

SUPPLEMENTAL LEASE AGREEMENT

SUPPLEMENTAL LEASE AGREEMENT NO.	TO LEASE NO.	DATE	PAGE
1	GS-04B-61159	November 19, 2012	1 of 5

ADDRESS OF PREMISES

Assemblage of four (4) parcels (located at 836 15th Street North, 843 14th Street North, 1410 8th Avenue North, and 1416 8th Avenue North) in Birmingham (Jefferson County), Alabama 35203

THIS AGREEMENT, made and entered into this date by and between: **CR INVESTMENTS, LLC**

whose address is: **1904 First Avenue North, Suite 300, Birmingham, Alabama 35203**

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

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

NOW, THEREFORE, the parties for the considerations hereinafter mentioned covenant and agree that the Lease is amended effective November 19, 2012, as follows:

1. **CHANGE ORDERS.** This Supplemental Lease Agreement ("SLA") No. 1 memorializes both: (i) the Government's directive to the Lessor to proceed with Change Orders 1, 2, and 3, attached to this SLA as Exhibits "A," "B," and "C," respectively ("Change Orders 1-3"); and (ii) the Government's acceptance of the Lessor's cost proposals for Change Orders 1-3 for the total estimated amount of \$5,261,611.13, as follows:
 - a) Change Order #1: Façade changes related to Design Excellence goals and objectives as outlined in Exhibit "A," in the amount of [REDACTED] (estimated);
 - b) Change Order #2: [REDACTED] for site and building as outlined in Exhibit "B," in the amount of [REDACTED] (estimated);
 - c) Change Order #3: Loading dock as outlined in Exhibit "C," in the amount of [REDACTED] (estimated).

-----Last Item-----

Continued on Page 2.

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

SIGNATURE	[REDACTED]	NAME OF SIGNER	Robert A. Simon
ADDRESS	1904 1 st Avenue North, Suite 300, Birmingham, AL 35203		

IN PRESENCE OF

SIGNATURE	[REDACTED]	NAME OF SIGNER	Brian Wolfe
ADDRESS	1904 1 st Avenue North, Suite 300, Birmingham, AL 35203		

[REDACTED]	OF AMERICA	NAME OF SIGNER	Robert E. Scott
[REDACTED]		OFFICIAL TITLE OF SIGNER	Contracting Officer

Within 20 calendar days of the Government's review of the construction drawings for conformance, the Lessor shall submit for each item listed in Change Orders 1-3, or any combination thereof, either (i) adequate cost and pricing data; or (ii) competitive proposals in lieu of cost and pricing data, the choice of which is in the Lessor's sole discretion. The price proposal submission, including subcontractor work, will contain at least the following detail: 1) Material quantities and unit costs; 2) Labor costs; 3) Equipment costs; 4) Worker's compensation and public liability insurance; 5) Overhead; 6) Profit; and 7) Employment taxes under FICA and FUTA. Within 10 calendar days of this Lessor submission, the Government shall provide the Lessor in writing with a payment document code for invoicing the estimated amount of \$5,261,611.13. The Lessor will be issued a lump sum payment for Change Orders 1-3 upon completion, inspection, and acceptance of the premises. In connection with Change Orders 1-3, payment will be due only for items that are listed in Change Orders 1-3. Payment is predicated on the Lessor's delivery of an invoice at the time of space acceptance to the following billing office: U.S. General Services Administration, Finance Division - 7BCP, 819 Taylor Street, Fort Worth, Texas 76102-0181, which invoice shall include the payment document code for Change Orders 1-3.

2. DELAYS.

a) The parties hereby agree that the Government has caused delays to the project. In order to avoid litigation costs and for the Lessor to be promptly reimbursed for its delay costs, the Government recognizes the Lessor's entitlement to recover its fair and reasonable costs associated with the following categories of delay costs: 1) Building permits costs increases; 2) Acoustical ceiling costs increases; 3) Fire protection costs increases; 4) HVAC costs increases; 5) Developer overhead costs increases; 6) Environmental, Geotechnical, & NPDES Monitoring costs increases; and 7) Construction loan interest increases. Estimates for these delay costs are more specifically outlined in Exhibit "D." Further, the parties acknowledge that the Government's delay has caused the Lessor's land cost to increase in the amount of approximately \$287,365.46 and the Government agrees to compensate the Lessor for this increase upon the Lessor's submission of the closing documents substantiating the exact amount of the increase. The parties understand and agree that the Lessor's entitlement in each of the above seven categories and land cost increase are limited to the increased costs caused by the Government's delay. For example, the Government is not agreeing to pay all of the Lessor's land cost but only the increase in the land's cost due to the delay. Again, by way of example and not limitation, the Government is not agreeing to pay for the entire cost of building permits but only the increase caused by the delay.

b) For all of the aforementioned delay costs, after substantial completion of the project and the Government's acceptance of the premises, the Lessor shall deliver to the Contracting Officer an invoice, with applicable backup documentation, setting forth the details of the costs associated with each delay cost category as set forth in Paragraph a) above. Thereafter, the Contracting Officer shall have thirty (30) days to review the invoice, issue a determination of the delay costs that the Government will pay, and pay such accepted delay costs.

c) To the extent that the Lessor accepts all or part of the Contracting Officer's determination responding to the Lessor's aforementioned invoice, the Lessor agrees, to the extent of the accepted delay costs, to release the Government from any and all claims arising under or by virtue of the Government's delay prior to this SLA's effective date. This release shall operate automatically without further documentation. Any delay that occurs after this SLA's effective date shall be governed by Paragraph 17 of this SLA.

d) If the Government rejects or denies any of the Lessor's delay costs, the Lessor shall retain its rights under the Lease to pursue a claim for such costs.

3. **PROGRAM DEVELOPMENT STUDY.** The parties agree that the Lessor shall include the costs for the Program Development Study items in its written Tenant Improvements price proposal (the "TI Price Proposal") required under Paragraph 5.11.E (Tenant Improvements Price Proposal) of Solicitation for Offers No. 9AL2109, attached to the Lease at SF-2 Paragraph 7(b) (the "SFO").

4. **NOTICE TO PROCEED.** Notwithstanding anything to the contrary stated in SFO Paragraph 5.11, after negotiation and acceptance of the TI Price Proposal, the Government shall issue a Notice to Proceed that authorizes the full funding for the work included in the TI Price Proposal and identifies a payment document code for such full funding (the "Notice to Proceed") within 3 calendar days of the Government's acceptance of the TI Price Proposal, and the Lessor shall have no obligation to commence construction without the Notice to Proceed. Each day that the Government is late in providing the Notice to Proceed shall constitute a day of Government Delay (as defined below).

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5. **SITE PLAN.** The Site Plan attached to the Lease at SF-2 Paragraph 7(e) is deleted in its entirety and replaced with the Site Plan attached hereto as Exhibit "E."

6. **LEASED PREMISES.** SF-2 Paragraph 1 is deleted in its entirety and replaced with the following paragraph:

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

A total of 83,676 rentable square feet (RSF) of office and related space, which yields 75,434 ANSI/BOMA Office Area square feet (ABOASF) of space to be newly constructed on an assemblage of four parcels (located at 836 15th Street North; 843 14th Street North; 1410 8th Avenue North; and 1416 8th Avenue North) in Birmingham (Jefferson County), Alabama 35203, including two hundred fifty (250) on-site, reserved parking spaces at no additional cost to the Government.

7. **TERM.** SF-2 Paragraph 2 is deleted in its entirety and replaced with the following paragraph:

2. **TERM:**

TO HAVE AND TO HOLD the said premises with their appurtenances for a firm term of fifteen (15) years beginning on the date of the Government's acceptance of the space. The lease commencement date and rent commencement date shall be more specifically set forth in a SLA upon substantial completion and the Government's acceptance of the space.

The Lessor has requested a 15-year firm term instead of a 15-year term with only 10 years firm.

8. **RENTAL RATES:** SF-2 Paragraph 3 is deleted in its entirety and replaced with the following paragraph:

3. **RENTAL RATES:**

The Government shall pay the Lessor annual rent for the entire term, monthly, in arrears, as follows:

<u>TERM</u>	<u>ANNUAL RENT</u>	<u>MONTHLY RATE</u>	<u>SHELL PER RSF</u>	<u>OPERATING COSTS PER RSF</u>	<u>TI PER RSF</u>	<u>PRSF RATE</u>	<u>ABOASF RATE</u>
Year 1 - Year 5	\$2,146,289.40	\$178,857.45	\$15.40	\$5.65	\$4.60	\$25.65	\$28.45
Year 6 - Year 10	\$2,275,150.44	\$189,595.87	\$16.94	\$5.65	\$4.60	\$27.19	\$30.16
Year 11 - Year 15	\$2,031,987.98	\$169,332.33	\$18.63	\$5.65	\$0.00	\$24.28	\$26.93

The rate per rentable square foot (PRSF) is determined by dividing the total annual rental by the rentable square footage set forth in Paragraph 1. The rate per ANSI/BOMA office area square foot (ABOASF) is determined by dividing the total annual rental by the ABOASF set forth in Paragraph 1.

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

CR INVESTMENTS, LLC
 1904 First Avenue North, Suite 300
 Birmingham, AL 35203

9. **TERMINATION NOTICE.** SF-2 Paragraph 4 (Termination Notice) and SFO Paragraph 1.13 (Lease Term) are deleted in their entirety. The Lease is for a firm term of fifteen (15) years, and the Government has no right to terminate the Lease other than as set forth in GSA Form 3517B, the Lease's Lessor default clauses, or for any reason at common law or equity.

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10. SHELL RATE. SF-2 Paragraph 9 is deleted in its entirety and replaced with the following paragraph:

9. In accordance with SFO Paragraph 1.12 (Building Shell Requirements), the shell rate is established as \$15.40 per RSF or \$17.08 per ABOASF for years 1-5, \$1,288,628.26 per annum; the shell rate is established as \$16.94 per RSF or \$18.79 per ABOASF for years 6-10, \$1,417,489.30 per annum; and the shell rate is established as \$18.63 per RSF or \$20.67 per ABOASF for years 11-15, \$1,559,218.58 per annum.

11. TENANT IMPROVEMENT ALLOWANCE. SF-2 Paragraph 10 is deleted in its entirety and replaced with the following paragraph:

10. Pursuant to SFO Paragraph 3.2 (Tenant Improvements Included in Offer), the maximum Tenant Improvement Allowance shall be \$2,761,639.00 (\$36.61/ABOASF) amortized over 120 months at 7%, payable monthly at the rate of \$32,064.97, or \$384,779.65 annually (\$4.60/RSF or \$5.10/ABOASF), and is included in the annual rent payment identified in SF-2 Paragraph 3.

12. T/I COST OVERAGES. SF-2 Paragraph 11 is deleted in its entirety and replaced with the following paragraph:

11. Pursuant to SFO Paragraph 3.3 (Tenant Improvements Rental Adjustment), the Government, at its sole discretion, shall make all decisions as to the usage and payment for said Tenant Improvement Allowance. If the T/I cost exceeds \$2,761,639.00, the balance due the Lessor will be paid by rental adjustment or lump sum, to be determined by the Government. If the entire T/I of \$36.61/ABOASF or \$2,761,639.00 is not used, the Government will adjust the rental rate downward to off-set the difference in the tenant improvement. In lieu of cost and pricing data, the Lessor may submit competitive proposals, the choice of which is in the Lessor's sole discretion.

13. COMMON AREA FACTOR. SF-2 Paragraph 12 is deleted in its entirety and replaced with the following paragraph:

12. In accordance with SFO Paragraph 4.1 (Measurement of Space), the common area factor (CAF) is established as 1.1093, based on 83,676 RSF and 75,434 ABOASF.

14. TAX ADJUSTMENT. SF-2 Paragraph 13 is deleted in its entirety and replaced with the following paragraph:

13. In accordance with SFO Paragraph 4.2 (Tax Adjustment), the percentage of Government occupancy is established as 100% (based on total building area of 83,676 RSF and the Government's occupancy of approximately 83,676 RSF). Percentage of occupancy is subject to revision based on actual measurement of Government occupied space at time of final inspection, not to exceed the maximum ABOASF stated in the SFO, and in accordance with GSA Form 3517B. In accordance with SFO Paragraph 4.2.B.7, the parties hereby establish the Lease's "Real Estate Tax Base" to be \$41,838.00, which Real Estate Tax Base is an amount negotiated by the parties that reflects an agreed upon base for a Fully Assessed value of the property.

15. OPERATING COSTS. SF-2 Paragraph 14 is deleted in its entirety and replaced with the following paragraph:

In accordance with SFO Paragraph 4.3 (Operating Costs), the escalation base is established as \$5.65 per RSF (\$6.27 per ABOASF), \$472,769.40 per annum.

16. COMMISSION AND COMMISSION CREDIT. SF-2 Paragraph 21 is deleted in its entirety and replaced with the following paragraph:

21. In accordance with SFO Paragraph 2.5 (Broker Commission and Commission Credit), Jones Lang LaSalle ("Broker") is the authorized real estate broker representing GSA in connection with this lease transaction. The Lessor and Broker have agreed to a cooperating lease commission of [REDACTED] of the firm term value of this Lease for the first ten years and [REDACTED] of the firm term value of the lease for the remaining five years ("Commission"). The total amount of the Commission is [REDACTED] and is earned upon lease execution, payable according to the Commission Agreement signed between the two parties. Due to the Commission Credit described in SFO Paragraph 2.5, only [REDACTED] or [REDACTED] of the Commission, will be payable to Jones Lang LaSalle. The remaining [REDACTED] or [REDACTED] of the Commission, which is the "Commission Credit," shall be credited to the shell rental portion of the annual rental payments due and owing to fully recapture this Commission Credit. The reduction in shell rent shall commence with

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the first month of the rental payments and continue until the credit has been fully recaptured in equal monthly installments over the shortest period practical.

Notwithstanding SF-2 Paragraph 3, 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:

First Month's Rental Payment of \$178,857.45 minus the prorated Commission Credit of [REDACTED] equals the adjusted First Month's Rent of [REDACTED]

Second Month's Rental Payment of \$178,857.45 minus the prorated Commission Credit of [REDACTED] equals the adjusted Second Month's Rent of [REDACTED]

Third Month's Rental Payment of \$178,857.45 minus the prorated Commission Credit of [REDACTED] equals the adjusted Third Month's Rent of [REDACTED]

Fourth Month's Rental Payment of \$178,857.45 minus the prorated Commission Credit of [REDACTED] equals the adjusted Fourth Month's Rent of [REDACTED]

- 17. APPROVED PROJECT SCHEDULE.** Notwithstanding anything to the contrary contained in the SFO or elsewhere in the Lease, the parties hereby agree that the project schedule attached to this SLA as Exhibit "F" (the "Approved Project Schedule") shall be the schedule that governs the timing for the design, construction, and completion of the premises, as referenced in SFO Paragraph 5.11 and elsewhere in the Lease. The Approved Project Schedule shall incorporate a duration of five hundred and twenty-two (522) calendar days from this SLA's date for substantial completion to occur. The Approved Project Schedule shall be attached to and made a part of the Lease as of this SLA's effective date. Should either the Government or the Lessor fail to discharge their responsibilities under the Lease within the time allocated under the Approved Project Schedule, such failure shall constitute "Delay," unless it constitutes Excusable Delay.

Notwithstanding the foregoing, if the Lessor delivers the premises as substantially complete prior to the deadline for such delivery set forth in the Approved Project Schedule, the Government shall accept the premises in accordance with SFO Paragraph 5.11.G.

- 18. SUBLETTING AND ASSIGNMENT.** Notwithstanding anything to the contrary contained in Clause No. 2 (Subletting and Assignment) of GSA Form 3517B or elsewhere in the Lease, the Government may sublease any part of the premises or assign the Lease in its entirety (not in part), but shall not be released from any obligations under the Lease by reason of any such subletting or assignment. In the event of any assignment or subletting, the proposed assignee or subtenant shall be subject to the Lessor's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed. The Government shall pay any increase in costs associated with any assignment or sublease.
- 19. FIRE AND CASUALTY.** Clause No. 17 (Fire and Casualty Damage) of GSA Form 3517B is deleted in its entirety and replaced with the following clause:

"17. FIRE AND CASUALTY DAMAGE. If the building in which the premises are located is totally destroyed by fire or other casualty, this Lease shall immediately terminate. If the building in which the premises are located are only partially destroyed or damaged, so as to render the premises untenable, or not usable for their intended purpose, the Lessor shall have the option to elect to repair and restore the premises or terminate the Lease. The Lessor shall be permitted a reasonable amount of time, not to exceed **270 days** from the event of destruction or damage, to repair or restore the premises, provided that the Lessor submits to the Government a reasonable schedule for repair of the premises within **60 days** of the event of destruction or damage. If the Lessor fails to timely submit a reasonable schedule for completing the work, the Government may elect to terminate the Lease effective as of the date of the event of destruction or damage. If the Lessor elects to repair or restore the premises, but fails to repair or restore the premises within **270 days** from the event of destruction or damage, or fails to diligently pursue such repairs or restoration so as to render timely completion commercially impracticable, the Government may terminate the Lease effective as of the date of the destruction or damage. During the time that the premises are substantially unoccupied, rent shall be abated. Termination of the Lease by either party

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under this clause shall not give rise to liability for either party. This clause shall not apply if the event of destruction or damage is caused by the Lessor's negligence or willful misconduct."

20. All other terms and conditions of the Lease shall remain in force and effect. To the extent that anything contained in this SLA conflicts with, or is in any manner inconsistent with, any term, provision, section, or covenant of the Lease, the terms and conditions of this SLA shall control.

-----END OF DOCUMENT-----

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