



**LEASE AMENDMENT
NUMBER 3**

Lease Number: GS-09B-02311 **Date:** 8/27/13
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 notice to proceed with construction.

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

Paragraph 29 is hereby added:

"29. NOTICE TO PROCEED

Following a Government review of the submitted cost proposal, the Government has determined that the bid submitted is fair and reasonable and a Notice to Proceed is hereby issued for the construction of Tenant Improvements at a total cost **not to exceed \$1,170,456.55** inclusive of all management fees.

The Government shall make a partial payment to the Lessor based on the Government estimation of quantity and quality of work completed, which payment shall not be unreasonably withheld, and in accordance with the following section of the Federal Acquisition Regulations (FAR): **52.232-5 Payments under Fixed-Price Construction Contracts (Sept 2002)**.

The Government shall pay the Contractor, upon the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified in this contract, payment shall be made on partial deliveries accepted by the Government if the amount due on the deliveries warrants it.

All references to "Contractor" in this document shall also mean "Lessor".

52.232-5 Payments under Fixed-Price Construction Contracts (Sept 2002)

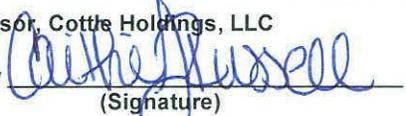
- (a) *Payment of price.* The Government shall pay the Contractor the contract price as provided in this contract.
- (b) *Progress payments.* The Government shall make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates of work accomplished which meets the standards of quality established under the contract, as approved by the Contracting Officer.
 - (1) The Contractor's request for progress payments shall include the following substantiation:
 - (i) An itemization of the amounts requested, related to the various elements of work required by the contract covered by the payment requested.
 - (ii) A listing of the amount included for work performed by each subcontractor under the contract.
 - (iii) A listing of the total amount of each subcontract under the contract.
 - (iv) A listing of the amounts previously paid to each such subcontractor under the contract.
 - (v) Additional supporting data in a form and detail required by the Contracting Officer.

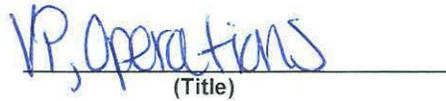
CONTINUED ON SHEET 1

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

Lessor, **Cottle Holdings, LLC**

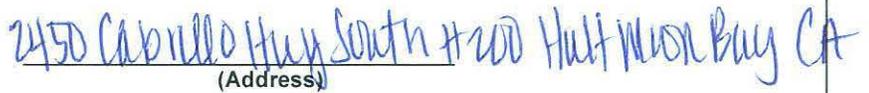
By


(Signature)

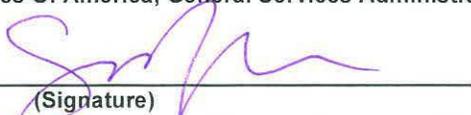

(Title)

In Presence of


(Signature)


(Address)

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


(Signature)

for **Megan Stefani**
Contracting Officer



- (2) In the preparation of estimates, the Contracting Officer may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the site also may be taken into consideration if—
 - (i) Consideration is specifically authorized by this contract; and
 - (ii) The Contractor furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform this contract.

In addition to the requirements as specified on FAR 52.232-5, the Contractor shall provide the following Contractor Certification, or payment shall not be made: (However, if the Contractor elects to delete paragraph (4) from the certification, the certification is still acceptable.)

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 contract;
- (2) All payments due to subcontractors and suppliers from previous payments received under the contract have been made, or will be made within 10 days of payment by GSA to Lessor, and timely payments will be made from the proceeds of the payment covered by this certification upon receipt of funds from GSA to Lessor, in accordance with subcontract agreements and the requirements of Chapter 39 of Title 31, United States Code;
- (3) This request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract; and
- (4) This certification is not to be construed as final acceptance of a subcontractor's performance.

Curtis Russell
(Name)

VP, operations
(Title)

8/23/2013
(Date)

(d) *Refund of unearned amounts.* If the Contractor, after making a certified request for progress payments, discovers that a portion or all of such request constitutes a payment for performance by the Contractor that fails to conform to the specifications, terms, and conditions of this contract (hereinafter referred to as the "unearned amount"), the Contractor shall—

- (1) Notify the Contracting Officer of such performance deficiency; and
- (2) Be obligated to pay the Government an amount (computed by the Contracting Officer in the manner provided in paragraph (j) of this clause) 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 Contractor notifies the Contracting Officer that the performance deficiency has been corrected; or
 - (ii) The date the Contractor reduces the amount of any subsequent certified request for progress payments by an amount equal to the unearned amount.

(e) *Retainage.* If the Contracting Officer finds that satisfactory progress was achieved during any period for which a progress payment is to be made, the Contracting Officer shall authorize payment to be made in full. However, if satisfactory progress has not been made, the Contracting Officer may retain a maximum of 10 percent of the amount of the payment until satisfactory progress is achieved. When the work is substantially complete, the Contracting Officer may retain from previously withheld funds and future progress payments that amount the Contracting Officer considers adequate for protection of the Government and shall release to the Contractor all the remaining withheld funds. Also, on completion and acceptance of each separate building, public work, or other division of the contract, for which the price is stated separately in the contract, payment shall be made for the completed work without retention of a percentage.

(f) *Title, liability, and reservation of rights.* All material and work covered by progress payments made shall, at the time of payment, become the sole property of the Government, but this shall not be construed as—

- (1) Relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or
- (2) Waiving the right of the Government to require the fulfillment of all of the terms of the contract.

(g) *Reimbursement for bond premiums.* In making these progress payments, the Government shall, upon request, reimburse the Contractor for the amount of premiums paid for performance and payment bonds (including coinsurance and reinsurance agreements, when applicable) after the Contractor has furnished evidence of full payment to the surety. The retainage provisions in paragraph (e) of this clause shall not apply to that portion of progress payments attributable to bond premiums.

(h) *Final payment.* The Government shall pay the amount due the Contractor under this contract after—

- (1) Completion and acceptance of all work;
- (2) Presentation of a properly executed voucher; and
- (3) Presentation of release of all claims against the Government arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. A release may also be required of the assignee if the Contractor's claim to amounts payable under this contract has been assigned under the Assignment of Claims Act of 1940 (31 U.S.C. 3727 and 41 U.S.C. 15).

(i) *Limitation because of undefinitized work.* Notwithstanding any provision of this contract, progress payments shall not exceed 80 percent on work accomplished on undefinitized contract actions. A "contract action" is any action resulting in a contract, as defined in FAR Subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

CONTINUED ON SHEET 2

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Government Lessor



SHEET NO. 2 IS ATTACHED HERETO AND MADE PART OF LEASE AMENDMENT NO. 3 TO LEASE # GS-09B-02311

(j) *Interest computation on unearned amounts.* In accordance with 31 U.S.C. 3903(c)(1), the amount payable under paragraph (d)(2) of this clause shall be—

- (1) Computed at the rate of average bond equivalent rates of 91-day Treasury bills auctioned at the most recent auction of such bills prior to the date the Contractor receives the unearned amount; and
- (2) Deducted from the next available payment to the Contractor.”

Paragraph 30 is hereby added:

“30. TENANT IMPROVEMENT BALANCE

The total cost for Tenant Improvements, exclusive of the [redacted] design and permit fees paid as part of LA #2, is not to exceed \$1,170,456.55 as set forth in Paragraph 29. \$480,112.88 of the total amount will be amortized into the rent as set forth in Paragraph 16 of the lease. The Government hereby orders the balance of \$690,343.67. Any progress payment made will be deducted from the balance of \$690,343.67. The remaining balance of the tenant improvement cost after the progress payment will become the final lump-sum payment amount.

Exhibit A, attached to and made a part of lease amendment number 3, includes the tenant improvement cost summary. Exhibit A includes a 3 week construction milestone with an estimated value of \$294,742.00. The Government anticipates making a progress payment upon the inspection and acceptance of construction progress at the 3 week milestone consistent with Exhibit A. The progress payment will be for \$294,742.00 if the Government determines that the work accepted warrants this amount and coincides with the completion of the line items shown in Exhibit A under “Complete at 3 Weeks”.

The Lessor will be paid upon submission of proper invoice or voucher of agreed completion and acceptance of work in progress by the Government, and in accordance with the Federal Acquisition Regulations clauses identified herein. Invoices shall be submitted via the GSA Finance website at: <https://finance3.gsa.gov/webVendors/>. The sum of the invoices shall not exceed \$690,343.67 except in the event that Change Orders are approved by the Contracting Officer.

A copy of the Invoice shall be simultaneously submitted to the Leasing Specialist at:

GSA, Real Estate Division
Attention: Jamie Philliposian
450 Golden Gate
3rd Floor East
San Francisco, CA 94102

A proper invoice must include the following:

- Invoice date
- Name of the Lessor as shown on the Lease
- Lease contract number, building address, and a description, price and quantity of the items delivered
- Annotation of GSA PS Number (will be sent after Government executes this Lease Amendment)”

Paragraph 31 is hereby added:

“31. The Government shall vacate the premises on August 30, 2013 for six weeks. Upon vacating the premises the Government will remove furniture, fixtures, and equipment as agreed upon, at the expense of the Government. The Lessor shall begin construction on August 31, 2013 and the work shall be substantially complete by October 11, 2013. The Government expects to move back into the premises on October 12, 2013. The Government shall continue to pay rent pursuant to Paragraph 9.”

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

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