

U.S. GOVERNMENT
LEASE FOR REAL PROPERTY

DATE OF LEASE

December 21, 2009

LEASE NO.

GS-02B-23736

NY7499

THIS LEASE made and entered into this date by and between **Genesee Gateway, LLC**

whose address is: 726 Exchange Street, Suite 825
Buffalo, New York 14210

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 consideration hereinafter mentioned, covenant and agree as follows:

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

10,910 rentable square feet (RSF) yielding 9,924 ANSI BOMA office area square feet (ABOASF) of office and related space located on the 1st and 2nd floors, with the separate floor spaces measuring 7,916 ABOASF and 2,008 ABOASF, respectively, of the premises known and designated as 123 Genesee Street, Buffalo, New York, as shown on the floor plans labeled Exhibit "A" and Exhibit "B", and five (5) secured, reserved parking spaces to be used for office and related purposes and parking.

2. ~~TO HAVE AND TO HOLD the said premises with their appurtenances for the term beginning on~~
~~through~~ ~~subject to termination and~~
~~renewal rights as may be hereinafter set forth.~~

SEE PARAGRAPH 9 OF THE RIDER TO THIS LEASE

3. The Government shall pay the Lessor annual rent in accordance with Paragraph 12 of the Rider to the Lease. Rent for a lesser period shall be prorated. Rent checks shall be made payable to:

Genesee Gateway, LLC
726 Exchange Street, Suite 825
Buffalo, New York 14210-1486

4. The Government may terminate this lease in whole or in part at any time after the fifth (5th) year by providing at least ninety (90) days written notice to the Lessor, and 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. This lease may be renewed at the option of the Government, for the following terms and at the following rentals:
provided notice be given in writing to the Lessor at least _____ days before the end of the original lease term
or any renewal term; all other terms and conditions of this lease shall remain the same during any renewal term.
Said notice shall be computed commencing with the day after the date of mailing.

6. The Lessor shall furnish to the Government, as part of the rental consideration, the following:

INTENTIONALLY DELETED

7. The following are attached and made a part hereof: SEE PARAGRAPH 7 OF THE RIDER TO THIS LEASE

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

LESSOR: GENESEE GATEWAY, LLC

BY

(Signature)

(Signature)

IN PRESENCE OF:

(Signature)

(Address)

UNITED STATES OF AMERICA, GENERAL SERVICES ADMINISTRATION

BY

(Signature)

Leasing Contracting Officer

(Official title)

7. The following are attached hereto and made a part hereof:
- a. Lease Rider, Paragraphs 7 through 34
 - b. Section 1: Summary, Paragraphs 1.2, 1.5, 1.6, 1.9, 1.11, 1.12.
 - c. Section 2: Award Factors and Price Evaluation, Paragraph 2.5.
 - d. Section 3: How to Offer and Submittal Requirements, Paragraphs 3.2, 3.3, 3.4.8, 3.5, 3.6B, 3.7.
 - e. Section 4: Utilities, Services, and Lease Administration, Paragraphs 4.2 through 4.13.
 - f. Section 5: Design, Construction, and Other Post Award Activities, Paragraphs 5.1, 5.3 through 5.15.
 - g. Section 6: General Architecture, Paragraphs 6.1 through 6.13.
 - h. Section 7: Architectural Finishes, Paragraphs 7.1 through 7.14.
 - i. Section 8: Mechanical, Electrical, Plumbing, Paragraphs 8.1 through 8.19.
 - j. Section 9: Fire Protection, Life Safety, Environment Issues, Paragraphs 9.1 through 9.12.
 - k. Section 10: Lease Security Standards, Paragraphs 10.1 through 10.24.
 - l. Section 11: Special Requirements
 - m. General Clauses – GSA Form 3517B (Rev. 11/05)
 - n. Representations & Certifications – GSA Form 3518 (Rev. 7/04)
 - o. Exhibit "A" 1st Floor Plan & Exhibit "B" 2nd Floor Plan
8. Wherever the words "Offeror" 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 the 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 "Leased Premises."
9. The term of this Lease shall commence upon completion of the alterations to the leased premises by the Lessor and acceptance thereof by the Government as substantially complete and run for a period of ten (10) years thereafter, subject to the termination rights as set forth below. The commencement date shall be more specifically set forth in a Supplemental Lease Agreement executed by both the Lessor and the Government.
10. Intentionally Omitted
11. The Lessor hereby agrees to deliver the space ready for occupancy within seventy (70) working days after the execution and delivery of approved working drawings by the Government or Lessor's receipt of a notice to proceed from the Government, whichever is later. The Lessor acknowledges that there are two separate portions of the leased premises to be occupied by two separate divisions of the [REDACTED] and that should one division provide the information necessary to proceed with their portion of the leased space prior to the other, the Lessor agrees to proceed with the project and have the space ready for a phased occupancy as permitted under

the terms of this Lease Agreement (General Clauses Section, Clause No. 552.270-19 Progressive Occupancy).

The Lessor shall give the Government at least ten (10) working days notice of the anticipated completion date of the leased premises whereupon the Government shall have ten (10) working days to inspect the leased premises to determine whether the space has been satisfactorily completed. As part of the rental consideration, the Lessor agrees to obtain any special use or occupancy permit that may be required from the municipality permitting the use and occupancy by the Government at the premises.

12. The Government shall pay the Lessor \$217,109.00 per annum or \$19.90 per rentable square foot of office space, which includes the tenant improvement allowance of \$434,373.48 (\$43.77 / ABOASF) amortized over ten years at a rate of 4% for a total tenant improvement rental of \$43,473.35 per annum or \$4.84 per rentable square foot as described in Paragraph 3.2 of the SFO portion of this lease. If the actual cost of constructing the tenant improvements is less than the tenant improvement allowance, the rental rate will be reduced to reflect that actual cost which will be amortized into the annual rental over ten (10) years at an interest rate of 4% and such adjusted amount shall constitute the annual tenant improvement rental. If the actual cost of constructing the tenant improvements is more than the total tenant improvement allowance amortized into the annual rental, the rental rate may be increased to reflect that actual cost which will be amortized into the annual rental over ten (10) years at an interest rate of 4% and such adjusted amount shall constitute the tenant improvement rental or the Government may reimburse the Lessor for that portion which exceeds the tenant improvement allowance in a one-time lump sum payment. Notwithstanding the foregoing, the Government reserves the right, upon satisfactory completion of all alterations required by this Lease and the Government acceptance of the space as satisfactorily completed, to make a one-time lump sum payment to the Lessor for all or part of the tenant improvement allowance, in which case the annual rental will be adjusted accordingly. These specific items together with the total lump sum payment amount and the reduced annual rental amount will be more specifically set forth in a Supplemental Lease Agreement.

13. The first six (6) months of the lease term will be rent free. The monthly rental payment will begin in the seventh month of the lease term.

14. The Government shall pay the Lessor annual rental as follows:

For years 1 through 5 of the lease term, a total rental of \$217,109.00 per annum (\$19.90 per rentable square foot) at a rate of \$18,092.42 per month in arrears as adjusted by operating cost escalations; provided, however, that the rent for month 7 and month 8 shall be reduced in accordance with Paragraph 15.

For years 6 through 8 of the lease term, a total rental of \$228,019.00 per annum (\$20.90 per rentable square foot) at a rate of \$19,001.58 per month in arrears as adjusted by operating costs escalations.

For years 9 through 10 of the lease term, a total rental of \$239,801.80 per annum (\$21.98 per rentable square foot) at a rate of \$19,983.48 per month in arrears as adjusted by operating cost escalations.

15. Jones Lang LaSalle ("JLL") is the authorized real estate broker representing the Government in connection with this lease transaction. The Lessor and JLL have agreed to a cooperating lease commission of [REDACTED] of the firm term value of this lease. The total amount of the commission is [REDACTED]. Lessor shall pay the Broker no additional commissions associated with this lease transaction. In accordance with Paragraph 2.5, "Broker Commission and Commission Credit" of the SFO portion of the lease, 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 Paragraph 2.5, "Broker Commission and Commission Credit" ([REDACTED] of the commission shall be due upon the execution of the Lease, and the remaining [REDACTED] shall be due at the lease commencement).

The shell rental portion of the annual rental payments due and owing under Paragraph 12 of this Rider 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 through the second month of the rental payments as indicated in the following schedule of adjusted monthly rent:

First month's rental payment (month 7) \$18,092.42 minus prorated Commission Credit of [REDACTED] equals [REDACTED] adjusted seventh month's rent.

Second month's rental payment (month 8) \$18,092.42 minus prorated Commission Credit of [REDACTED] equals [REDACTED] adjusted eighth month's rent.

16. Rent for a lesser period shall be prorated. Rent checks shall be made payable to Genesee Gateway, LLC, 726 Exchange Street, Suite 825, Buffalo, New York 14210.
17. For the purposes of the Operating Cost Escalation, in accordance with Paragraph 4.3 of the SFO portion of this Lease, the annual base cost of services is \$53,786.30 (\$4.93 / RSF or \$5.42 / ABOASF).
18. In accordance with Paragraph 4.6, 'Overtime Usage', of the SFO portion of the Lease, the overtime rate for years 1-10 of this Lease agreement shall be \$5.00 per

hour for every 1,500 ABOASF of leased space or portion thereof; provided, there will be no additional charge for any 24-hour LAN room.

19. For the purposes of Real Estate Tax Adjustment, in accordance with Paragraph 4.2 of the SFO portion of this Lease, the Government will occupy 20.78% of the rentable area of the building.
20. For the purposes of Adjustment for Vacant Premises, in accordance with Paragraph 4.4 of the SFO portion of this Lease, the rent shall be reduced by \$2.39/ABOASF.
21. In accordance with Paragraph 4.8 "Janitorial Services", cleaning services requiring access to the Government's leased space shall be accomplished during the Government's working hours of 7:00 AM to 6:00 PM, Monday through Friday, in accordance with the specifications set forth in this Lease.
22. The Lessor shall provide five (5) secured, reserved parking spaces at the building. All parking costs are included in the rental consideration set forth in Paragraph 14 of the Rider to the Lease.
23. The Lessor shall be solely responsible for the technical accuracy of the construction documents to be developed by the Government from the approved design intent drawings and the construction of the leased premises as required by this Lease including but not limited to, HVAC requirements, lighting placement, plumbing and fire/life safety requirements.
24. In the event of any conflict or inconsistency between the SFO, the rider and approved construction drawings it is agreed that the rider and the approved construction drawings shall control and govern.
25. Each employee of the Lessor and/or its contractor(s) shall be (1) a citizen of the United States of America; (2) an alien who has been lawfully admitted for permanent residence as evidenced by Alien Registration Receipt Card, Form I-151; or (3) an alien who presents other evidence from the Immigration and Naturalization Service that employment will not affect his/her immigration status.
26. In no event shall the Lessor enter into negotiations concerning the space leased or to be leased with representatives of Federal agencies other than the employees of the General Services Administration or personnel authorized by the Contracting Officer.
27. The Lessor shall not be reimbursed for any services not provided for in the Lease including, but not limited to, repairs and alterations, nor will any rental be paid for occupancy in whole or in part except for the Lease term specified in this Lease, unless approved in advance and in writing by an authorized official of the U.S. General Services Administration.

28. If, during the term of this Lease including extensions, title to this property is transferred to another party either by sale, foreclosure, condemnation or other transaction, the Lessor (transferor) shall promptly notify the Contracting Officer of said transfer. The following information shall accompany this notification:

- A certified copy of the deed transferring title to the property from the Lessor to the new owner.
- A letter from the new owner assuming, approving, and agreeing to be bound by the terms of this Lease.
- A letter from the Lessor waiving all rights under this Lease against the Government up to the effective date of the transfer.
- The new owner's employer identification or Social Security Number.
- A completed "Payment Information Form" SF3881 (Provided to the Lessor by the Government)
- The new owner's full legal name. If a corporation, indicate the state of incorporation. If a partnership, list all partners fully. If a limited partnership, list all general partners fully and identify under the laws of which state the limited partnership is created. If a realty trust, give names of all trustees and the recording date of the trust.

The foregoing information must be received by the fifteenth day of the month in which the transfer of title will be affected. The rent for that month, adjusted in accordance with the effective date of the transfer will be processed to the Lessor. Initial rental payment, including the applicable portion of rent for the month during which the transfer occurred, to the new owner will be processed on the first day of the second month following the transfer of title. If the notification of transfer and related information is not received until the sixteenth day of that month (or later), in which the transfer of title will be effected, the full contract rental for the month will be forwarded to the Lessor. In this instance, it will be the responsibility of both the Lessor and the new owner to submit, in conjunction with the other requested information, a letter of agreement regarding disposition of the monthly rent with respect to the effective date of transfer. In any instance, failure to submit the documentation required for transfer of title will result in a stop payment of rent until such time as the Contracting Officer receives all documentation.

29. The Government shall have 24-hour/day, 7-day/week access to the leased premises.

30. The Lessor agrees that the Government shall have no obligation to restore the premises as a result of initial or future alterations whether performed by the Lessor or the Government.