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GSA

GSA National Capital Region

4/30/2021

Ms. Kathy Murphy
SDC for Management and CFO
Office of the Comptroller of the Currency
Department of the Treasury
400 7th Street, SW
Washington, D.C. 20219

Dear Ms. Murphy:

This letter is in response to the Office of the Comptroller of the Currency's (OCC) Report of Excess Real Property, dated February 10, 2021, encompassing 186,198 gross square feet of a leasehold interest in the property known as "Constitution Center," located at 400 7th Street, SW, Washington, DC.

As set forth in this transfer letter, and in accordance with the Federal Property and Administrative Services Act of 1949, as amended, and the Federal Management Regulation, 41 CFR 102-75.175, *et seq.*, the real property interest has been transferred to the U.S. General Services Administration, National Capital Region (GSA). The transfer is subject to the Memorandum of Understanding, dated April 19, 2021, between GSA and Office of the Comptroller of the Currency, enclosed herewith and made a part of this transfer letter. Any necessary documentation related to the lease should be transferred to GSA by OCC as soon as practicable.

We understand that Ms. Deborah VanBuskirk, Manager, Leasing and Facilities Services, will represent OCC in these matters. Ms. Aimee Whiteman, Director, Office of Portfolio Management and Real Estate, Public Buildings Service (PBS), National Capital Region (NCR), will be GSA's point of contact for any issues related to the transfer.

Please acknowledge receipt of this letter in the space provided below and return to this office.

U.S. General Services Administration
1800 F St., NW
Washington, DC 20405
www.gsa.gov

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If you have any questions or concerns regarding this transfer, please contact Tim Sheckler, Director, Real Property Utilization and Disposal Division, PBS, NCR, at 202-401-5806.

Sincerely,

DocuSigned by:
Darren Blue
A129529746E1427...

Darren J. Blue
Regional Commissioner
Public Buildings Service

Enclosures

Receipt acknowledgement:

Name: Calliope K. Murphy Digitally signed by Calliope K. Murphy Date: 2021.04.30 12:16:30 -04'00'

Title: SDC Management/CFO

Date: April 30, 2021

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MEMORANDUM OF UNDERSTANDING
BETWEEN THE UNITED STATES GENERAL SERVICES ADMINISTRATION
AND
THE UNITED STATES OFFICE OF THE COMPTROLLER OF THE CURRENCY

This Memorandum of Understanding (MOU) is effective as of the last date of execution by the U.S. General Services Administration (GSA) and the U.S. Office of the Comptroller of the Currency (OCC), the parties (the Parties, or each individually, the Party). The purpose of this MOU is to memorialize the terms and conditions on which a leasehold interest in real property may be transferred from OCC to GSA and to establish the allocation of contract obligations and liabilities and a rent payment schedule for certain identified space in the building known as Constitution Center, located at 400 7th Street, SW, in Washington, DC (the Building).

WHEREAS, OCC Owner LLC (OCC Lessor) and the Government, acting by and through OCC, entered into that certain Lease Contract dated as of [February 11, 2011] (the OCC Lease), whereby OCC leased approximately 688,931 RSF of above grade office and related space, [and obtained an option to extend the term, and has exercised that option, such that the current expiration date of the OCC lease is October 31, 2027]; and

WHEREAS, in April 2019, the OCC informed the OCC Lessor that as a result of an office realignment, the OCC would not have a need for all of the space leased in the Building, and that the OCC would designate the space as excess property to GSA; and

WHEREAS, OCC has or will complete negotiations with the OCC Lessor to separate out approximately 186,198 RSF (yielding approximately 152,553 BOUSF) of vacant space located on floors six and seven in their entirety, and partial space on the fifth floor from OCC's leasehold interest into a separately defined disposable leasehold interest using GSA's lease template forms (the "Transfer Lease" (a final draft that has been reviewed by GSA and OCC) is attached hereto); and

WHEREAS, consistent with 40 U.S.C. § 521 and 12 U.S.C. § 5416, OCC has reported or will report the Lease as excess to GSA in its capacity as realty disposition agent for Federal agencies, and GSA, in its capacity as the central realty management agency, may request transfer of the leasehold interest to it pursuant to 41 C.F.R. § 102-75.175 for assignment to other Federal agencies pursuant to 40 U.S.C. § 584; and

WHEREAS, OCC and GSA agree that the fair value of the Lease is equal to the monthly rent (and other payments) that must be paid to the Lessor under the terms of the Transfer Lease, which have been reviewed by GSA (as reflected in the attached draft), and further, that OCC and GSA have consequently determined and agreed that OCC shall not be entitled to additional fair market value reimbursement from GSA pursuant to 41 C.F.R. § 102-75.205; and

WHEREAS, GSA has already identified a client agency for occupancy of the space identified in the Lease with desired occupancy occurring by no later than May 1, 2022; and

WHEREAS, the Lessor may have claimed other compensation or adjustment relating to the OCC Lease ("Lessor's Potential Claims"); and

WHEREAS, notwithstanding transfer of the partial leasehold interest from OCC to GSA, OCC and

GSA agree that OCC is the proper party to defend Lessor's Potential Claims and that to the extent that the Government is found liable to the Lessor, such liability represents a concomitant diminution of the fair value of the property to GSA unless OCC takes financial responsibility for such liability;

Now, therefore, the parties do agree as follows:

1. OCC will, on the date that it executes this MOU or within 10 business days thereafter, submit to GSA a Report of Excess (SF118 and Disposal Checklist) to report as excess the Transfer Lease.

2. Pursuant to a Federal Transfer letter (to which this MOU shall be an exhibit), a copy of which OCC will counter-sign and return to GSA, GSA may federally transfer the Lease from OCC to GSA pursuant to 40 U.S.C. § 521, et seq. and related promulgated regulations and OCC may partially dispose of the lease pursuant to 12 U.S.C. § 5416. As of the date of the Federal Transfer letter ("the Government transfer date"), GSA will have received into its inventory the leasehold interest described in the Transfer Lease, attached hereto, and except as is provided herein, GSA will assume all continuing obligations thereunder, as Lessee. GSA will execute a Lease Amendment #1 with the Lessor to substitute GSA as the Government's agent as tenant.

3. To the extent that OCC has made any payments, reimbursements, or taken any other actions in fulfillment of its obligations under the OCC Lease or the Transfer Lease made prior to the Government transfer date, and to the extent the Lessor asserts that such obligations have not been discharged, the OCC agrees to provide evidence of such payments, reimbursements, credits, offsets, or insufficiency of Lessor's claims and/or actions and to defend against all claims arising out of the OCC Lease or Transfer Lease prior to the Government transfer date, even if such requests for adjustment or claims are presented after the Government transfer date. GSA agrees to assist the OCC in resolving any such Lessor assertions.

4. Notwithstanding any other provision of this MOU, OCC and GSA, without waiving any defenses, agree that OCC shall defend any and all actions brought related to the Lessor's Potential Claims, and that to the extent the Government is found liable to the Lessor, OCC, rather than GSA, shall be financially and administratively responsible for the defense, compromise, or settlement of Lessor's Potential Claims and that GSA shall be responsible for administration of the Lease and the acts or omissions of GSA after the Government transfer date, *provided further* that the Transfer Lease Amendment #1 shall include language describing this allocation of responsibilities as between the agencies.

5. Specifically, with respect to the component of Lessor's Potential Claims that derives from any claim by the Lessor that the Government owes rent, beginning from any date prior to the date that is the earlier of the substantial completion of the tenant improvements for the occupying tenant identified by GSA after the Government transfer date or the date of rent commencement, said Lessor's claims for rent or other adjustment shall remain OCC's sole responsibility to defend, compromise, or settle, and OCC, rather than GSA, shall be financially responsible for payment of any such resolution.

6. OCC and GSA agree that GSA shall only assume responsibility for the payment of rent under the lease to the Lessor upon the date of rent commencement, which is set in the

attached draft lease as May 1, 2022. GSA shall nevertheless have the right to access the premises prior to that date, but not before May 1, 2021, to install furniture, fixtures, equipment, security measures or to perform any other improvements as permitted under the terms of the lease. Included in GSA's right to access the space, the GSA tenant agency may occupy some or all of the space in its "as built" configuration or reconfigure some of the space as "swing space" while other Tenant Improvements are being designed or constructed prior to the rent commencement date.

7. OCC and GSA shall cooperate to carry out the terms of this MOU.

8. The terms and conditions of this MOU may only be modified or amended by the mutual written agreement of both parties.

9. This MOU and its effectiveness are governed by applicable laws and regulations. This MOU is not an obligation of funds in advance of an appropriation of such funds, and it does not constitute authority for the expenditure of funds.

10. The recitals (Whereas clauses) are incorporated herein as a substantive part of this MOU.

11. The Parties to this MOU certify that each person acting as signatory for a Party has full authority to represent and bind their respective agencies to the terms and conditions of this MOU.

IN WITNESS WHEREOF, the Parties hereto have caused this MOU to be executed by their proper and duly authorized officers.

FOR THE UNITED STATES GENERAL SERVICES ADMINISTRATION

DocuSigned by:

BY Darren Blue DATE 4/19/2021

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Darren J. Blue
Regional Commissioner
Public Buildings Service
National Capital Region

FOR THE UNITED STATES OFFICE OF THE COMPTROLLER OF THE CURRENCY

BY Calliope K. Murphy Digitally signed by Calliope K. Murphy Date: 2021.04.16 09:21:45 -04'00' DATE 4/16/2021

Kathy Murphy
Senior Deputy Comptroller for Management
and Chief Financial Officer

Attachment: Final Draft Lease