GSA

GSA Public Buildings Service

Supplemental Lease Agreement
Number 1

Lease Number:	GS-09B-02311	Date:	May 2, 2012

ADDRESS OF PREMISES 6140 Cottle Road
San Jose, California 95123-5103

THIS AGREEMENT, made and entered into this date by and between: **Cottle Holdings, LLC**

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

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

WHEREAS, the parties hereto desire to amend the above lease to issue a Notice to Proceed for architectural design to be paid for as a part of the Tenant Improvement Allowance.

NOW THEREFORE, these parties for the considerations hereinafter mentioned covenant and agree that the said Lease is amended as follows:

Paragraphs 25, 26, and 27 are hereby added:

"25. NOTICE TO PROCEED WITH DESIGN: Following a Government review of the submitted cost proposal for Architectural Design fees associated with Design Intent Drawings and Construction Drawings, the Government has determined that the bid submitted for the leased premises is fair and reasonable and a Notice to Proceed is hereby issued for the design of Tenant Improvements for the amount not to exceed [redacted] inclusive of all architectural fees."

"26. The Lessor shall design all Tenant Improvements in accordance with "Exhibit C" attached to Supplemental Lease Agreement #1 (SLA #1) (the scope of work), and all terms and conditions of the lease package. The amount not to exceed [redacted] for the production of Design Intent Drawings and Construction Drawings as specified under Paragraph 5.11 as modified in this Supplemental Lease Agreement are to be included as a part of the Tenant Improvement Allowance described in Paragraph 3.2 and 3.3."

"27. CONSTRUCTION SCHEDULE

A. Within 10 Days of execution by the Government of Supplemental Lease Agreement Number 1, the Lessor shall submit to the Contracting Officer a tentative construction schedule giving the dates on which the various phases of construction will be completed.

Continued on Sheet 1

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

Lessor, Cottle Holdings, LLC By: KENMARK REAL ESTATE GROUP, INC. its authorized agent

By Cheltin Russell (Signature) — Director, Development + Marketing (Title)

In Presence of

Lauren Ramirez (Signature) — 2450 Cabrillo Hwy South #200 Half Moon Bay CA 94019 (Address)

United States Of America, General Services Administration, Public Buildings Service.

Megan M. Stefani (Signature)

Megan Stefani
Contracting Officer

B. The schedule shall include timing for completion of design and construction milestones including, but not limited to: 1) submittal of preliminary plans and specifications; 2) submittal of other working drawings; 3) issuance of a building permit; 4) completed construction documents; 5) start of construction; 6) completion of principal categories of work; 7) phased completion and availability for occupancy of each portion of the Government demised area (by floor, block, or other appropriate category); and 8) final construction completion."

Paragraph 5.11 of the SFO is hereby replaced in its entirety as follows:

"5.11 DESIGN/CONSTRUCTION SCHEDULE AND ACCEPTANCE OF TENANT IMPROVEMENTS:

A. The construction schedule shall commence upon full execution by the Government of SLA #1. 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 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. 4) Demolition Plans. "Working Days" shall be defined herein as Monday through Friday not including Federal Holidays. Design intent drawings shall be due from the Lessor within 35 Working Days from full execution by the Government of SLA #1.

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 based on the specifications attached as Exhibit "C". The Government shall perform all reviews of design intent drawings within 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 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 30 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. An Asbestos Management Plan must also be provided with Construction Drawings.

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 30 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 20 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. Upon Government acceptance of the Tenant Improvement price, and before the commencement of any construction, Lessor and Government shall negotiate a subsequent Supplemental Lease Agreement setting forth the final Tenant Improvement Allowance, the final Tenant Improvement price (subject to contingencies and change orders), the final construction schedule, the schedule for Government progress payments for all costs in excess of the Tenant Improvement Allowance which will only be paid after the particular work is accepted by the Government, the time period for Government vacancy of the Premises to accommodate the construction of Tenant Improvements, any monetary adjustments to the Lease, and such other items as are required. Any asbestos abatement, ADA compliance or other upgrades, system changes, or shell alterations required or necessitated by the Tenant Improvements shall be costs included in the total Tenant Improvement price and not the sole responsibility of the Lessor; however, if the estimated cost of such items is unacceptable to the Government, before the commencement of construction, the Government may alter or reduce the scope of the Tenant Improvements and Lessor shall obtain revised cost estimates.

E. TENANT IMPROVEMENTS PRICE PROPOSAL
Within 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. 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.**"

G. 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 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.

H. ACCEPTANCE OF SPACE AND CERTIFICATE OF OCCUPANCY:
15 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 15 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

SHEET NUMBER 3 ATTACHED TO AND FORMING A PART OF SUPPLEMENTAL LEASE AGREEMENT NUMBER 1

protection engineer to verify the offered space meets all applicable local codes and ordinances to ensure an acceptable level of safety is provided."

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