

ATLANTA FEDERAL CENTER
LEASE NO. GS-04B-34033
SUPPLEMENTAL LEASE AGREEMENT NO. 2
SPACE PROGRAMMING AND PLANNING SERVICES
(8.25.94)

THIS SUPPLEMENTAL LEASE AGREEMENT NO. 2 made and entered into this ^{22nd} ~~26th~~ day of August, 1994 by and between the DOWNTOWN DEVELOPMENT AUTHORITY OF THE CITY OF ATLANTA (hereinafter referred to as the "Lessor") and the UNITED STATES OF AMERICA, acting by and through the Administrator of the General Services Administration (hereinafter referred to as the "Government")

WITNESSETH THAT:

WHEREAS, the Lessor and the Government entered into that certain Lease Agreement, dated December 22, 1993 (Lease No. GS-04B-34033) with respect to certain Improvements to be referred to as the Atlanta Federal Center (such Lease Agreement hereinafter referred to as the "Lease");

WHEREAS, section 13.3 of the Lease contemplates that the Government deliver by certain dates, the Tenant Layouts (as defined in the Lease and in the below defined Space Planning Agreement) and the Government wishes to engage the Lessor to cause such Tenant Layouts to be prepared and delivered as required by the Lease;

WHEREAS, the Government acknowledges that nothing contained herein or in the Space Planning Agreement shall release or relieve the Government of its obligations under Section 13.3 of the Lease to deliver the Tenant Layouts by the Tenant Layout Due Dates;

NOW THEREFORE, the parties, intending to be legally bound, agree as follows:

I. FORM OF AGREEMENT

The Lessor agrees to enter into an agreement with M. Arthur Gensler, Jr. and Associates, Inc. in association with Stanley/Love-Stanley and Hillsman & Associates or other architectural and space planning firms acceptable to the Lessor and the Government (the "Space Planner") to perform the Space Programming and Space Planning Services, as defined in the Space Planning Agreement and the Scope of Services detailed below, and prepare the Tenant Layouts, which agreement shall be substantially in the form of that attached hereto as Schedule A and made part hereof by this reference (hereinafter referred to as the "Space Planning Agreement").

II. LIST OF SCHEDULE & EXHIBITS -

Schedule A - Space Planning Agreement between the Lessor and the Space Planner as referenced in Section I. above, together with the Exhibits referenced herein.

Exhibit A - Scope of Services and Matrix

Exhibit B - Schedule

Exhibit C - List of Agencies & Special Purpose Spaces for Programming

Exhibit D - List of Reimbursables

[Handwritten signature]

III. SCHEDULE

The schedule attached to this Agreement as Exhibit B is general in nature and intended to outline the major milestones which must occur through the process in order to complete, by August 31, 1995, the work contemplated by the Space Planning Agreement. Within fifteen (15) days from the date of this Agreement, the Lessor shall provide a detailed schedule (hereinafter referred to as the "Schedule") to the Government identifying the activities to be accomplished in a detailed month by month format; individual schedules will also be prepared for each Agency identified on Exhibit C by September 1, 1994.

The Lessor must comply with this Schedule, and the Government will provide resources and support as necessary to encourage compliance by the Agencies. It is the Lessor's responsibility to notify the Government in writing any time, and as soon as it appears that an Agency(s) may not be able to comply with the Schedule. In the event the Contracting Officer determines that any Agency(s) is not complying with the Schedule, the Contracting Officer reserves the right to take either of the following actions:

A. The Contracting Officer may choose to supply the necessary information to the Lessor on behalf of the Agency(s). The Lessor would be notified of this action in writing. Payment for the services would not be affected by this action; the Lessor would still be required to perform the Space Programming and Planning work contemplated herein.

B. The Contracting Officer may choose to take over the Space Programming and/or Planning Services for the Agency(s) from the Lessor. The Lessor would be notified of this action in writing, and the Lessor's Space Programming and/or Planning Services for that Agency(s) would cease upon receipt of the written notification from the Contracting Officer. The Lessor would be entitled to payment for work performed up to the date of receipt of the written notification; the invoice for the month in which such action occurred would be modified accordingly. After that date, the square footage for that Agency(s) would no longer be included in the invoice submittals or payment calculations.

IV. REIMBURSABLES

In accordance with Exhibit D, the Government acknowledges that the Lessor will incur certain reimbursable expenses in the performance of the work contemplated by this Agreement ("Reimbursable Expenses"). The quantities and prices included on Exhibit D are the maximum allowable; the Lessor understands and agrees that these amounts cannot be exceeded without prior written approval by the Contracting Officer. The quantities for items identified in the Matrix to Exhibit A for base services are not allowable as Reimbursable Expenses; these quantities must be exhausted before any payment for Reimbursable Expenses can begin. Payment for Reimbursable Expenses shall be in accordance with Section V below.

V. GENERAL DESCRIPTION OF SERVICES AND PAYMENT PROCEDURES

This Agreement contemplates the performance of two broad services, hereinafter referred to as the Space Programming Service and the Space Planning Service, each of which encompasses multiple tasks, as specifically described in

Exhibit A. The Lessor shall submit to the Government monthly invoices which shall be accompanied by corresponding invoices from the Space Planner beginning September 1, 1994, which shall contain a detailed written description of the progress in accordance with the Schedule. Invoices shall be submitted in accordance with Paragraph 11.2 of the Lease and payment will be made to the Lessor in accordance with same. Payment for the work under this Agreement, inclusive of the Space Planning Agreement is directly related to the Schedule, and will be made in accordance with the following procedures:

A. SPACE PROGRAMMING PAYMENT

1. This payment or any installment thereof shall be referred to as the Lessor's Programming Payment. Interim payments will be made on a monthly basis in arrears, based on the estimated Programmed Square Footage contemplated by Exhibit C.

2. The Government shall pay the interim monthly Lessor's Programming Payments in arrears based on the following calculations:

\$ 184,898	(.20 x 924,488 square feet from Exhibit C less square footage for [REDACTED])
\$ 29,700	(\$.11 x 270,000 sq.ft. for modified programming services as described in Exhibit A for the [REDACTED])
\$ 214,598	TOTAL PROGRAMMING PAYMENT (Subject to adjustment - See 4. below)
/ 4	Four Interim Monthly Payments
\$ 53,649	TOTAL MONTHLY PAYMENT (Subject to adjustment - See (i.) and (ii.) below.)

(i) The monthly payment will be increased by the amount of any Reimbursable Expenses in accordance with Section IV above and Exhibit D. Reimbursable Expenses for the month shall be included on the invoice, with secondary invoices (i.e. receipts) attached as supporting documentation.

(ii) The monthly payment will also be adjusted downward in the event an Agency(s) does not require the Conventional and/or Systems Furniture Inventories as described in Exhibit A. The price per square foot in Section V. A.2 above includes a total of \$.10 for these services (\$.05 each). The invoice should identify any Agency(s) for which inventories were not required, and the adjustment should be made based on the estimated Programmed Square Footage per Agency from Exhibit C.

3. When the Space Programming Service is complete, the final monthly payment for this Service will be adjusted in accordance with the procedures outlined in the Space Planning Agreement (reference 1. (v.) "Programmed Square Footage"), to reflect the actual Programmed Square Footage, which in no event shall exceed 1,194,500 feet of Programmed Square Footage. The final invoice should reflect the actual Programmed Square Footage. In the event there is a negative difference, the Government shall offset such amount against payments due to the Lessor under the Space Planning Services described in Section V. B. below.

4. The Government retains the right to withhold the interim monthly payments, as described in A. 2. above, if the Lessor does not demonstrate compliance with the Schedule. The Government reserves the right to withhold the final Space Programming Payment if the Space Programming Services are not complete at the time the final invoice for these services is submitted. In the event the Government or an Agency(s) is responsible for the Lessor's failure to perform the Space Programming Services, payment cannot be withheld for that portion of Space Programming work which was delayed as a direct result of the Government or the Agency(s).

B. SPACE PLANNING PAYMENT

1. This payment, or any installment thereof shall be referred to as the Lessor's Space Planning Payment. Interim payments will be made on a monthly basis in arrears, in equal amounts, for eight (8) months, and according to the procedures outlined in the Space Planning Agreement.

2. The Government shall pay the interim monthly Lessor's Space Planning Payments based on \$.61 times the Actual Planned Square Footage as described in the Space Planning Agreement.

3. The monthly Lessor's Space Planning Payment may be increased by the amount of any Reimbursable Expenses, in accordance with Section IV. above and Exhibit D. Reimbursable Expenses for the month shall be included on the invoice, with secondary invoices (i.e. receipts) attached as supporting documentation.

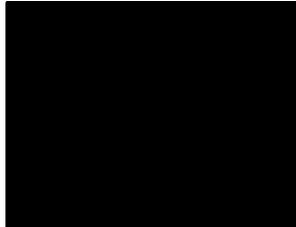
4. The Government retains the right to withhold the interim monthly Lessor's Space Planning Payments if the Lessor does not demonstrate compliance with the Schedule. The Government reserves the right to withhold the final Space Planning Payment if the Space Planning Services are not complete at the time the final invoice for these services is submitted. In the event the Government or an Agency(s) is responsible for the Lessor's failure to perform, payment cannot be withheld for that portion of Space Planning work which was delayed as a direct result of the Government or the Agency(s).

VI. OPTIONAL SERVICES

A. The Lessor agrees, upon written request by the Government, to cause the Space Planner to perform the optional services (hereinafter referred to as "Additional Services"), provided the Space Planning Agreement has been executed and delivered by both the Lessor and the Space Planner.

B. The Lessor understands and acknowledges that the Government has not yet determined a need for the Additional Services and they are not inherently required to complete the work contemplated by this Agreement. Should the Contracting Officer identify a need for an Additional Service(s), she will request an estimate based on the number of hours required to perform the Additional Service(s) from the Lessor. Upon evaluation of the estimate, the Contracting Officer may provide a written request to the Lessor for performance of the Additional Service(s).

1. Interior Design
2. Graphic Design
3. Move Sequencing
4. Move Coordination
5. Review of Construction Documents



VII. LIQUIDATED DAMAGES

In the event the Lessor or the Space Planner fails to perform the Space Programming Services and/or Space Planning Services contemplated herein in accordance with the Schedule, the Government may choose to withhold payment as described above, and/or collect from the Lessor the Liquidated Damages (as defined in the Space Planning Agreement), to which the Lessor is entitled and which the Lessor actually receives under the Space Planning Agreement. Both the Government and the Lessor agree that the Liquidated Damages shall not constitute a penalty, but they shall be the Government's exclusive remedy for such failure, except that the Government also maintains the right to withhold payment for Services not rendered in accordance with the Schedule and Sections V.A.4. and V.B.4, herein. The Government further acknowledges that if such failure is the fault of the Government or an Agency(s), then the Government shall not be entitled to collect or receive Liquidated Damages with regard to the Tenant Layouts which were not delivered as a result.

VIII. OTHER ACKNOWLEDGMENTS

A. The Government and Lessor further acknowledge and agree that nothing contained herein shall be deemed to modify or amend any provision or section of the Lease that limits the rights of one party against the other, including without limitation Section 9.6.

B. The Government and Lessor further acknowledge and agree that in the event a dispute arises with respect to this agreement, the Lessor has delegated the right to the Space Planner under the Space Planning Agreement to assert its claim directly against the Government pursuant to and in accordance with Section 15.3 of the Lease.

C. The Government, the Lessor and the Space Planner recognize that, as of the date of this Agreement, the design documents ("Base Building Documents") for the Improvements are at or about 65% complete, and that there will be further modification to the Base Building Documents as the design progresses towards completion. The Space Planner agrees to provide the Services contemplated by the Agreement with the understanding that the design is in progress. In this regard, the Space Planner understands that the Base Building Documents are being prepared by the architectural team of Kohn Pedersen Fox ("KPF"), under the direction of Federal Center Builders ("FCB") as the Construction Manager ("CM") and an Authorized Lessor Representative, and that KPF will provide revised and final Base Building Documents to the Space Planner as they become available.

1. The Government shall have until November 1, 1994 to deliver to the Lessor Base Building Documents that are sufficiently complete for the Space Planner to perform the Space Planning Services (such documents the "Final Building Documents"). If the Government delivers any Base Building

Documents to the Lessor prior to November 1, 1994, then the Lessor or the Space Planner shall promptly provide a Notice to the Government stating those changes, if any, that must be made in order to permit the Space Planner to perform the Space Planning Services. In the event the Lessor or the Space Planner does not provide such Notice within 10 days of receipt of such Base Building Documents then such Base Building Documents will be deemed sufficiently complete in the event such Base Building Documents are used for the performance of the Space Planning Services.

2. (i) In the event the Government anticipates that the Final Building Documents will not be available by November 1, 1994, then the Government shall deliver a Notice to the Lessor and Space Planner no later than October 17, 1994, which describes the latest version of the Base Building Documents provided to the Lessor and a projected date for delivery of the Final Building Documents to the Lessor and Space Planner. The Lessor will have until October 24, 1994, to provide a Notice to the Government that sets forth additional costs that it would incur as a result of the delay in the delivery of the Final Building Documents beyond November 1, 1994, and any delays in the Schedule which would result from such delayed delivery (the "Additional Cost Notice").

(ii) The Government will review the Additional Cost Notice and, by November 1, 1994, in a Notice to the Lessor and Space Planner, elect one of the following alternatives: (x) require the Space Planner to perform the Space Planning Services on the basis of the latest version of the Base Building Documents then in its possession (or those provided with the Notice), in which case for purposes of Section 3. below, such Base Building Documents will become the Final Building Documents; or (y) approve the Additional Services contemplated by the Additional Cost Notice; or (z) disapprove the Additional Services contemplated by the Additional Cost Notice, in which event the Space Planner shall perform the Space Planning Services in accordance with the Final Building Documents when they are actually delivered, but the Space Planner (through the Lessor) will have the right to pursue a Claim against the Government for any Additional Services it performs and additional costs it incurs as a result of the delay in the delivery of the Final Building Documents beyond November 1, 1994. In the event the Government elects alternative 2. (ii) (x) herein, and subsequently anticipates that the Final Building Documents will not be available by the extended date, then the process set forth herein will be repeated until the Final Building Documents have been delivered or the Government elects either alternative 2. (ii) (y) or 2. (ii) (z) herein.

3. (i) In the event there are changes to the Final Building Documents after November 1, 1994, (or if the Final Building Documents are not delivered by November 1, 1994, and the Government elects the alternative under Section 2. (ii) (x) above, after the Final Building Documents are actually delivered to the Lessor), then, to the extent that such changes cause additional work to be performed by the Space Planner under the Space Planning Agreement, such additional work will be considered an Additional Service and the Schedule shall be adjusted as necessary to accommodate the performance of any such Additional Service. The Lessor or the Space Planner shall provide a Notice to the Government promptly after it becomes aware that such changes will result in the performance of Additional Services. It is understood and agreed that the Government shall have the absolute right to change the Base

Building Documents at any time and from time to time prior to November 1, 1994, (or if the Final Building Documents are not delivered by November 1, 1994, and the Government elects the alternative under Section 2. (ii) (x) above, prior to the date the Final Building Documents are actually delivered to the Lessor) without incurring any obligation to the Lessor or the Space Planner for Additional Services associated with such changes.

(ii) Payment for such Additional Service(s) and corresponding adjustments to the Schedule, if necessary, shall be negotiated in good faith at the time it is determined that such Additional Service(s) is required. The Lessor and the Space Planner agree not to perform any Additional Service(s), including those contemplated herein, without prior written approval from the Contracting Officer. In the event the Government and the Space Planner are not able to reach a mutually acceptable agreement with regard to such Additional Service(s), then either x) the Government may direct the Space Planner to continue performance of the Space Planning Services without regard to the changes; or y) the Government, at the sole discretion of the Contracting Officer, may direct the Space Planner to perform the Additional Service(s) at the highest rate proposed by the Government in such negotiations, and the Space Planner (through the Lessor) shall have the right to pursue a Claim against the Government for the difference between the amount paid by the Government for such Additional Service(s) and the amount to which the Space Planner asserts that it is entitled to for such Additional Service(s); or z) the Government may terminate this Agreement. In the event the Government chooses to terminate this Agreement, the Space Planner would be entitled to payment for only those Services rendered as of the date of termination in accordance with the Schedule.

D. The Government and Lessor acknowledge that the Lease directs the execution of Supplemental Lease Agreement No. 1 to fix the exact amount of the Rent Payments. Both parties recognize that Supplemental Lease Agreement No. 1 has not been executed as of the date of this Agreement, which shall be referred to as Supplemental Lease Agreement No. 2, Space Programming and Planning. The parties intend to execute Supplemental Lease Agreement No. 1 by November 1, 1994.

E. Notices that are required or permitted under this Supplemental Lease Agreement should be sent in accordance with Article VIII, Paragraph 8.14 of the Lease; provided that any Notices to the Lessor which relate solely to this Supplemental Lease Agreement and the actions or inaction's of the Space Planner shall also be sent to the Space Planner in the same manner as provided in the Lease, at the following address:

Space Planner: M. Arthur Gensler, Jr. and Associates, Inc.
909 West Peachtree Street
Atlanta, GA 30309
Attn.: Gerry Tracz

with a copy to: M. Arthur Gensler, Jr. and Associates, Inc.
600 California Street
San Francisco, CA 94108
Attn.: Benjamin Fisher

EXCEPT AS AMENDED HEREIN, the Lease remains in full force and effect.

IN WITNESS WHEREOF, the Parties hereby execute this Supplemental Lease Agreement No. 2 as of the date included herein.

LESSOR:

THE DOWNTOWN DEVELOPMENT AUTHORITY OF
THE CITY OF ATLANTA

By: *Jim Campbell*

Its: Chair

THE GOVERNMENT:

THE UNITED STATES OF AMERICA

By: *Amanda L. Wilde*

AMANDA L. WILDE
Contracting Officer

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