus prorated Commission Credit of [REDACTED] equals [REDACTED] adjusted Ninth Month's Rent.

Tenth Month's Rental Payment \$18,506.16 minus prorated Commission Credit of [REDACTED] equals [REDACTED] adjusted Tenth Month's Rent.

Eleventh Month's Rental Payment \$18,506.16 minus prorated Commission Credit of [REDACTED] equals [REDACTED] adjusted Eleventh Month's Rent.

23. The Asbestos Inspection Report dated June 27, 2007 and Asbestos Operations, Maintenance and Repair Plan dated June 28, 2007 indicate only nominal amounts of asbestos containing materials which have been identified as non-friable and in good condition, posing no threat for human exposure, and at the time of inspection did not require repair. Lessor agrees to implement, at Lessor's cost, an asbestos abatement plan during construction of the Government's Tenant Improvements. Said plan will be submitted to the Government for review and approval prior to implementation of said plan.

24. TENANT IMPROVEMENT FEE SCHEDULE:

The following fee schedule shall be applied to the Tenant Improvement costs paid by the Government.

1. General Conditions shall not exceed [REDACTED] of the total subcontractor's costs associated with the Tenant Improvements;
2. General Contractor's fee shall not exceed [REDACTED] of the total subcontractor's costs associated with the Tenant Improvements;
3. Lessor's Project Management fee shall not exceed [REDACTED];
4. Architectural/Engineering Fees owed by the Government shall not exceed [REDACTED] of the total subcontractor's costs associated with the Tenant Improvements.

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