

CHAPTER 17:

Lease Administration

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1. Overview

a. General

This chapter covers postaward activities that relate specifically to the lease, the terms and conditions of the General Services Administration (GSA) Form 3517, General Clauses, and any amendments or attachments to the lease. Managing the lease following award is the next most important activity after the award itself. It is the responsibility of the Lease Administration Manager (LAM) to make sure that the lessor meets the terms and conditions of the lease. The LAM may be the Property Manager, the Leasing Specialist, or other individuals appointed for this purpose as a contracting officer's representative (COR). This chapter outlines the duties, responsibilities, and remedies involved in enforcing the lease.

The lease management and administrative duties are transferred to the COR once a lease is awarded. The Lease Contracting Officer transfers this authority by issuing a letter of delegation to the appointed COR and sends a letter to both the client agency and building owner notifying them of the new point of contact for management of the lease. However, the Lease Contracting Officer still maintains the oversight and enforcement of the contractual requirements of the lease. Any contractual changes to the lease—such as changing the square footage, invoking the Adjustment for Vacant Premises clause, negotiating and awarding a succeeding or superseding lease, backfilling space that changes the contractual terms of the lease if a client agency terminates occupancy during the firm term of the lease—remain the responsibility of the Lease Contracting Officer.

Maintaining open communication throughout the term of the lease between the lessor, the client agency, and GSA enables a successful partnership. When the COR's role is introduced to all parties, the client agency is advised that all requests must go directly to the COR and not to the lessor. This is important for GSA to track any patterns and work directly with the lessor to resolve ongoing issues. A later portion of this chapter addresses how to remedy potential ongoing issues.

b. Financial

On January 16, 2003, OMB issued a memorandum to all Executive departments and agencies citing the President's Improved Financial Performance initiative to reduce erroneous payments by the Federal Government. In keeping with this initiative, section 831 of the National Defense Authorization Act for Fiscal Year 2002 requires agencies that enter into contracts with a total value above \$500 million in a fiscal year to carry out a cost-effective program for identifying errors made in paying contractors and for recovering amounts erroneously paid to the contractors.

A required element of such a program is the use of recovery audits and recovery activities. A recovery audit is a review and analysis of the Government agency's books, supporting documents, and other available information supporting its payments. In addition, the audit identifies overpayments to contractors that are due to payment errors. It is not an audit in the traditional sense. Rather it is a control activity designed to ensure the integrity of contract payments, and as such, it is a management function and responsibility.

To address this requirement, this chapter also covers pricing components as they relate to real estate tax escalations, adjustments to operating costs, reimbursable work authorizations (RWAs) for overtime (OT) utilities or alterations, and the Adjustment for Vacant Premises clause. It outlines the lessor's financial responsibilities, as well as the System for Award Management

(SAM) registration process, change of ownership or payee, change of lessor name, and the novation process as it relates to the sale of a building where the Government has a lease.

2. Definitions

a. Lease Administration

The term “lease administration” refers to the maintenance activities that are an integral part of postaward, such as accounting, administrative, and legal requirements normally associated with a real estate portfolio.

This chapter describes in detail many of the job responsibilities for lease administrators. The main role and responsibility is to be the conduit between lessors and client agencies and to verify that lessors meet their obligations under the terms and conditions of the lease. To be effective in the management of a lease, designated employees need to be knowledgeable about the nuances in GSA leases and have the authority to enforce the leases.

b. Lease Management

Lease management is the daily oversight and enforcement of the lessor’s performance in meeting the terms and conditions of the lease, with particular focus on meeting technical requirements for energy management, fire and life safety drills, Leadership in Energy and Environment Design (LEED) standards, inspections, and overall delivery of contract services.

GSA’s lease package—the lease and attached exhibits; GSA Form 3517, General Clauses, and (for older leases) GSA Form 3518, Representations and Certifications—include terms and conditions that the lessor and the Government must follow. The most significant function of the lease package is to explain the intent of the requirements as clearly, concisely, and completely as possible to the parties involved, enabling the parties to enforce and comply with the lease requirements. The lease package, when signed by both parties remains in full force and effect through the termination of the lease.

As part of the rental consideration, the Government includes a negotiated price for agency-specific requirements and contract services in the lease with those requirements and contract services in place. If the lease is not enforced, then the Government is at risk of paying for services not received. For example, oftentimes the Government includes the amortized cost to replace the carpet throughout the term of the lease. If the lease rental rate includes the cost for cyclical carpet replacement in the 7th year of the lease and the lessor does not replace the carpet, then the Government never received the benefit to replace the carpet. In such an instance, the lease would give the Government remedies discussed in a later section of this chapter.

c. Lease Administration Managers

LAMs are responsible for managing the client agency relationship and making certain the lessor complies with the terms and conditions of the lease. The LAM must establish an effective lease management program that conforms to the August 2006, Lease Management Guide. LAM responsibilities also include understanding the agreement between GSA and the client agency as outlined under an Occupancy Agreement and using the Customer Guide to Real Property (www.gsa.gov/.../guide_to_real_propertybookmarked2002_r2e-c-pk_...) and the Pricing Desk

3. Contracting Officer's Representative Coordination

Guide (www.gsa.gov/graphics/pbs/pricing_desk_guide_4th_edition.pdf) for policy guidance. These tools provide a consistent approach to lease administration and management.

The LAM's duties are oftentimes synonymous with or a function of the Lease Contracting Officer's Technical Representative (COTR) or COR. The COR role is defined by the level of authority and training required as outlined under the Office of Management and Budget (OMB) memorandum, the Federal Acquisition Certification for Contracting Officer Technical Representatives, dated November 26, 2007, as amended. (www.whitehouse.gov/sites/default/files/omb/.../memo/fac-cotr.pdf). The memorandum established a nationally mandated structured training program for all Government employees designated as a COTR or COR by a Lease Contracting Officer. All GSA employees designated as COTRs or CORs who hold delegation letters on active leases must maintain their skills by taking 80 hours of continuing education every 2 years beginning the fiscal year following their certification date. Chief Acquisition Officers in each region are the designated officials for policy guidance and training.

LAMs designated as COTRs or CORs can enforce the terms and conditions of the lease instead of the Lease Contracting Officer. The LAM is responsible for the day-to-day maintenance and management of the lease and in some instances prepares Lease Amendments for the Lease Contracting Officer's signature to modify the existing terms of the lease. This chapter uses the terms "LAM," "Property Manager," "COTR," or "COR" interchangeably; generically they refer to any GSA employee assigned the duties of lease management and enforcement in leased facilities.

3. Contracting Officer's Representative Coordination

a. Contracting Officer's Representative as Lease Administration Manager

The LAM must be involved early on in the transaction as a member of the project management team. The LAM plays a critical role in project execution as the onsite point of contact for successful delivery, acceptance, and inspection of the leased space. The LAM, in partnership with the Lease Contracting Officer, is responsible for conducting postaward transaction meetings with the client agency to verify that the lessor is meeting its expectations. In keeping with project management principles, meetings must include established agendas, meeting minutes, and key talking points surrounding the Realty Transaction Survey (RTS) that follows 60 days after the space assignment as described under paragraph 3b below.

The post-transaction meeting is the formal transition from delivery into occupancy. During this phase, the Lease Contracting Officer must issue a formal COR designation letter to the LAM, as the Government employee overseeing the contract, and the letter must be on the GSA letterhead, with the telephone number and address of the Lease Contracting Officer and the COR.

The purpose and intent of the COR letter is to advise the client agency, field office, and lessor as to the designated point of contact for managing and administering the lease postaward and to formally transfer the responsibility to the designated person. The letter avoids any gaps in monitoring the lease. It is common practice to contact the lessor and client agency to make the face-to-face introduction and discuss any current situations needing attention. The introduction also provides an official lease transfer from the negotiation and award phase to implementation

and enforcement. (See attachment 1 at the end of this chapter for a sample COR designation letter and attachment 2 for a sample COR notification to the field office.)

The COR verifies that the lessor complies with the scope of the lease as written, including, at a minimum, the following responsibilities.

- Perform daily maintenance and management of leased space, including building maintenance and operating aspects relating to the building's services, utilities, and equipment as set forth in the Federal Management Regulation and GSA orders.
- Inspect and accept work within the limitations of the COR's authority that the lessor performs under the lease contract and modifications.
- Inspect and accept services that the lessor is obligated to provide under the lease contract.
- Advise the Lease Contracting Officer as difficulties or situations arise that may disrupt or hinder performance, or that may justify withholding rent.
- Issue cure letters according to established procedures when delivery of routine services does not conform to lease requirements specifically, authorizing and enforcing the following:
 - Daily delivery of services and utilities necessary to maintain efficient operation of the facility;
 - Periodic services (window washing, cyclical painting, snow removal, pest control, etc.); and
 - Routine maintenance and repairs of the facility.

b. Realty Transaction Survey

As discussed in the RTS guidance, PBS uses the RTS to assess its performance in meeting client agency needs and defined expectations according to project schedules and to determine how well it manages the client agency relationship during the lease transaction process.

PBS uses contracted services to survey client agencies or authorizing officials who work directly with leasing employees to complete lease transactions. Surveys cover lease transactions for new, new replacing, succeeding, superseding, and expansion space actions over 1,000 square feet. They are initiated based on new assignments (including backfills) that generate new Occupancy Agreements and either create or modify space assignments in GSA's inventory system. Leases meeting the RTS criteria become eligible for survey 60 days following the effective date of an assignment entered into GSA's inventory system. During the eligibility period, LAMs have 2 weeks to validate agency contact information and check that the GSA contact information also is correct. The survey results are tools to both assess PBS' overall performance in leased and federally owned space and to evaluate training needs to improve customer service.

c. International Facility Management Association Survey

In addition, ongoing occupancy includes the need for postaward alterations, as agency needs change during occupancy. Ongoing occupancy management services and the client agency's continued satisfaction with its space and our services will affect future surveys, such as the International Facility Management Association (IFMA) survey. The IFMA survey gauges the level of client agency satisfaction regarding a wide range of building services. An assertive approach in addressing customer satisfaction and concerns on a daily basis is one way to encourage a positive response rate.

LAMs are responsible for issuing surveys in both paper and electronic (Web-based) formats and for taking necessary steps to generate a high response rate within established timeframes (usually between May and June each year). PBS uses a contractor to tabulate survey results and to issue a series of comprehensive reports that summarize client agency responses. The IFMA

4. Lease Administration Manager Responsibilities

survey reports meet PBS criteria for reporting to the OMB and Congress, and assist in budget formulation and program execution.

IFMA survey results are oftentimes indicators of potential problems related to the operation and maintenance, contract services, and aesthetic appearance of the space. LAMs must review and analyze client agency feedback and continue to work closely with the lessor to meet the lease terms and, if necessary, revisit the schedule of contract services to determine whether the schedule can realistically meet the needs of the client agency.

The IFMA survey is only one of several PBS performance measures. LAMs also must review and analyze other performance measures for any indication of problems related to requirements for maintaining the premises as outlined in the lease. LAMs must understand PBS performance measures, work to achieve program results, and use the results to meet established targets.

On a daily basis, the LAM must interact with the end user occupying the space or the authorizing official located elsewhere. Agency approval for postaward alterations may require input from an agency official with signatory authority located in the agency's regional or national headquarters. Make sure that the contact information is current for the client agency as well the agency's authorizing official. The LAM must report to the Lease Contracting Officer any changes that the client agency requests if they are material changes to the existing terms and conditions of the lease.

4. Lease Administration Manager Responsibilities

In addition to the duties identified in Paragraph 3, Contracting Officer's Representative Coordination, the LAM must perform regular lease contract reviews to verify that the lease file contains a current copy of the lease contract, all related files, inspection and performance documentation, Lease Amendments, and all general correspondence.

At a minimum, the LAM must review the following areas to check administrative requirements for lease management.

a. File Management

- Are the lease file documents maintained in a way that is consistent with the lease file checklist?
- Are copies of all leases, outleases, Lease Amendments, Occupancy Agreements, and unit price agreements (as applicable) in the lease file?
- Are the files in a common, secure, and accessible location?
- Are the files organized within an easy-to-understand filing system (such as alphabetically or numerically—by building number or by lease number)?
- Is an employee or employees assigned responsibility for the control and safeguarding of the documents? Is there a system in place to manage check out and return of lease files?

Quick Tip

For a smooth transition, regions should create a procedure for transferring responsibility for the lease from the Leasing Specialist to the LAM in the form of an introduction letter, a meeting, or a conference call, in addition to the COR designation letter.

- Are inspections performed at least annually and deficiencies noted with a planned course for corrective action?
- Are the inspection results documented, including any deficiencies in the estimating and processing of overtime utilities and repairs and alterations (R&A)? Is there a tracking report or tracking system in place? Is there follow-up conducted to verify resolution?
- Is there a process to follow-up on health, fire protection, and life safety deficiencies? Are there procedures for preventing adverse health, safety, and fire incidents and emergencies?
- Are there opportunities for improvement based on the results of the inspection or any previous findings?
- Have you communicated the inspection results to the lessor's representative, the Leasing Specialist, and the client agency, along with an action plan to resolve any deficiencies?

c. New and Expiring Leases

- Is there a process for incorporating new leases into the inventory of existing leases?
- Is there a process for dealing with expiring leases?
- Is there a copy of the periodic services schedule on file? If so, does it comply with the lease requirements?
- Is there a process in place to make certain that leases are meeting background security requirements? (See paragraph 14, Postaward Security Requirements.)
- Is there a review process for leases meeting energy efficiency and conservation criteria; are lessors meeting cost-effective improvement plans? (See the lease provisions for Energy Star requirements.)
- Is the lessor meeting environmental goals, for example, building recycling plans?
- In lease contracts with terms that are net of services and utilities, do the service and utility contract periods correspond with the lease expiration dates?
- Are current occupant emergency plans and procedures in place?
- In fully serviced leases, is the lessor meeting contract requirements; do all maintenance personnel have certificates of applicable training, licensing, permits, and bonding?
- Are building operation plans current in specifying hours of operations based on the seasons and in accordance with the outside temperature condition, including procedures for starting up and shutting down?
- Have you developed a communication plan to transmit information to affected business line employees?

5. Contract Reviews

a. Procurement Management Review

The Office of the Chief Acquisition Officer (OCAO) conducts procurement management reviews (PMRs) to analyze, evaluate, and validate the acquisition process, internal controls, and financial reporting in all GSA regions. A PMR is a comprehensive review of operational efficiency and compliance with statutory requirements, Federal regulations, and agency-specific guidance and standard operating procedures. OCAO issues a comprehensive report on improvements or best practices in strategic areas, including organizational alignment and stewardship.

In assessing operational effectiveness, internal controls, and financial management, LAMs must prepare for a PMR by verifying the following:

- A copy of the COR delegation letter is in the lease file. Copies of training certificates show that the COR meets continuing education requirements to maintain the COR designation.
- Contract files are organized and clearly document modifications or postaward changes to the lease.
- Documentation exists in the lease file to reflect performance for minor alterations. Documentation includes notices to proceed, Lease Amendments, all correspondence leading up to the amendment documents, scope of work, price reasonableness determination, solicitation of at least two bids, and an independent Government estimate that supports the basis for the contract price, as well as progress reports and evidence of invoicing.
- Signed copies of RWAs or related funding source documents are in the lease file.
- The lease file contains a statement from the COR cross-referencing where the required documentation is maintained if the COR maintains a separate file or location for postaward contract administration other than the official lease file,
- The lease file contains evidence of SAM documentation.
- The lease file contains the Price Negotiation Memorandum or a synopsis to support any Lease Amendments.
- The lease file contains evidence of annual inspection reports.

Further information is available in OMB's Office of Federal Procurement Policy (OFPP) Guidelines for Assessing the Acquisition Function and OMB Circular A-123, Appendix A, Internal Control over Financial Reporting. (www.whitehouse.gov/omb/circulars-a123-rev).

b. Management Analysis Review System

The Management Analysis Review System (MARS) is a comprehensive review of regional practices for program areas in acquisition, budgeting, R&A, custodial management, maintenance and energy, and lease administration. The review process randomly selects leased and federally owned facilities to assess the economic and environmental impact on PBS' real estate portfolio, examine accountability, and identify best practices to increase program efficiency. From a leasehold interest, the MARS review is a comprehensive evaluation of the lessor's ability to

effectively manage and maintain the leased premises and building equipment and systems in accordance with the lease terms and conditions. LAMs must prepare for MARS reviews by undertaking the same action as required for the PMR process.

6. Services and Maintenance Schedules

a. General

Audit findings indicate that property managers are not always knowledgeable about the services and maintenance that client agencies are due under their leases. To a large degree, they rely on client agencies to keep them informed about unsatisfactory services, even though client agencies themselves may not know the lease terms. As a result, client agencies do not receive all the services they are entitled to under the lease. Further findings indicate PBS relies too heavily on client agencies to identify substandard lease services.

LAMs must be assertive in lease management to make certain that client agencies receive the services to which they are entitled, particularly periodic services such as window cleaning and carpet shampooing. The Leasing Specialist must obtain a schedule for periodic services from the lessor and forward it to the LAM to verify that client agencies receive services as scheduled. Once obtained, these schedules become the LAM's responsibility for daily lease management and inspections of leased space. To assist in this effort, see Attachment 3, Sample Letter Requesting Periodic Services Schedule. Written regional procedures currently in place for requesting and monitoring receipt of periodic services schedules are acceptable for use instead of the sample letter.

Due to differing regional organizational structures and responsibility assignments, each region must have written procedures in place to distribute periodic service schedules to the regional employees responsible for lease administration and the client agency's local designated official.

b. Lease Language

The lease has very specific and mandatory language governing the periodic services schedule. The lessor must provide the Leasing Specialist or the COR with a list of the scheduled services, usually within 60 days after occupancy. The COR is responsible for understanding the requirements of the lease for periodic services and for reconciling the lessor's list of scheduled services with the type and frequency of services required by the lease. This list becomes the basis for scheduling and conducting inspections.

The lease paragraphs regarding periodic services and maintenance are mandatory and developed during presolicitation to meet agency-specific requirements. Over the term of a lease, an agency might decide, for example, that it needs to change from nighttime to daytime cleaning or increase or decrease the level of services. The Lease Contracting Officer must address the client agency's request to decrease or increase their requirements because the request may not consider the original cost of such services amortized into the existing rental rate for operating expenses. If, for example, the client agency no longer needs nightly cleaning or daily trash removal due to changes in staffing or security requirements, then the COR must consult with the Lease Contracting Officer to assess the change to periodic services and the financial impact (if any) on the cost of services. It is important to document the lease file and issue a Lease Amendment to reflect contract changes. This not only reduces costs but also keeps the lessor honoring a contract that fits the requirements. The intent is to help the lessor honor the contract. If

7. Enforcement Management and Failure in Performance

the lessor fails to have trash removed as required in the lease contract, then the lessor is contractually in violation of the lease, even if daily collection has become unnecessary.

LAMs must use the agreed-upon list of scheduled and periodic services to conduct inspections and verify the lessor's performance in meeting the schedule. The frequency or method of performance, along with an assessment of the results, determines a lessor's performance.

When conducting inspections for maintenance services, the LAM's common practice is to use GSA Form 1181A, Contract Cleaning Inspection Report, to document the results. It is important for the inspector to note the date and time of the cleaning inspection. If the services rendered are unsatisfactory, be sure to provide detailed remarks to support that evaluation, and prepare written notice to the lessor citing your findings. If the deficiencies persist, seek legal guidance and notify the Lease Contracting Officer. Be sure to document your efforts because the Office of Regional Counsel relies on your documentation to pursue legal remedies on performance issues required under the lease.

Asking for the schedule of periodic services is useless unless the LAM follows up and monitors performance with the client agencies and the lessor. In rare instances, and only for remote locations, contact the client agency by sending a copy of the periodic schedule and allow the client agency to assess the lessor's performance in meeting contract services for carpet cleaning, window washing, snow removal and similar services.

If the lessor fails to comply with the schedule of periodic services or the evaluation of results is less than satisfactory, then the LAM must contact the lessor to determine when these services will be scheduled and performed. If the lease states that periodic services, such as cleaning, are performed after normal business hours, then the LAM must coordinate with the client agency to determine whether escort services are required or whether someone from the client agency is available after hours during the time when work is completed.

It is critical to read and understand this section of the lease, as it often indicates who pays for contract services, such as the removal of furniture and other personal items for carpet cleaning, painting, and other contract services. The COR must coordinate with the client agency and lessor if computers or furniture must be moved by an outside vendor so that the warranty will not be voided on the equipment or personal property.

7. Enforcement Management and Failure in Performance

The lessor must maintain the leased premises—which include the building, the building systems, and all equipment and fixtures and appurtenant areas furnished by the lessor under the lease—in good repair and habitable condition. This includes heating, ventilation, and air-conditioning systems; lighting; fire and life safety measures; and the general appearance of the building and leased space. This means that if a client agency had originally requested additional cooling in its server room and the lessor installed the cooling unit, then the lessor is responsible for maintaining that equipment unless special provisions were made at the time it was installed and documented in the lease accordingly.

If the lessor fails to perform any aspect of the lease, whether it is providing contract services, making repairs or replacements, or in performing other requirements under the lease, the

Government has the right to perform these duties and deduct such costs from rental payments due the lessor. However, the lessor may correct any deficiencies, depending on the severity and urgency. As a best practice, the LAM documents deficiencies and issues a “Notice to Cure” letter. The Notice to Cure letter must outline the deficiencies and give a reasonable timeframe, dependent upon the urgency, to cure the deficiencies. If a deficiency remains uncured or the lessor does not submit a corrective action plan within the time allotted, the lessor is in default of the terms and conditions of the lease. The Government’s rights to pursue its remedies during the term of the lease are under the General Clauses, Failure in Performance and Default by Lessor.

Although the Government has the right to exercise the termination for default clause in the lease, it is important to gain the cooperation of the lessor and work out a reasonable timeframe for correcting any deficiencies. Only the Lease Contracting Officer may withhold rent or order corrective actions that will result in withholding rent. Close coordination with the Office of Regional Counsel is required.

The LAM must submit a report on any serious continuing lessor failures, such as not performing within the terms of the lease, to the Leasing Specialist or Lease Contracting Officer. In addition, the LAM or Lease Contracting Officer must provide the lessor written correspondence in support of lease enforcement. Written documentation is critical because if a lease enforcement action is necessary, the documentation will support the findings.

Communication with client agencies regarding lease complaints is an important area to consider when assessing communication requirements for lease management. The following are some actions to take:

- Fully document failures in performance and provide documentation for the Lease Contracting Officer and Office of Regional Counsel to reduce lessor payments as appropriate.
- Validate deficiencies in the lessor’s performance through interviews with clients and site visits identifying the deficiencies, including photographs as applicable.
- Cite lease sections that require the lessor to perform, prohibit the deficiency, or require a corrective measure.
- Report deficiencies to the lessor immediately and maintain copies of all correspondence from the Lease Contracting Officer about lease administration matters.
- Confirm that a process is in place to resolve complaints from client agencies. Before the issuance of final decision letters, advise the Leasing Specialist when issues of lease interpretation or enforcement are at issue.

8. Operating Cost Escalation

a. Background

GSA has engaged a contractor as a recovery auditor to fulfill the OMB financial performance requirements described in chapter. The contractor reviews payments related to leasing, building services, supplies, and information technology to identify erroneous payments. Lease administration includes the execution of a Budget Activity (BA) 53, Rental of Space, account; the processing of rental payments including step rent; operating cost escalations; reimbursement for

lump-sum real estate taxes; and rent reductions for amortized client agency tenant improvements (TIs). Recovery audits have identified and successfully recovered erroneous payments. The paragraphs below discuss the process for paying operating cost adjustments. The following are some actions to consider when calculating and processing rental adjustments:

- Review financial records, Lease Amendments, and lease clauses.
- Review all Lease Amendments that modify payment terms over the life of the lease.
- Review the lease and subsequent amendments to determine increases or decreases due to step rent, amortization of TIs, and termination of rent due to the partial release of space.

b. General Information

The lease must clearly state whether the rental rate is firm throughout the term of the lease—ordinarily required for leases under the simplified lease acquisition model—or if it is subject to annual adjustment of operating costs. If operating costs are subject to adjustment, the lease file must specify the base cost of services on GSA Form 1364, Proposal to Lease Space.

The simplified lease acquisition model as designed is an all-inclusive firm-fixed rate. To include an operating cost escalation rate must be the exception and not the rule. On those rare occasions where the market demands an escalation rate, it is not necessary to include GSA Form 1217, Lessor's Annual Cost Statement, for the simplified lease; the Lease Contracting Officer has discretion to include or exclude the operating cost escalation paragraph.

The streamlined, standard, succeeding, and superseding lease models include the operating cost escalation paragraph—Consumer Price Index (CPI)—in the lease. When using these models, the lease package must include GSA Form 1364 (subject to variation by letter and model type) and GSA Form 1217, which clearly define the proposed annual operating costs. The LAM must first confirm that the lease documents allow for operating cost escalations by reviewing the lease package for the appropriate model.

c. Basis for Adjustment

GSA Form 1217, as negotiated and agreed upon, determines the base rate for adjusting operating costs. The operating rent and the base cost of services are the same for the first year of the lease. Beginning with the second year of the lease, upon the lease anniversary date and each year thereafter, the lessor is entitled to an operating cost adjustment for any increase or decrease in the CPI over the index for the base year. In certain instances, the CPI could fall below the base, and the rental amount reduced accordingly.

This escalation accounts for changes in costs for cleaning services, supplies, materials, maintenance, trash removal, landscaping, water, sewer changes, heating, electricity, and certain administrative expenses attributable to Government occupancy. Note that some lessors have requested increases to the base operating cost because the true costs are actually higher than originally proposed. It is up to the Lease Contracting Officer to consider modifying the base cost of services after lease award; however, it must not be a regular practice to do so. If the Lease Contracting Officer considers modifying the base cost of services after lease award, then there must be some consideration given in return by the lessor. If the Lease Contracting Officer deems an adjustment to the base cost of services fair and reasonable, then the client agency must agree to the increase in the Occupancy Agreement and be given 18 months' notice to budget for the increase. Any adjustment to the base operating cost and the annual escalations must be in a written amendment to the lease.

The base cost of services changes only when the Government issues a Lease Amendment to expand space under the Changes Clause or if the lease allows, to exercise its right to terminate the Government's existing occupancy. In addition, under the Adjustment for Vacant Premises clause, the Government may exercise its right to adjust the base cost of services when the Government vacates a portion of the leased space but does not have the right to terminate the space during the term of the lease.

The annual increases or decreases use the annual percentage of change determined by the cost of living index as published by the Department of Labor, Bureau of Labor and Statistics. The LAM must understand the method of calculation and stay abreast of annual rental increases and decreases to the lease, if there is a need to modify the operating rent due to postaward changes.

9. Tax Escalation

a. Lease Language

The lease includes provisions for handling real estate tax adjustments throughout the term of a lease, a customary private-sector practice in most real estate markets. The simplified lease acquisition model provides for a firm fixed rental rate for the entire term of the lease, with real estate taxes for the property built into the shell rate and no real estate tax adjustments provided during the term of the lease. Streamlined, standard, and succeeding leases, however, will likely include real estate tax adjustment provisions allowing a lessor to recover a pro rata share of real estate tax increases (or to pay a credit due the Government if real estate taxes decrease). The lease includes a detailed description of the procedures for real estate tax adjustments.

Most GSA regions use additional resources to manage and track real estate taxes. Nonetheless, LAMs and Leasing Specialists must read and understand the standard real estate tax adjustment paragraph in the lease, along with the procedures of the various taxing authorities in the markets or territories where they conduct business.

b. General Process

For real estate tax escalations, in coordination with the lease terms, the real estate tax base is the unadjusted real estate taxes for the year in which the lease begins. In the case of a newly constructed building or an existing building that underwent major renovations, the first year of full assessment after construction of the building when the taxing authority has fully reassessed the building establishes the base.

Leasing Specialists must understand the definition of "fully assessed" or "full assessment" as defined in the lease and as reiterated here. To determine the lessor's liability for real estate taxes, the taxing authority determines the value of the property, taking into account the value of all improvements contemplated for the property under the lease. The taxing authority issues to the lessor a tax bill or other notice of levy that bases the real estate taxes for the full tax year on that full assessment. At no time before the issuance of such a tax bill or notice of levy is the property deemed fully assessed. The Leasing Specialist and Lease Contracting Officer must be cautious in trying to establish a real estate tax base amount negotiated between the parties before the construction or major renovation of a building. A negotiated real estate tax base may not fully reflect the value of all improvements contemplated for the property. Thus, the real estate tax base may be grossly understated, causing the Government to pay significant increases over the base year during the entire term of the lease.

The lessor has a contractual obligation to submit real estate tax statements for the base year within 60 days after payment to establish the base year real estate taxes. If the tax statement is for multiple parcels or buildings, the statement must define the value of each. For all subsequent years, including when there is no change to the real estate taxes for the preceding year, the lessor must submit to the Government the following within 60 days of payment in full of the real estate taxes for the applicable period (usually the preceding calendar year):

- A statement or invoice including calculations showing, at a minimum, the base year real estate taxes for the entire parcel or building, real estate taxes for the applicable tax year, percentage of occupancy, and an exact amount due the lessor or credited to the Government; and
- Copies of real estate tax statements for the base year and subject year and copies of paid tax receipts from the taxing authority.

Recovery audits have uncovered instances where GSA was entitled to receive real estate tax credits resulting from decreases in real estate taxes below the base year or from real estate tax refunds or abatements issued by the local taxing jurisdiction. In such cases, lessors failed to provide GSA with tax rebates or documentation to calculate decreases in real estate taxes. This omission by the lessor affects GSA's ability to receive a credit for its pro rata share in the reduction of real estate taxes and to pass through such tax savings to the client agency. The lessor is contractually obligated to remit any lump sum payment to the Government within an established period as specified in the lease. A lessor's failure to remit payment entitles GSA to collect interest on the late payment and gives GSA the right to pursue the outstanding balance of any real estate tax credit using such debt collection methods as are available in the United States.

Neither an Occupancy Agreement nor Lease Amendment is required for billing or paying the real estate taxes; however, the Leasing Specialist must review the current billing Occupancy Agreement and contract documents to verify that they include the tax escalation provision. In some instances, a unilateral Lease Amendment may be prepared that does not require the lessor's signature but documents the basis for the real estate taxes. Furthermore, the Leasing Specialist or other assigned personnel must confirm the real estate tax base and percentage of occupancy against the contract documents, as well as review the lessor's calculations for accuracy. This includes reviewing the real estate taxes to make sure they do not include any special assessments described in the lease, or any late fees, interest, or other penalties. This process repeats itself each year during the term of the lease, including the pro rata share of the final calendar year of occupancy. The lessor should only expect to recover the Government's pro rata share of the difference between the base year and the current applicable year real estate taxes. The lessor may not collect real estate tax increases for previous years, if it fails to submit the required information. The Government, however, maintains the right to recover, at any time during the term of the lease and a reasonable time after lease expiration, any credits due in any or all previous years of the lease.

The lease allows the Government to direct the lessor to file appeals to the taxing authority if the Government disagrees with real estate tax assessments. The Government also may file any such appeals on its own, with or without the assistance of the lessor. The Leasing Specialist must seek the advice of the Office of Regional Counsel if such an appeal is under consideration. The lease also includes provisions for how the Government, lessor, or both will fund any costs of filing appeals, and for how the Government and lessor will determine a fair and equitable solution for sharing any tax reductions as a result of appeals.

10. System for Award Management (SAM)

The System for Award Management (SAM) is a Federal Government owned and operated free web site that consolidates the capabilities in Central Contractor Registration (CCR)/FedReg, Online Representations and Certifications Applications (ORCA), and the Excluded Parties List System (EPLS). SAM streamlines processes, eliminating the need for users to enter the same data multiple times, and consolidates hosting to make the process of doing business with the government more efficient. See Leasing Desk Guide Chapter 2, New or Replacing Lease, for further details regarding SAM requirements prior to lease award.

a. Vendor Responsibilities

Current and potential vendors must register in SAM for the Government to award a Federal contract, including a Federal lease. Registration requires vendors to provide basic information related to procurement and finances. Information updates occur in real time. To remain active, vendors must update or renew their registration annually. Vendors register their business profile in only one Government database (that is, SAM) and are responsible for the accuracy of the information at all times. Although a vendor must maintain the accuracy of its data in SAM, doing so does not relieve it of the duty to provide any contractual changes to the LCO for appropriate processing.

A vendor must have an identifier from the Data Universal Numbering System (DUNS) and a taxpayer identification number (TIN) before registering in SAM. DUNS is a commercial reporting system developed and regulated by Dun & Bradstreet® that assigns a unique nine-digit identification number for each physical location of a vendor's business. DUNS number assignment is free for all businesses required to register with the Federal Government for contracts or grants. In October 2005, the Internal Revenue Service (IRS) began validating TINs and taxpayer names of registrants in CCR (now SAM). To complete registration in SAM, a registrant must provide a TIN and taxpayer name that matches exactly with the data used for Federal tax matters.

b. Annual SAM Registration Renewal

Lessors are required to complete an annual renewal process in SAM, and the system sends email reminders to registered vendors to do so. Annual renewal of the lessor's SAM registration is a requirement of the Lease. If the annual renewal process is not completed in a timely manner, a delay in payment may occur as discussed below in "Electronic Funds Transfer Requirement".

In addition to the SAM-generated warning, PBS's Lease Contract Administration (LCA) groups will email warnings to lessors that their SAM expiration is approaching and message them if their registration expires. The LCA groups will also directly reach out to lessors to assist them with renewing their registration. However, if a Leasing Specialist or LCO is made aware that a lessor's SAM registration is close to expiration or has expired, they should work with the lessor to maintain active registration in order to prevent delays in payment.

c. Electronic Funds Transfer Requirement

It is PBS policy to process all lease payments using EFTs, and SAM is integral to EFT payments. SAM is required for all types of contract payments including monthly rental payments, payments for any alterations, overtime utilities, or any other payment due and payable to the lessor. If the annual renewal process is not completed and a lessor's SAM registration has expired on the

linked Pegasys Vendor Code, the financial system, Pegasys, is unable to disburse electronic payments, causing a delay in payment until the lessor renews their SAM registration. .

Note: Registration in SAM is required under FAR Subpart 4.11 and incorporated into each GSA lease via FAR 52.204-7 and FAR 52.204-13. Federal agencies and, more specifically, GSA must enforce the requirement on all leases and other procurements.

d. Verification of Lessor Information

Leasing Specialists and support contractors must verify that the lessor's name and address shown on the R620 matches the physical address listed in SAM. If not, a Lease Amendment may be required.

GSA does not require Electronic Funds Transfer/Automated Clearing House (EFT/ACH) vendor forms—that is, Standard Form (SF) 3881, ACH Vendor/Miscellaneous Payment Enrollment Form—for lessors registered in SAM, as EFT information comes from the banking information that lessors maintain in SAM. The United States Department of Agriculture (USDA) is GSA's Shared Service Provider. USDA obtains the banking information through a link in GSA's financial accounting system. The SAM documentation replaces the EFT/ACH vendor form that was formerly required for the official PBS lease file. However, when a lease award is subject to the SAM registration exemption discussed under 10.e below, the lease file must contain a copy of the EFT/ACH vendor form to document the lessor's name, address, or other payment changes for PBS.

e. Exemptions

FAR 4.1102(a) outlines exemptions to the SAM registration requirement. These exemptions include classified contracts when registration in SAM could compromise the safeguarding of classified information or national security and contracts awarded in the conduct of emergency operations, such as responses to natural or environmental disasters or national or civil emergencies (e.g., Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121)). Refer to Leasing Desk Guide Chapter 12, FEMA Disaster Leasing, for further guidance on SAM registration requirements under the Stafford Act.

11. Legal Instruments

a. Role of Legal Counsel

The Offices of Regional Counsel are responsible for providing legal review and policy advice and assistance throughout the course of lease transactions. Legal instruments that show the Government's leasehold interest, protests, contract terminations, and the Lease Contracting Officer's final decision letters issued under the Contract Disputes Act require legal review and approval or concurrence of the Office of Regional Counsel. The following subparagraphs identify legal instruments that require preparation by leasing employees.

Central Office Legal Counsel Review

While this desk guide chapter includes references to *regional* legal counsel reviews, as PBS zonalizes certain Lease Contract Administration (LCA) processes, legal reviews may transition from a regional to a Central Office counsel review.

b. Statement of Lease (Estoppel Letters)

A statement of lease, also known as an estoppel letter or statement of fact letter, provides the status and terms of the lease when the lessor or financial institution requests this information before the sale of a building. In addition, a statement of lease must be prepared on a regular basis, typically within 30 days after the request. It must contain the terms and conditions of the lease and any issues with the lessor's performance, as well as any subsequent Lease Amendments outlined in numerical order. More information on statements of leases is available at 48 CFR 552.270-24, Statement of Lease (<https://www.acquisition.gov/content/552270-24-statement-lease#i1874954>).

c. Subordination, Nondisturbance, and Attornment Agreements

Leasing employees also respond to lessor requests for subordination, nondisturbance, and attornment agreements (SNDA) with a statement of lease. See GSA Form 3517, General Clauses, for more information.

The need for a statement of lease arises because lessors typically obtain their construction loan and permanent financing after lease award. However, a bank will not make a loan unless it receives certain guaranties from the lessor and GSA about the lease, which is the primary security—that provides the rental stream that services the loan. Therefore, the lender wants GSA to agree that our lease is junior to the lien of the loan. In exchange for our promise to subordinate to the loan, the lender agrees that our lease continues in the event of a foreclosure on the loan. The General Clauses require GSA to execute an SNDA within 20 business days after receiving a written demand letter from the lessor. The purpose of the SNDA is to establish three elements that govern what happens in the event of a foreclosure:

- **Subordinate:** GSA allows our lease to be junior to the lien of the loan.
- **Attornment:** GSA recognizes and accepts the lender as the new lessor under the same terms and conditions of the lease.
- **Nondisturbance:** In exchange for the above two obligations, the lessor agrees that it accepts GSA as the client under the same terms and conditions of the lease.

Most Offices of Regional Counsel have prepared standard SNDAs that offer all of the rights necessary to protect lenders and GSA. As an example, attachment 4 is a standard document prepared by the region 9 Office of Regional Counsel, accepted by every major lending institution in the country. If the lender asks you to modify this or the equivalent form that your region uses, immediately contact your Office of Regional Counsel for assistance.

d. Novation Agreement or Lease Assumption and Assignment

A novation agreement is a legal instrument that formalizes an arrangement to substitute one party for another in a contract. Not to be confused with a Change of Name Agreement, where a lessor legally changes its name (See Part f), a novation agreement is synonymous with lease assumption and assignment, or where a lessor's (transferor's) assets are transferred to another entity, the successor in interest or transferee. A novation request asks the Government to recognize a transferee as successor in interest to the lease. The Government's recognition of the transferee is discretionary. Although the Government cannot prevent the transferor's sale of a building, the novation process should be completed only when it is in the Government's best

interest to do so. If a novation is completed, the transferee will assume all liabilities and obligations associated with the lease.

If a lessor has transferred, or will be transferring, the assets used in performance of its obligations under the lease to another entity, the lessor must immediately inform the LCO and begin the novation process. The LCO must not issue any contract modifications in the transferee's name, issue any payments to the transferee, or otherwise recognize the transferee until such time as a novation agreement is executed and a Lease Amendment has been issued that incorporates the signed novation agreement into the lease. Rent payments shall continue to be sent to the transferor during the novation process, subject to the terms of the lease, until such time as the novation has been completed.

Federal Acquisition Regulations (FAR), subpart 42.12, Novation and Change of Name Agreements, outlines the policies and procedures to recognize a successor in interest. All LCO(s) must comply with FAR 42.12, and the guidance contained herein.

FAR 42.12 Required Documents

Before the Government will recognize the successor in interest, the following documents must be submitted to the LCO regarding the transaction for the LCO to evaluate the proposed novation. The required information is listed below and included in the novation checklist (Attachment 7).

- 1 signed copy of the novation agreement;
 - ▷ The draft novation agreement is provided in Attachment 6.
 - ▷ The draft novation agreement must be signed by officials authorized to act on behalf of the transferor and transferee. Transferor and transferee must provide evidence of the signatories' authority to bind their respective entity.
 - ▷ A copy of the fully executed novation agreement, if agreed to by the Government, should be returned to the transferor and the transferee. An additional copy should be maintained in the electronic lease file.
- The document describing the transaction;
 - ▷ This could include the purchase/sale agreement, asset purchase agreement or deed.
 - ▷ The effective date of the transfer from the recorded transaction document should be reflected in the novation agreement, paragraph (a)(2).
- If transferor holds multiple leases, a list of all affected leases or contracts between the existing lessor and the Government, as of the date of sale or transfer of assets, showing;
 - ▷ The lease number,
 - ▷ Name and address of the contracting office;
 - ▷ Total dollar value, as amended, and
 - ▷ Approximate remaining contract balance, including remaining lease term.

If transferor holds multiple leases that are being transferred to the same transferee, one novation agreement may be signed for all affected leases. However, separate lease amendments for each affected lease must be executed by the LCO(s) upon approval of the novation.

- Evidence of the transferee's eligibility and financial capability to perform;
 - ▷ This includes balance sheets of the transferee, dated immediately before and after the transfer of assets. If available, an independent auditor report should be included.
- Any other relevant information requested by the LCO.
- The LCO may also require one copy of the documents listed below.
 - (1) If the transferee is a corporation, (i) an authenticated copy of the transferee's certificate and articles of incorporation and bylaws, (ii) a copy of the resolution signed by all the necessary directors of the corporation authorizing the corporate officer who will sign the novation agreement to bind the corporation to the lease, and (iii) incumbency certificate signed by the secretary of the corporation. If the corporation was formed for a purpose other than to receive the transferor's assets, include a statement to that effect.
 - (2) If the transferee is a partnership, (i) copy of the partnership agreement, statement of partnership, or statement of limited partnership, (ii) evidence of authority of signatory to bind the partnership if not expressly authorized by the previous item, and (iii) if the signing partner is a partnership or corporation, submit all items required above for each partnership or corporate layer. If the partnership was formed for a purpose other than to receive the transferor's assets, include a statement to that effect.
 - (3) If the transferee is a limited liability company, (i) a copy of the articles of organization and operating agreement, (ii) evidence of the authority of the signing manager (if company is manager-managed) or member (if the company is member-managed) to sign, if not expressly authorized by the previous item, and (iii) if the signing manager or member is itself another business entity, submit all items required herein for each such partnership, corporation or limited liability company or other business entity layer. If the limited liability company was formed for a purpose other than to receive the transferor's assets, include a statement to that effect.
 - (4) Evidence that any security clearance requirements will be met. If high level security clearances are required as part of the lease, or by the customer agency, the security clearance requirements must be met before the novation process is complete).
 - (5) The consent of sureties if bonds are used (if required).
 - (6) A certified copy of Board resolutions (for both the transferor and transferee) authorizing the transfer of the asset. If either the transferor or the transferee does not have a Board of Directors, include a statement to that effect and confirm in the Articles of Incorporation that the company elected not to have a Board of Directors.
 - (7) A certified copy of Stockholder Meeting Minutes (for both transferor and transferee) approving the transfer of assets, as applicable.

Instructions

Contact the current lessor using the “Notice of Procedures for Assignment and Assumption of Lease” template (Attachment 5). Include with the letter the following:

- The novation agreement (Attachment 6)
- The novation checklist (Attachment 7)

The transferor/transferee is responsible for returning all the required documents outlined in the novation checklist to the LCO. When all documents are received, they should be reviewed by the LCO for completeness, put into a file marked “Novation Agreement,” and forwarded to Regional Counsel’s office for review.

Responsibility Determination

In accordance with FAR 9.104 and GSAM 570.108, the LCO must determine if the transferee is responsible with respect to the lease under consideration. To determine if the novation is in the best interest of the Government, the LCO must, in addition to reviewing the novation documentation, complete a responsibility determination (Attachment 8). At a minimum, the LCO’s responsibility determination shall include the following:

- Verification that the transferee has registered in the System for Award Management (SAM) for purposes of “All Awards” which includes completion of on-line representation and certifications.
 - ▷ Review SAM to confirm that there are no exclusion records listed for the transferee. These exclusion records include the Dept. of Treasury’s list of Specially Designated Nationals (SDNs).
 - ▷ Review transferee’s SAM online representations and certifications responses as part of the responsibility determination (e.g., FAR 52.209-5, Certification Regarding Responsibility Matters, FAR 52.209-10, Prohibition on Contracting with Inverted Domestic Corporations).
 - ▷ Review SAM for foreign ownership and, if transferee is foreign-owned, notify tenant agency of the foreign ownership.
- The LCO should discuss with the Lease Administration Manager or the GSA building manager any documented performance related issues (e.g., cure notices, deficiency letters, etc.) that were raised with the transferor during lease administration. If there are outstanding performance issues, the transferee should be made aware of the issues.

Small Business Representation/Subcontracting

If the lease was awarded to an “other than small business” entity and included a small business subcontracting plan, the transferee must follow the original plan, even if the transferee represents that they are a small business in SAM.

However, if the original lease did not require a small business subcontracting plan and the transferee represents that they are an “other than small business” entity in SAM, a small business subcontracting plan is not required as part of the Novation process. Subcontracting is only required for contract awards or modifications.



- A review of the following:
 - ▷ The financial resources of the transferee. The LCO should review the balance sheet provided by the transferee to determine if the transferee has the financial capability to perform the services required under the lease. This review should be the same for the transferee as if it were the original lease awardee. For example, if the novation is occurring with T/I work still remaining, the LCO must ensure that the transferee has the financial capability to perform its T/I responsibilities.
 - ▷ Whether there are any existing past performance issues related to the transferee.
 - ▷ Any other factor that might impair the transferee’s ability to successfully perform under the Lease.
- A review of the Federal Awardee Performance and Integrity Information System (FAPIS) for information about past performance for the transferee or the transferee’s maintenance company (if known) should be considered as well.

The LCO must document the results of the Responsibility Determination (Attachment 8). The memo should include, at a minimum, a statement that the transferee has (or lacks) the necessary organization, experience and skills (or the ability to obtain them) to perform the lease successfully and that the transferee is otherwise qualified (or not) to, and eligible (or not) to, receive a lease award from GSA. If the results of the responsibility determination indicate potential problems/issues, the LCO should consult with the Regional Counsel’s office before completing the responsibility determination. In the event that the LCO determines that the transferee can meet the obligations of the Lease, the LCO should forward the responsibility determination to the Regional Counsel’s office, along with the other novation documentation.

Transferor/Transferee Request to Modify Novation Agreement

If the transferor or the transferee requests modifications to the novation agreement template (Attachment 6), the LCO should complete a preliminary evaluation of the effect of such removal or modification. For example, if the transferor asks that clause (b)(8) (Transferor’s performance and liability guarantee) of the draft novation agreement be removed, the LCO should first review any remaining requirements for successful performance under the lease. This, along with the information gathered for the responsibility determination, including the performance capabilities and financial resources of the transferee, should be discussed with Regional Counsel. It should not be standard practice to grant or deny such requests routinely without review of the transferee’s capabilities and financial resources. In all instances where a transferor/transferee requests changes to the novation agreement, the LCO should flag the change and consult with Regional Counsel before final novation approval.

The table below outlines a few examples of novation modification requests:

Request	Considerations	Response
Remove novation requirement entirely from Lease	<ul style="list-style-type: none"> • If property is sold without the novation clause, GSA would have no one, but the new owner, to hold responsible for the terms of the lease. • Property could be sold to a 	<ul style="list-style-type: none"> • Do not remove the novation clause from the Lease. • Consult with Regional Counsel.



	<p>non-responsible lessor, an underperforming lessor, or an otherwise objectionable lessor without GSA consent.</p>	
Remove or modify (b)(2)	<ul style="list-style-type: none"> If removed GSA could potentially be dealing with multiple lessors in any claims GSA may have against the lessor. 	<ul style="list-style-type: none"> Generally do not remove or modify this clause. Consult with Regional Counsel.
Remove or modify (b)(8)	<ul style="list-style-type: none"> Is this Lease Construction? Is property being sold before/during buildout? Is transferee financially solvent? Is transferee capable of performing the lease requirements? Does transferee have any relevant past performance issues? 	<ul style="list-style-type: none"> If building is being transferred before substantial completion, do not remove or modify the (b)(8) clause. If transferee is not financially solvent, not capable of performing or has past performance issues, do not remove this clause and consider not approving the novation request. If transferee is financially solvent, capable of performing and has no past performance issues, and transferee is otherwise fully capable, removal of the clause is appropriate. <ul style="list-style-type: none"> A review of how the transferee intends to manage the property and whether the transferee is using the same property management company(s) as used by the transferor is important in this situation. If transferee appears financially solvent, capable of performing but the LCO has no ability to confirm relevant past performance, consider adding a time limit to the clause (<i>i.e.</i>, transferor's guarantee for one year) instead of complete removal of the clause. If after sufficient time has passed to consider fully the transferee's performance, the clause may then be removed. In all instances, GSA should expect a transferee that is equal to or better than the transferor in successful performance or financial capability before considering removal or modification of this clause. If a high performing transferor is selling to a mediocre or unknown transferee do not remove the clause or modify the (b)(8) clause.

Request for Regional Counsel Review

After compiling and reviewing all of the novation documentation and completing the Responsibility Determination, the LCO must forward the documents, along with a draft Lease Amendment, to Regional Counsel's office for review. Regional Counsel must review all novation requests before they are finalized with the transferor/transferee. The LCO must complete the RC Request for Review of Novation Agreement (Attachment 9) and forward all documents to Regional Counsel's office.

Lease Amendment

Following Regional Counsel review, if it is determined to be in the best interests of the government to effect the novation, the LCO must:

- Finalize the lease amendment and mail two copies to both the transferor and the transferee for signature. The effective date of the change must be the first day of the following month to ensure timely processing with USDA Financial Services.
- After receiving signed documents, execute the lease amendment and the novation agreement and forward the signed copies of each to the transferor and the transferee.
- Retain the signed lease amendment, novation agreement, and all supporting documentation in the lease file in accordance with national and regional guidelines.
- Do not stop lease payments while a change of ownership is pending. Lease payments should continue to the original lessor until such time as the novation has been completed and a lease amendment has been executed.

There may be rare, extenuating circumstances where funds have remained with the Government because of issues processing payment to the previous owner. In such occurrences, the Lease Contracting Officer (LCO) or Administrative Lease Contracting Officer (ALCO) will provide written instructions to the BA53 Analyst in an email specifying how the funds are to be disbursed. The ALCO will also prepare and send a lease amendment to the new lessor memorializing the amount of withheld funds that are being dispersed.

Example: Original Lessor sells building and notifies the ALCO of the change of ownership. The ALCO proceeds to process the change of ownership, making no change in REXUS until the change of ownership (novation) process is complete. The change of ownership is eventually completed and the rent is now being paid to the new owner. However, during this review process, the original owner closes their EFT account and there is one month's of rent that is not disbursed. The ALCO confirms that, per their review of the novation documentation (e.g., deed), the new owner had possession of the property during the time period associated with the undisbursed rent. The ALCO sends an email to their zonal BA53 Analyst directing the month's unclaimed rent to be paid to the new owner and sends a lease amendment to the new lessor memorializing the funds that are being dispersed.

e. Changes in Payment

The SAM registration must match the owner of the property and the Lessor information contained within the lease. If a lessor wishes to change the payment information this is done through SAM and a novation agreement is unnecessary. As noted under paragraph 10 above, the Government pays rent by EFT to the account designated by the lessor in SAM; the lessor only needs to update their information in SAM.

Note that the lease should not designate a different payee, except under rare circumstances where the lessor has designated a different payee through an Assignment of Claims. In such an instance, a Lease Amendment is necessary to process a change in payee. Such a change must be documented through a Lease Amendment, along with the executed Assignment of Claims (See Attachment 10). In all other instances, the owner of the property and the lessor on the lease must be one and the same. GSA does not recognize 3rd party payees (such as a lessor management company) for receipt of payment. Regional counsel must be consulted prior to processing an Assignment of Claims.

The Lease Contracting Officer or Administrative Lease Contracting Officer must prepare the Lease Amendment for the lessor's signature and mail two copies of the Lease Amendment to the current lessor for signature. Upon receipt of the signed Lease Amendment, the Lease Contracting Officer signs the Lease Amendment, sends the lessor a fully executed Lease Amendment for record keeping, and submits a copy to the finance office for processing according to the user manual for the Real Estate Across the United States (REXUS) system.

Retain the original signed lease agreement and scan and file the Lease Amendment in accordance with regional guidelines.

Note that a novation agreement is not necessary for a change in payee.

f. Change of Name Agreements

In instances where the lessor changes its name only, the notification should be forwarded to the appropriate Lease Contract Administration Zone for processing. As outlined under FAR 42.1205, the lessor must provide proper documentation effecting the name change, authenticated by a proper official of the State having jurisdiction, along with an opinion from their legal counsel stating that the change of name was properly effected under applicable law and showing the effective date. GSA will also need to see evidence that the leased property is deeded in the lessor's new "name." The ALCO will draft a lease amendment documenting the name change and send this to the lessor for signature. The ALCO will forward the signed lease amendment, along with the lessor-provided documentation, to legal counsel for review. Once approved, ALCO may execute the lease amendment and update REXUS accordingly.

12. Minor Alterations

a. Authority to Change Scope of Lease

According to the Changes clause, the Lease Contracting Officer has a contractual right to make changes to the general scope of the lease, including directing changes to the TIs, building security requirements, and services required under the lease. This is an important right for the Government, and only the Lease Contracting Officer has the authority to make a written request for those changes to the lease. If the agency has requested an alteration to its current space postaward, it must report this to the LAM. At that time, the LAM, using project management principles, meets with the client agency. The client agency must provide a detailed scope of work (SOW), completed with the help of the space designer or planner or a construction representative as needed. Upon completion, the client agency must provide a copy of the detailed scope of work, related drawings, a cost estimate to support the scope of work, and an RWA. After the SOW and initial drawings are complete, the LAM must advise the Lease Contracting Officer of the client

agency's SOW and discuss whether the SOW involves minor or major contract changes and the impact to the existing lease. This is an important step in the process because of varying situations:

- The lease may have an unused TI allowance.
- The lease may have less than 2 years remaining on its term requiring the agency to consider their future housing solution. There are significant improvements required by the SOW that may give rise to a superseding lease.
- Some other factor may weigh into the decision to make an alteration at this point.

If the SOW is within the responsibility and authority of the LAM, the LAM may inform the lessor of the client agency's SOW. The lessor must obtain competitive bids from two or more vendors, competed independently, and submit priced offers for the renovation of the space based on the SOW and the drawings. Certified cost or pricing data are not required for simplified acquisitions or when priced offers are based on adequate competition. However, the lessor may submit a bid without adequate price competition provided cost or pricing data from the lessor accompanies the proposal and are sufficient for the Lease Contracting Officer to determine if the price is fair and reasonable. If a lessor submits a bid without adequate competition then the LAM must obtain an Independent Government Estimate (IGE) to help determine if the lessor's price proposal is fair and reasonable. The IGE and the lessor's proposal must be prepared independent of each other.

b. Unit Price Agreements

Some leases may include the optional language requiring the lessor to provide unit price agreements. It is common practice to use unit price agreements during the first year of the lease to price alterations not exceeding the simplified acquisition threshold. Prices contained in unit price agreements are for fully installed and finished alterations. The LAM must review the lease to determine whether it includes a unit price agreement. If the lease includes a unit price agreement, then prices for subsequent years must use the CPI to calculate increases or decreases or renegotiated upon mutual agreement between the lessor and the Government.

If the lease does not contain a unit price agreement or the lessor's price proposal appears higher than industry standards, then the LAM must seek the assistance of the COTR or Lease Contracting Officer to begin the negotiation phase of the project.

c. Verifying Funds

Once the LAM and lessor have agreed upon a price, then the LAM must contact the agency to secure funding. If the lessor cannot add the costs of TIs into the rent, then the agency must provide an RWA for the work. Only after receipt of funds may the Lease Contracting Officer sign a Lease Amendment with a notice to proceed. The work may not start without an agreement in writing from the lessor that the costs will be included in the TI allowance (as long as the agency has not already exceeded the allowance) or that the agency has provided an RWA for all associated costs.

Giving a lessor written or oral notice to proceed without certification of funds in place creates a serious administrative violation under the Anti-Deficiency Act and can subject the LAM or Lease Contracting Officer to disciplinary action. Sometimes, lessors are anxious to proceed in the absence of written notice, or the client agency may have directed the lessor to proceed with the renovations. Whatever the reasons, proceeding in the absence of funds is a violation of the Anti-Deficiency Act, and the LAM or Lease Contracting Officer has a duty to advise the lessor that it

proceeds at its own risk, and that the Government is under no obligation to pay for unauthorized TIs.

d. Unauthorized Commitments

Only the Lease Contracting Officer has the authority to bind the Government. Delegation under the Federal Acquisition Certification-COTR program transfers certain authorities to designated leasing employees who have the experience and training to administer and enforce leases. Implied obligations committed by client agencies and issuance of Lease Amendments or notices to proceed without an approved funding source are unauthorized commitments. Unauthorized commitments may require ratification according to GSAM 501.602-3, Ratification of Unauthorized Commitments. Persons making unauthorized commitments are subject to disciplinary action.

GSA prohibits documentation prepared or provided after issuance of Lease Amendments or notices to proceed to pay a lessor for an unauthorized commitment without going through the ratification process. Ratification is the act of approving an unauthorized commitment after the fact by a Government official who has the authority to do so. The ratification process requires the individual making the unauthorized commitment to provide all documentation about the unauthorized commitment and work closely with the Lease Contracting Officer and the Office of Regional Counsel to develop a written statement of fact that includes a summary recommendation to ratify the procurement action. Only the Head of the Contracting Agency (HCA) has the authority to approve an unauthorized commitment for ratification. Completion of the ratification process occurs if approved by the HCA; only then may the Lease Contracting Officer sign a Lease Amendment to complete the lease transaction to pay the lessor.

13. Reimbursable Work Authorizations

a. Overview

RWAs are set up to capture and bill client agencies for the cost of initial alterations (such as enhanced security requirements), postaward alterations or renovations, and for recurring services when the cost exceeds the basic operations financed through GSA's RENT system.

b. Types of Reimbursable Work Authorizations

There are two types of cost transactions associated with the use of RWAs:

- **Recurring:** A recurring RWA pays for client agency costs not readily separated from standard operating costs. Recurring RWAs may cover any period such as a month, quarter, 6 months, or a full year, but they cannot cross fiscal years. The overhead charged to a recurring RWA is a flat rate of \$100.
- **Nonrecurring:** A nonrecurring RWA pays for client agency services when its costs are for postaward activity or for costs that exceed standard operating expenses. LAMS must apply an overhead rate to all nonrecurring RWAs; calculated based on a sliding scale and applied to the RWA's authorized amount. Nonrecurring RWAs, with the exception of blanket RWAs, have a 5-year limit unless the client agency provides "no year" money, meaning its funding is available for obligation without fiscal year limitation. Blanket RWAs are limited to 1 fiscal year to cover routine, low-cost services and eliminate the need for a new RWA each time low-cost services are required. The maximum overhead charge for a nonrecurring RWA is \$30,000.

It is GSA policy to charge direct labor for an RWA if the time spent was for performing the work requested on the RWA but not for the time spent supporting the RWA work. Since Federal agencies are responsible for their own programmatic needs and costs, it follows that they must use their appropriations to pay for the cost of work performed on their behalf or in furtherance of their missions. In the absence of statutory authority for GSA to absorb these costs, any unreimbursed cost incurred by GSA on behalf of another agency is an unauthorized augmentation of that agency's appropriations. Thus, when GSA provides reimbursable services on an actual cost basis, it must recoup **all** of its costs and allocate overhead to those services. This understanding is consistent with previous GSA Inspector General reports and with Comptroller General decisions interpreting interagency reimbursements under the Economy Act.

c. Reimbursable Work Authorization—GSA Form 2957

The RWA (GSA Form 2957) revised in July 2009, includes additional legal language as advised by OMB and the Office of General Counsel. RWA guides, tools, and communications are available at

<http://www.gsa.gov/Portal/gsa/ep/channelView.do?pageTypeId=17109&channelPage=%2Fep%2Fchannel%2FgsaOverview.jsp&channelId=-24397>.

The realty technician may perform payments through RWAs in the realm of lease administration, but the LAM or a GSA-designated official retains responsibility for managing and overseeing postaward lease projects. The following responsibilities fall under RWAs; note that not all regions have a realty technician position, and another role might perform these duties:

- Create a project file that includes the RWA file checklist, an RWA Cost Summary Sheet, an IGE if applicable, and the lessor's cost proposal. Both the IGE and the lessor's cost proposal must use the Tenant Improvements Cost Summary (TICS) table in MasterFormat. The TICS table is a tool for calculating and recording a lessor's proposed TI costs or any postaward alterations as permitted under the lease.
- Log and track RWAs; verify the availability of funds before issuing a Lease Amendment or a notice to proceed.
- Make sure the notice to proceed does not exceed the RWA amount; to do so would be an administrative funds violation under the Anti-Deficiency Act.

e. Funds Management

LAMs must work closely with their Budget Analyst to process RWA payments within the period of limitations for recurring and nonrecurring RWAs. LAMs must review RWAs for proper charges and transfer fees for direct labor and project management fees. The following are other actions LAMs must take or questions to ask regarding funds management:

- Follow up on the RWA payment and properly close out the file with appropriate documentation (RWAs and any modifications, agency certification of funds, cost estimates, lessor's cost proposal, notices to proceed, Lease Amendments, inspection and acceptance reports).
- Prepare electronic procurement requests for an invoice or RWA-associated document number as required in Pegasys.

- Ensure that the project files (RWAs) have estimate documents. Does the RWA cost summary sheet comply with the most current guidelines?
- Review inspection reports and include in the files for periodic or final inspections (GSA Form 220, Inspection Report on Work Under Contract, or equivalent).
- Track obligations against RWA projects using GSA Form 1814, Job Order Control, or equivalent. Do obligations exceed the total amount of funding for any projects?
- Close out RWA projects within 30 days of project completion or final payment. Does the file contain copies of the client agency service letters?

In rare instances, LAMS must use BA 54 and BA 55 funding for alterations to backfill vacant leased space or substituted in the absence of an RWA when a leased location is part of a major consolidation into Federal or leased space. In such unique situations, consult with your regional Portfolio Management Office for guidance.

Recurring RWAs are the primary funding documents used to pay for overtime services on an annual basis. In rare instances, GSA may use BA 61, Real Property Operations, in the absence of BA 53 funding or instead of an RWA to pay the lessor for overtime services. Agencies can elect to pay for overtime services through the GSA RENT process when linked to the cost of overtime services related to their mission and exceeds the standard operating cost. Agency certifying officials at the headquarters level must seek GSA approval and include an ad hoc clause in the Occupancy Agreement to reflect the change and reimburse GSA for payment of overtime services. In the absence of a signed agreement, client agencies must provide an RWA for overtime services. LAMs must calculate estimated rates by using the current estimating cost tool for overtime services. LAMs are responsible for developing utility profiles or reports to reflect historical trends on use and consumption.

Authorized users of credit card acquisitions may procure contract services within their funding authority. However, in such cases the same requirements exist as for RWA funding to reimburse GSA for the procurement. The lease file must contain a copy of the RWA with the accounting and appropriation information. LAMs must verify that purchases are rotated among qualified vendors and that every purchase is supported with an invoice and receiving report.

14. Postaward Security Requirements

a. Policy for Background Investigations in Leased Space

General Policy

All lessor personnel and contractors with routine access to the Government's leased space in:

- Interagency Security Committee (ISC) Security level IV GSA-leased facilities, or
- ISC Security level III GSA-leased facilities with 100-percent Government occupancy

for a period more than 6 months must submit completed fingerprint charts and personal history forms to obtain a background investigation. In buildings with security levels I, II, or III (with less

than 100 percent occupancy), the client agency may also request such background investigations on a reimbursable basis.

Routine Access Defined

Regularly scheduled access is the same as routine access. For example, a contractor who reports to the facility on a regular basis to perform ongoing duties requires routine access and must have a background investigation. An intermittent contractor—for example, a contractor summoned for a service call as needed—is not required to have a background investigation.

Background Investigation Instructions

The manager of each PBS regional field office or service center must review each lease to determine whether the lease meets the general policy for background investigations and whether the lease contains the applicable background investigation clause. If the clause is absent, conduct background investigations according to the following instructions:

1. Meet with the lessor to identify personnel requiring background investigations in all existing security level IV leases and security level III leases with 100 percent Government occupancy where background investigations are incomplete or are not current. In the event of a dispute, a designated PBS employee must consult with the client agency and Federal Protective Service (FPS) to identify which of the lessor's personnel and contractors require background investigations.
2. **Contact the lessor.** The designated PBS employee must then contact the lessor and provide fingerprint charts (FD-258, available on the Government Printing Office Web site at <http://bookstore.gpo.gov>) and personal history forms (SF 85P, Questionnaire for Public Trust Positions, available at www.gsa.gov/forms) for the people requiring background investigations. The designated employee must then:
 - i. Confirm and document the return of all forms to GSA and forward them to the FPS within 30 days of receipt or as otherwise provided by the lease;
 - ii. Document when the request was made to the lessor, when the forms were forwarded to FPS, and when the investigations were completed; and
 - iii. File this documentation in the lease file under Tab 10, Lease Administration.
3. **Obtain credentials as necessary.** The lessor's personnel requiring background investigations must contact the regional credentialing officer to obtain the appropriate GSA-issued credential, as necessary, upon receipt from FPS of a successfully completed background investigation.
4. **Consult with the Office of Regional Counsel.** In cases where lessors delay, resist, or refuse to provide required information, the Lease Contracting Officer may consult with the Office of Regional Counsel to aid in obtaining such information from lessors. Contract clauses to be relied on include the Background Security Checks paragraph (November 2005), if available, and the Changes paragraph. The lease file under tab 10 must document any difficulties with lessors in meeting the requirements of Homeland Security Presidential Directive (HSPD)-12, Policies for a Common Identification Standard for Federal Employees and Contractors.
5. Verify the revised **lease paragraph (May 2007)**. All new leases must include the Verification of Contractor Personnel paragraph. This paragraph replaces the Background Security Checks (NOV 2005).

b. Facility Security Assessments

FPS must do a facility security assessment (FSA) upon occupancy. After occupancy:

- The ISC schedules future FSAs. Security level I and II facilities have FSAs completed within every 5 years of the completion date of the previous 5-year FSA and within 3 years for security levels III, IV, and V facilities. No later than August 1 of each fiscal year, FPS provides a proposed regional schedule to the regional Facilities Management and Services Programs (FMSP) office for all FSAs scheduled for completion in the next fiscal year. The schedule identifies the region; building number and address; completion date for the previous FSA; scheduled date of completion; and assigned inspector for future FSAs.
- No later than September 1 of each fiscal year, the regional FMSP office provides the FPS regional office any recommended adjustments to the FPS proposed schedule to reflect facilities that will leave the inventory in the next fiscal year, undergo complete renovation, or be vacant and FPS must provide revised schedules to FMSP before September 30.

c. Conduct of the Facility Security Assessment

The FPS inspector coordinates and schedules the FSA with the Facility Security Committee (FSC) chairperson and the PBS property manager.

Before beginning the onsite assessment, the FPS inspector conducts an entrance interview with the FSC chairperson and PBS property manager to obtain any information about recent security concerns that the FSA should focus on.

The property manager must provide the FPS inspector with copies of occupancy management plans (or in the case of capital leases, asset business plans). Plans must include planned building R&A, tenancy changes, space plans, and other information that could affect the assessment of potential threats, the impact of loss if an incident occurs, or the implementation of possible security measures.

Upon completing the FSA, the inspector will conduct an exit interview with the PBS property manager to discuss the assessment and the impact of countermeasure recommendations on the facility. It is during this briefing that FPS and PBS collaborate on countermeasure cost estimates. The purpose of the exit briefing is to identify and resolve any issues before briefing the designated official or the entire FSC.

FPS will brief the designated official or the entire FSC on the FSA. The FSA is complete when the FSC chairperson signs the original copy of the executive summary and concurs on the proposed countermeasures. At the end of each quarter (no later than January 15, April 5, July 15, and October 15), FPS provides the regional FMSP office with a report identifying the status of all scheduled FSAs for the quarter. The report includes the building number and address; facility security level; completion date; the next fiscal year of assessment; and the name of the inspector who conducted the FSA.

d. Facility Security Assessment Briefing to Facility Security Committee

FPS coordinates with the FSC chairperson to schedule FSC meetings and briefs the committee on the results of the FSA report. The briefing covers at least the following:

14. Postaward Security Requirements

- Identified threats (or undesirable events), consequences, and vulnerabilities;
- Countermeasure recommendations (and options); and
- Budgetary impact of the countermeasure options, by agency.

The decision on whether to implement recommended countermeasures belongs to the FSC—the building client agencies. Together, FPS, PBS, and FSC are responsible for identifying and implementing the most cost-effective countermeasure appropriate to mitigate any vulnerability and reduce the risk to an acceptable level.

FPS obtains concurrence and written approval from all client agencies on recommended countermeasures (and options) before proceeding with implementation. If a follow-up FSC meeting is necessary, FPS coordinates with the FSC chairperson for scheduling.

At the end of each quarter (no later than January 15, April 15, July 15, and October 15), FPS provides to the regional FMSP office a report listing in order of priority all countermeasures identified through the FSA process. This report, sorted by region, includes a complete description of the countermeasures (type, amounts, and locations); the status of FSC approval of specific countermeasures; the status of countermeasure implementation; and funding responsibility and status.

After the end of each fiscal year (but no later than October 31), FPS provides an annual report of all countermeasures recommended based on the FSA completed in the previous year. This report is a cumulative report of the quarterly reports provided and summarizes funding responsibility and status, the status of FSC approval of specific countermeasures, and the status of countermeasure implementation.

e. Facility Security Committee

All GSA facilities must have an FSC that operates under rules established by the ISC. The FSC, formally known as the Building Security Committee, is responsible for addressing facility-specific security issues and approving security measures and practices. It consists of representatives of all Federal client agencies in the facility, the security organization, and the owning or leasing department or agency. In the case of new construction or pending lease actions, the FSC also includes the project team and the planned client agencies. The FSC chairperson determines the frequency of the meetings. If necessary, the PBS property manager and FPS inspector must work together to facilitate additional FSC meetings. The two attend and participate in all regularly scheduled meetings; FPS and PBS attend emergency meetings. FPS and PBS do not have a vote unless housed in the building, or GSA is paying the security charge for vacant space in the building.

The FPS inspector elicits information from the FSC regarding security concerns at the facility, including topics for security awareness and crime prevention training as identified in subparagraph 14b above. FPS conducts a project-specific risk assessment during the requirements development phase and recommends countermeasures and design features in accordance with ISC standards to be included in the design specifications. FPS briefs the project manager before presenting the findings to the client agency. Countermeasure recommendations include planning costs for security officers before and upon occupancy of the building.

PBS provides copies of all construction drawings or renderings deemed necessary to FPS to conduct assessments, reviews, and inspections.

During new construction, the contractor is responsible for site security until substantial completion. The HSPD-12 guidance requires PBS or client agencies to fund security guard contract services and escort services during major modernization projects, renovation, or other construction work in an existing building. Such costs are part of the overall construction project costs.

For construction at primary U.S. Courthouse facilities, FPS and PBS must first coordinate with the U.S. Marshals Service to approve the posting of guards.

FPS inspects security countermeasures for effective operation and recommends either acceptance or rejection.

15. Parking

Parking is categorized as structured or unstructured (whether inside or outside), and within these two categories it may be further classified as reserved and unreserved parking. In the absence of agency-specific requirements, most leases require parking ratios that meet local codes. In the absence of local codes, use parking ratios ranging from one space per 2,500 to 4,000 rentable square feet. Usually, the lessor controls structured or unstructured parking or allocates parking on a first-come, first-served basis.

GSA's parking policy is to use its Government-wide influence to reduce the Federal Government's impact on the environment. This policy complies with Executive Order 13514; Presidential Memorandum—Disposing of Unneeded Federal Real Estate; and is in accordance with existing laws including the Architectural Barriers Act and Architectural Barriers Act Accessibility Standard (ABAAS). GSA's goal is to reduce emissions associated with business operations, including employee commuting (Scope 3, Greenhouse Gas Emissions).

Where parking is being provided onsite, in either federally owned or leased facilities, the parking footprint must be minimized to the extent practicable, using reduced parking requirements, parking management strategies, and efficient physical layout techniques (garages, etc.). LAMs must work closely with client agencies to allocate parking spaces with the following considerations in mind:

1. Accessible Parking Requirements as specified in the Architectural Barriers Act Accessibility Standard (ABAAS), Chapter 2, Section F208, Table F208.2 (Parking Spaces) and F208.2.4 (Van Parking Spaces) <http://www.access-board.gov/ada-aba/final.cfm#208>.
2. Official agency vehicles: One parking space for each official agency vehicle including:
 - Postal vehicles at buildings containing the U.S. Postal Service's mailing operations
 - Federally controlled vehicles used to apprehend criminals, fight fires, handle emergencies, and for homeland security
 - Federally controlled vehicles, including those in motor pools or assigned for general use
 - Other vehicles used in an official capacity by law enforcement, agency security, or required by an agency to meet its mission requirement
 - Service vehicles
3. One parking space per location for each Member of Congress (excluding staff).
4. One parking space for each Federal Judge (appointed under Article III of the Constitution) per location but not the staff.
5. One parking space for Cabinet Secretaries and Administrators (excluding staff).

6. Vehicles for child care operations: one parking space per 250 square feet of childcare center and additional drop-off spaces.
7. Patron and visitor vehicles: Agency must provide mission justification for a number of patron and visitor vehicles.

When acquiring parking spaces in leased transactions, GSA officials must not include in the Request for Lease Proposal (onsite or in the vicinity) or consider in the award factors any parking spaces beyond the **minimum** required by local zoning or code. GSA considers, on a case-by-case basis, locally approved practices to reduce the parking requirement further, below the standard zoning minimum (for example, through coordinated parking management). If zoning minimums are zero, follow items 1 through 7 above in leased transactions.

The LAM must review changes to parking policy and consult with the Lease Contracting Officer, the Chief Sustainability Officer, and agency officials for justifications or waivers for a deviation to the parking policy for Items 1 through 7 above.

Client agencies classified at security levels III and IV have a need for mission-related secured parking, and the request for such parking is normally included in their agency-specific requirements package. Lease Contracting Officers acquire secured parking spaces or an entire garage (if needed) for official Government vehicles or private vehicles used in the conduct of a client agency's mission based on the criteria listed above. When GSA leases a parking garage for the exclusive use of a client agency, it is the responsibility of the client agency to allocate and assign parking spaces to its employees.

LAMs only become involved in allocating and assigning leased parking spaces when returned to GSA under the 120-day notice to vacate and there is little or no potential for a buy-out or release of parking spaces back to the lessor. LAMs must keep written procedures for assigning parking spaces to ensure a fair and equitable distribution among employees. In secured parking facilities, it is very difficult to out-lease parking to non-Government agencies. LAMs must work closely with client agencies to develop strategies to reduce the number of secured parking spaces.

Agencies that need parking must first use available facilities controlled, owned, or leased by the Government and must inquire with GSA regional offices about the availability of Government-controlled space. If no suitable Government-controlled parking is available from GSA, an agency may use its own procurement authority to acquire parking by service contract. In the absence of agency-driven requirements for parking spaces, it is economically more feasible for client agencies to procure individual parking spaces under their own authority. Individual parking requests or requests for short-term parking are not leasehold interests.

16. Designation of Authority for Alterations by Client Agency

Client agencies may perform alterations in leased space provided the lease contains the optional language paragraph for "Subsequent Tenant Alterations \$150,000 or Less."

Client agency officials designated and appropriately certified as COTRs may place orders for postaward alterations using simplified acquisition procedures as referenced under the FAR. The Lease Contracting Officer must designate the client agency official in writing, outlining the designee's responsibilities, authorities, and limits under the lease contract. The Lease Contracting Officer must provide the lessor with a list of client agency officials authorized to place

orders and specify any limitations on the authority designated to the client agency officials. Designated client agency officials cannot contract with the lessor on any other matters outside the scope of their authority. Designated client agency officials are responsible for maintaining all documentation and making payments directly to the lessor. The client agency must provide the LAM with a copy of the lease file and as-built drawings for inclusion into GSA's lease file within 30 days from final acceptance and payment.

In the absence of the optional lease language to perform alterations in leased space, the client agency may send a written request for approval to contract directly for services up to the simplified acquisition threshold for each project, provided the client agency has an agency-designated certified COTR. To do so, client agencies must follow these steps:

- Send the LAM the complete SOW and contract specifications when the client agency's contractor submits a request for review and approval. It is important to emphasize that the client agency SOW and direction provided must conform to the lease contract.
- Request project reviews by GSA's regional fire and life safety staff. If the SOW involves contracting for security systems, submit the design work to GSA's regional FPS Division for review.
- Make sure the completed work conforms to GSA's fire and life safety standards.
- Inspect and certify that the client agency's contractor has satisfactorily completed the ordered work.
- Inspect and certify that the lessor satisfactorily completed the work and the work complies with the contract.
- Complete all necessary paperwork to support the final payment document—GSA Form 1142, Release of Claims, and GSA Form 2419, Certification of Payments to Subcontractors and Supplies—and provide written certification as evidence of the inspection and acceptance. The client agency must provide the LAM with a copy of the foregoing package for the lease file for future reference.
- Submit as-built drawings to GSA's facilities staff within 30 days of the completion of the work.

As GSA's representative, the LAM reserves the right to inspect the work and require corrections if the project does not comply with fire and life safety standards, disturbs normal functioning of building mechanical systems, or is so disruptive as to affect the quiet enjoyment of the space by other occupants.

17. Customer Service—Occupancy Management

a. Occupancy Management Plan

An effective tool for managing customer relations is an occupancy management plan that sets mutual standards and expectations between the client agency and GSA and lists the amenities and recurring services the client agency will receive during its continued occupancy. The LAM must prepare an occupancy management plan. At a minimum, the occupancy management plan should include a profile of the client agency, GSA and client agency contact information, dates

and frequency of periodic services, a building operation plan, an emergency plan, the lessor's building management team, and any other contact information that is necessary to manage the lease.

b. Incorporating the Occupancy Management Playbook into Lease Management

The Occupancy Management Playbook (OMP) provides guidance for maintaining customer relationships at the initiation phase and throughout occupancy of the leased space. The two main purposes of the OMP and client agency profile are to clearly identify and communicate the standard of services, and to establish the client agency's expectations at all approval levels.

If, during this process, GSA identifies a discrepancy between the services included in the lease and the client agency's needs, it uses the following "5 key interactions" to reconcile the requirement:

1. Conduct a needs interview.
2. Confirm the requirements.
3. Present options.
4. Document the agreement.
5. Deliver as promised and follow up.

c. Occupancy Profiles

The OMP occupancy profile provides a practical tool for each lease and its client agency. This profile includes the most important information for the LAM in an abbreviated, accessible format. It includes contact information for client agencies and lessors while also highlighting important lease requirements. Occupancy profiles are required for each location and updated as necessary. One region, for example, updates occupancy profiles for those buildings scheduled for survey at least every 3 years. Another advantage of completing occupancy profiles is the ability to provide new LAMs with concise information for each lease.

The OMP applies to lease management in that the 5 key interactions and occupancy profile must be developed and communicated to the client agency in leased space at particular times, including:

- The commencement of a new occupancy
- A change in key client agency contacts (security level II)
- The Tenant Satisfaction Survey (TSS) process and follow-up
- A major change in the occupancy environment:
 - Client agency requests for projects during the term of the lease
 - Client agency requests for services, such as overtime utilities

- Client agency requests for maintenance and custodial services
- GSA coordination of cyclical contract requirements, such as carpeting and painting

By applying the five key interactions to lease management, GSA can manage client agency and lessor relationships and expectations consistently. Details on the 5 key interactions are in the OMP at

http://pbsportal.pbs.gsa.gov:7777/portal/page?_pageid=79,303678&_dad=portal&_schema=PORTAL.

18. Adjustment for Vacant Premises

If the Government fails to occupy any portion of the leased premises or vacates all or part of the premises before the lease expires, the lease allows for a reduction to the base cost of services under the Adjustment for Vacant Premises clause in leases having the clause and the negotiated rate per GSA Form 1364.

The Lease Contracting Officer must negotiate a reduction in the ANSI/BOMA Office Area square foot rental rate by that portion of the operating expenses not required to maintain the space. The Lease Contracting Officer must give advance written notice to the lessor at least 30 calendar days before reducing the rent. (Verify the number of calendar days for each lease.) The adjustment for vacant premises clause continues in effect until the Government occupies the vacated space, or the lease expires (with no intent to renew or succeed), or a portion of the space is terminated.

If the client agency's space needs increase or decrease over the term of the lease, the agency should submit a request to its COR. See Chapter 6, Change in Square Footage—Expansion and Reduction, for a full discussion of these scenarios. The COR reviews the lease to determine whether the agency is in the firm term of the lease and whether the lease contract includes termination rights (in whole or in part) for portions of the leased premises. In addition, if the agency is seeking a square footage reduction, then the COR must review the adjustment for vacant premises clause. If the agency is seeking additional square footage and the lease is in full force and effect, then there could be an opportunity to renegotiate a superseding lease. If the space request is for more space, the COR must contact the Lease Contracting Officer to take appropriate action.

If the square footage is a decrease and if the agency is still in the firm term, the Government has the right to invoke the adjustment for vacant premises clause in the lease. However, it is important to research the rate reduction (if any) included in the lease. The lease also clearly states how many days' written notice the Government must give the lessor when the client agency vacates the space. Do not confuse this timeframe with the 120 days' notice that the client agency must give under the terms and conditions of the Occupancy Agreement.

19. Lease Expiration

Lease contracts have a fixed expiration date that after lease expiration must be renewed or replaced to avoid holdover in the absence of a legally binding lease agreement. As a practice,

Lease Contracting Officers should close all lease files within 30 days after the expiration date of the lease. Before closing out a lease file, the LAM must verify that all actions are completed. The LAM must also coordinate with the appropriate budget office to ensure that payments terminate upon expiration of the lease.

a. Lease Closeout Process

It is reasonable to assume that when the lease expires, the Government vacates the premises and the lease terminates. Terminating lease transactions involves completion of the lease closeout process and GSA Form 1204, Condition Survey Report, which the lessor or the designee must sign. A rule of thumb is for the Leasing Specialist to begin the closeout process within 6 months before lease expiration. The process requires a review of the lease file—including all Lease Amendments and alteration or project files, which may be in a different folder separate from the original lease—to identify closeout actions. The Leasing Specialist must verify that all contract actions, especially alterations, include acceptance reports, and review RWA funds status reports to determine that any excess funds are no longer obligated and properly refunded to the client agency.

If there is evidence that work is complete but the lessor has not submitted a final invoice for payment, the Lease Contracting Officer must retain enough funding to make payment on the final invoice.

b. Release of Claims

The Lease Contracting Officer must prepare a “Release of Claims” form when the lease file has outstanding lease transactions or alterations projects remaining under the lease. The purpose of obtaining a release of claims is to have a lessor or contractor acknowledge in writing that there is no pending litigation or appeal (either filed or pending filing by the contractor) or to list such claims and litigation. The document releases the Government from any claims arising under the contract as amended over the life of the lease, subject to the lessor’s list of any claims against the Government and the amounts listed. If there are no claims, the lessor must state “none,” sign the form and have the signature witnessed, and return the document to the Lease Contracting Officer.

Payment is not final if there is a pending litigation or appeal action underway by the Lease Contracting Officer and Office of Regional Counsel. If outstanding actions remain, a release of claims, or the contractor’s closing statement, is required regardless of the type of contract.

c. Closeout Inspection

At the end of the lease term, the LAM must conduct a scheduled inspection with the client agency and the lessor or lessor’s representative 1 week before lease expiration. The LAM must complete a Condition Survey Report to document all pertinent items and comments as to the general condition and appearance of the space. The LAM must document the file that the lessor received all keys to the property. All parties in attendance—the PBS official, the client agency, and the lessor or its designated representatives—must sign the report certifying that it represents their opinion or dissent as to the true and correct condition of the premises as of the exact date of the inspection.

The client agency must remove all Government equipment and furniture and leave the space clean, allowing for normal wear and tear. Client agency representatives must attend closeout inspections to ensure removal of their Government property from the premises. Failure to remove all Government assets and clean the space could put GSA in a holdover position if the lease has already expired, meaning that the lessor could file a claim for additional rent payments. The

Condition Survey Report documents the condition and appearance of the space immediately after vacating the space and includes a brief description of any remaining property and the date to remove the property. If the lessor is willing to remove abandoned property for an agreed-upon amount, the Lease Contracting Officer must document the agreement on the form and make certain that all attending parties sign. Client agencies may abandon Government property under certain conditions but must provide an RWA for the cost of removal and any subsequent damages or additional costs for holdover rent.

Client agencies are not responsible for the cost of normal wear and tear, nor Government-installed improvements affixed to the property. It is customary to negotiate an agreement for compensation when damage has occurred to the space beyond normal wear and tear. This is ordinarily a lump-sum payment to the lessor to cover the costs of restoring the space to a reasonable condition. The Leasing Specialist must review the lease file and all amendments to determine whether the lease contains a waiver of restoration clause.

Lessors or their designated representatives have a duty to attend closeout inspections to check the condition of the premise. If the lessor fails to attend the closeout inspection, the LAM still must conduct the scheduled inspection and provide the lessor with a copy of the condition survey report along with a cover letter and keys to the property sent certified mail, with return receipt requested. The mailing documents the file to show the return of keys and end the Government's obligation to pay rent.

d. Late-Term Improvements

Client agencies have a tendency to want to continue making improvements even when lease expiration is approaching. Avoid this practice when there is less than 2 years remaining on the lease or the cost of improvements would exceed the simplified acquisition threshold. However, if an agency insists upon making improvements under a lease soon to expire, Leasing Specialists must consult with the Lease Contracting Officer and the Office of Regional Counsel. . In situations where a lease goes into holdover, client agencies should avoid using funds for additional projects under an expired lease.

e. Outstanding Litigation

The Lease Contracting Officer must resolve all open actions and liabilities before closeout. Upon execution of a settlement agreement or final decision letter, the Lease Contracting Officer must issue a formal letter or Lease Amendment to terminate the lease, or through advice of the Office of Regional Counsel, forward a copy of the file to the Office of Regional Counsel for further action. Lease Contracting Officers must also seek the advice of their budget officers regarding outstanding claims and the impact on agency funds. For postaward TIs that are in litigation, the Lease Contracting Officer must retain sufficient funding to cover the estimated cost of the claims until the litigation or appeal is resolved. Be aware that RWAs with remaining balances associated with pending litigation may distort GSA's executive scorecard report.

Attachment 1: Contracting Officer's Representative Designation Letter

Memorandum to: Designated Associate

From: Name, Lease Contracting Officer

Subject: Appointment as Contracting Officer's Representative

You are hereby designated to serve as the Contracting Officer's Representative (COR) for the above referenced lease contract, located at (Building Name, Address, City, State) and awarded to (enter lessor name and full address). As the designated COR, you are responsible for lease contract administration, as defined under GSAM Part 542.202(d), Contract Administration Services.

1. The responsibilities of the COR include actions taken after contract award to obtain lessor compliance with lease contract requirements. The COR's actions include technical, financial, and administrative actions in support of the Lease Contracting Officer, as outlined in the Attachment. It may include additional task requests as needed by the lease contracting activity including support throughout the lease procurement lifecycle.
2. The Lease Contracting Officer (LCO) remains the exclusive agent of the Government with authority to enter into, and administer contracts. As the COR, you must keep the LCO fully informed of the lessor's compliance with the terms and conditions of the lease and as problems arise work collaboratively to develop solutions to immediately resolve problems.
3. The COR may not enter into, modify the lease contract, or otherwise perform duties reserved for a warranted official. As a COR/COTR you shall not make or agree to any action that commits the Government in matters which would change contract price, quantity, quality, delivery schedule or other terms or conditions of the contract. As the COR you may not further designate the above responsibilities nor re-delegate your authority to any other person.
4. As the COR you are granted administrative rights to eLease which contains a complete copy of the lease contract file. As the COR, you are to ensure that all subsequent lease amendments and official correspondence are entered into eLease for retention in the lease contract file.
5. The LCO will provide the lessor with a copy of this letter that authorizes you to perform the duties as outlined in this letter.

Attachment 1: Contracting Officer's Representative Designation Letter

6. Your designation shall remain in effect until termination of the lease contract, rescinded by the Lease Contracting Officer, or terminated under the GSA COR/COTR Certification Program by the Regional Procurement Office.

Attachment

As a COR/COTR, you must:

- Know and act within the limits of this written designation and use reasonable care in performing designated duties.
- Conduct duties in a professional and ethical manner.
- Discuss areas of responsibilities with the Lease Contracting Officer (LCO), to gain an understanding of the administrative procedures required for the daily management of leased space, including building maintenance and operating matters related to the lease contract and janitorial and cleaning services, overtime utilities, and contracts to maintain agency installed equipment.
- Perform timely and reasonable monitoring of lease contract performance, particularly in the technical area of sustainability, recycling, and energy consumption and discuss these matters with subject matter experts.
- Coordinate inspection and acceptance services that the lessor is obligated to provide under the lease contract.
- Maintain confidentiality of sensitive information; safeguard the lessor and his contractor's confidential business and technical information in accordance with the Privacy Act and FAR Part 3.
- Avoid improper business practices and personal conflicts of interest. Avoid any action or the appearance of any action that may lead to an ethical violation or conflict-of-interest position or compromise GSA's position with industry and congressional officials or the public.
- Provide timely and effective communication with the LCO on the status of contract administration.
- Ensure timely and proper inspection, rejection or acceptance, and reporting of services that the lessor is obligated to perform under the lease contract and through subsequent lease amendments, subject to the limitations of your authority.
- Inspect contract services delivered, if designated to do so in the lease contract documents; determine if delivery is in agreement with the lease contract requirements and the periodic schedule; and recommend to the LCO acceptance or rejection of pre-award or postaward submittals and services.
- Read, understand, and monitor compliance with the terms and conditions of the lease contract, particularly with those contract terms and conditions that fall within the area of your responsibility, such as completion dates, renewal option or lease expiration dates, energy consumption, and reports or data submission dates.
- Be aware of the need to protect the Government's interests.
- Maintain an impartial, arms-length relationship with the lessor and his contractors.
- Create and maintain a file to document telephone conversations or other verbal communications with the lessor; maintain other records of the lessor's performance, such as inspection and progress reports, site visits, and service reports.

Attachment 1: Contracting Officer's Representative Designation Letter

As a COR/COTR you do not have the authority to:

- Execute, award, agree to, or sign any contracts for services or lease amendments.
- Violate internal controls requiring separation of duties, such as obligating the payment of funds.
- Cause the lessor financial harm, such as to incur costs not otherwise covered by the contract with the expectation that through the ratification process, the government would reimburse such costs.
- Make or infer, by action or inaction, legal interpretations on the scope, scheduled delivery, or intent of the contract that if viewed could imply a change to the lease contract resulting in a claim or commitment or otherwise obligate the Government.
- Offer advice to the lessor or his contractor that may be construed as instructions which could adversely affect performance, compromise the rights of the Government, provide the basis of a claim for additional compensation, release the contractor from its obligations under the contract, or affect any pending or future Lease Contracting Officer (LCO) determination as to fault or negligence.
- Make assertions to the lessor regarding contractual remedies available to the government without prior consultation with the LCO.
- Demand that the lessor perform any task or make changes to, grant deviations from, or waive any of the terms and conditions of the contract.
- With the exception of real estate tax and operating cost escalations, increase the rental consideration of the contract, authorize work beyond the dollar limit of the contract, or authorize the expenditure of funds.
- Give any direction, to the lessor or to the employees of the lessor except as provided for in the contract.
- Authorize/approve the furnishing of Government property or expenditure of funds for the purchase of equipment, except as required under the contract.
- Approve/disapprove the use of overtime.
- Approve/disapprove any substitution not specifically provided for in the contract.
- Resolve or make decisions concerning any claims or disputes concerning a question of fact or law.
- Suspend construction or A-E work, except in the event of unsafe acts and conditions that are likely to result in accident or injury. Note: suspensions in work could subject the Government to a claim for equitable adjustment under FAR for delay or interruption.
- Issue stop work instructions to the lessor. Note: Submit in writing to the LCO any recommendation to discontinue service contracts that are part of the rental consideration.
- Interfere with the lessor's performance by "supervising" the lessor's service contract employees or otherwise directing their work efforts.
- Allow the improper use of government property.
- Receive or accept goods and services not expressly required by the contract.
- With the exception of issuing cure letters or sending general correspondence related to the daily maintenance and operation of the leased space, issue any final decision letters or correspondence proposing to reduce the rental consideration for the value of the contract requirements not performed.

Technical Liaison and Monitoring

- Maintain liaison and direct communications with the lessor, the Lease Contracting Officer (LCO), and affected stakeholders, particularly for early release of space by the occupying agency prior to the expiration of the lease term.
- Determine whether the qualifications of key personnel performing under the lease contract are consistent with the qualification requirements agreed to in the lease contract, if applicable.
- In accordance with GSA's procedures, coordinate and validate lessor's staff meet the requirements of Homeland Security Presidential Directive (HSPD) 12, Background Investigations in Leased Space. Ensure lessor's personnel working in leased space wear identification at all times which visibly identifies them as contract employees.
- Record and report to the LCO continued deficiencies, performance delays, unsatisfactory performance, or other problems needing corrective action. In addition, advise the LCO of any potential disputes, problem areas, or disagreements that could lead to a claim.
- Review progress reports to determine if there are technical requirements or key deliverables that affect the processing of rental payments or acceptance of invoices for overtime services or minor alterations.
- Advise the LCO of any unusual problems or ownership changes that would affect the existing lease contract.
- Inspect contract services delivered, if designated to do so in the lease contract documents; determine compliance with the lease contract requirements; and recommend to the LCO acceptance or rejection of pre-award submittals (as requested) or postaward lease contract services.
- Ensure the performance of all required periodic services according to the lease contract. Document any deficiencies or failure in performance and work closely with both the Lessor and LCO to correct deficiencies. If the lessor requires additional time, the lessor must submit a formal request for a time extension to the LCO through you. You should indicate your concurrence, or state the reasons why you do not concur, and forward the request to the LCO for finalization. Assure prompt review of all reports and/or submittals and provide approval/disapproval and comments to the contractor through the LCO.
- Furnish the LCO a copy of all client agency requests for proposed contract changes, such as minor alterations, that affect the rental consideration, contract services, or lessor's obligation under the existing contract. Provide technical recommendations, including assessments of the specific impact on the lease contract, and independent government estimates to determine a fair and reasonable price. Upon request of the LCO, assist in negotiating changes, claims, rental adjustments.

Inspection and Acceptance

- Perform inspections and acceptance of lease contract services or alterations, oversight of lessor performance, and verification of corrected deficiencies for lessor services. This process includes certifying receipt of services for payment purposes. Ensure the process meets the lease contract provisions and is performed within the stated period of performance.

Invoices, Payment and Financial

- Review lessor invoices, progress payment requests, and other requests for overtime and alteration payments, to ensure receipt of services, and recommend payment amount to the

Attachment 1: Contracting Officer's Representative Designation Letter

warranted official. If amount approved for payment is less than invoiced amount, provide basis to the warranted official.



Attachment 2: Sample Letter Requesting Periodic Services Schedule

(DATE)

LESSOR
ADDRESS
CITY, STATE, ZIP

Dear _____:

The General Services Administration's (GSA's) client agency recently occupied space at (building and address, city, state, zip) which is being leased under the terms and provisions of Lease (GS-xxx-xxxxx). The lease requires that you submit several items within a certain time after occupancy. The pertinent paragraphs in the lease are as follows:

1. Paragraph _____, Schedule of Periodic Services, requires you to submit within 60 days after occupancy by the Government a detailed written schedule of all periodic services and maintenance to be performed other than daily, weekly, or monthly. Please send this schedule no later than _____.
2. Paragraph _____, Floor Plans After Occupancy, and Paragraph _____, CAD As-Built Floor Plans, require you to submit Mylar as-built floor plans and their CAD files within _____ days after occupancy. Please send these items no later than _____.

Please send these items to:

If you have any questions, please contact _____ at (AC) (Phone) or via email at _____.

Sincerely,

XXXXXXXXXXXXXXXXX
Lease Contracting Officer
Public Buildings Service (XX)



Attachment 3: Lease Status Report

Re: Lease No. _____
Address: _____
Date: _____

Dear Sir or Madam:

The undersigned, a Contracting Officer of the United States of America, hereby confirms and represents, to the best of (his/her) knowledge and belief, the following as of January __, 2001:

1. The above referenced lease, dated _____, between the United States of America, by and through its agent, the General Services Administration (the "Lessee") and XXXXXX, (the "Lessor"), as modified by the following Supplemental Lease Agreements ("SLA")

SLA #1, dated _____
SLA #2, dated _____
SLA #3, dated _____

(collectively, the "Lease") constitutes the entire agreement between the Lessor and the Lessee with respect to the leased Premises (hereafter defined), is in full force and effect, and has not been modified, supplemented, canceled, or amended as otherwise stated above.

2. The Lessee occupies approximately _____ rentable square feet (rsf) of space located on the ____ floor (the "leased Premises").
3. The term of the Lease commenced on _____ and will expire on _____.
4. Neither the Lessee nor the Lessor is in default in the performance of any of the terms, covenants, or conditions of the lease except _____.
5. The current monthly rent paid in arrears by Lessee under the Lease is \$____.
6. No payments under the Lease have been paid in advance or will be paid in advance. Lessee has no right to any free rent, rent abatement, rent credit, or other rent concession except _____.
7. The undersigned is authorized to execute this letter on behalf of the Lessee.

The statements in this letter are based solely upon a reasonably diligent review of the Contracting Officer's lease file as of the date of issuance. An inspection of the Premises has not been conducted for the purpose of this letter, nor has the tenant agency been contacted concerning the Lessor's performance under the Lease. The Lessor and each



prospective lender and purchaser are deemed to have constructive notice of such facts as would be ascertainable by reasonable prepurchase and precommitment inspection of the Premises and Building, and by inquiry to appropriate Federal, State, and local Government officials. This document shall not be construed as a waiver of any rights, benefits, or interests the Government has under the above-referenced Lease.

Sincerely,

By:

Contracting Officer

UNITED STATES OF AMERICA

Attachment 4: Subordination, Nondisturbance and Attornment Agreement

SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT ("Agreement") is made and entered into as of the _____ day of _____, 20____, by and between XYZ Corp. (Landlord), ABC Bank, that has executed the Agreement below as lender ("Lender"), and THE UNITED STATES OF AMERICA acting by and through the General Services Administration ("Lessee");

WITNESSETH:

WHEREAS, Lender intends to fund a commercial mortgage loan (the "loan") to the Landlord secured by a mortgage or deed of trust (the "Mortgage") on the land described on Exhibit "A" together with present or future improvements (the "Real Property"); and

WHEREAS, the Landlord has demised to the Lessee a leasehold interest under that certain U.S. Government Lease for Real Property (Lease No. GS-11B-) dated as of Month DD, YYYY (together with all amendments, options, extensions, and renewals; the "Lease"); and

WHEREAS, as a condition of the Loan's funding, Landlord will assign its interest in the Lease to Lender as part of Lender's security; and

WHEREAS, Lessee desires to enter into this Agreement in order to benefit from the promises by Lender that are set forth in this Agreement;

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants herein contained, the parties agree as follows:

1. **Subordination.** In accordance with Paragraph ____ of the General Clauses of the Lease, Subordination, Nondisturbance and Attornment, (48 C.F.R. 552.270-23), the Lessee acknowledges that the lease is subordinate to the lien of Lender on the Real Property; the Lender likewise acknowledges that such subordination shall not operate to affect adversely any right of the Government under the Lease.
2. **Attornment.** If the Lender forecloses the Loan or acquires title to the Real Property by deed in lieu of foreclosure, or in any other manner succeeds to the interest of the Lessor under the Lease, or if the Lender shall take possession of the Leased Premises, the Lessee shall attorn to the Lender as its Landlord under all of the terms, covenants, and conditions of the Lease for the balance of the term thereof remaining and any extensions thereof which may be effected in accordance with any option therefore as set forth in the Lease, with the same force and effect as if the Lender were the Lessor under the Lease. Such attornment shall be effective and self-operative immediately upon the Lender's succeeding to the interest of the Lessor, whereupon the Lessee shall recognize the Lender, or any person claiming by through or under the Lender (immediate or remote), as the lessor under the Lease without the execution of any further instruments on the part of any of the parties hereto. The Lease shall at all times continue in full force and effect,



and the respective rights and obligations of the Lessee and the Lender upon such attornment shall be governed by the Lease. However, the Lessee agrees to execute, acknowledge, and or deliver to Lender any certificate or other instrument that Lender reasonably requests to confirm such attornment. Likewise, the Lender agrees to execute a Novation Agreement in the form required by FAR Part 42.12.

3. *Nondisturbance.* So long as no default by the Lessee has occurred and is continuing, which default under the terms of the Lease would give the Landlord (or the Lender as successor in interest to the Lease) the right to terminate the lease, Lender will not disturb the Lessee’s quiet enjoyment or possession of the demised premises.
4. *Assignment of Rental Stream.* In accordance with Paragraph of the General Clauses of the Lease , Assignment of Claims, (48 C.F.R. 52.232-23) the Lessor may assign its rights to be paid to the Lender. Following such assignment, to be made in accordance with the Assignment of Claims Act, as amended, 31 USC 3727, and following the execution of a Supplemental Lease Agreement changing the named Payee in the Lease, the Lessee shall pay all rent and all additional rent to the Lender. Such assignment shall not be deemed to (a) cause the Lender to succeed to or to assume any obligations or responsibilities as the landlord under the Lease, all of which shall continue to be performed and discharged solely by the Landlord, or (b) relieve Landlord of any obligations under the Lease. Lessee’s compliance with the assignment of rent shall not be deemed to violate the Lease, and Landlord hereby agrees that Lessee shall be entitled to full credit under the Lease for any Rent paid to Lender under an assignment of claims to the same extent as if such Rent were paid directly to the Landlord. Landlord shall look solely to the Lender with respect to any claims Landlord may have on account of an incorrect or wrongful assignment of claims payment.
5. *Advanced payments.* No prepayment of rent or additional rent due under the Lease shall be made by the Lessee to any party.
6. *Modification; Waiver; Successors and Assigns.* No provision of this Agreement may be modified, waived or terminated except in accordance with a written instrument executed by the party against whom enforcement of such modification, waiver, or termination is sought. This Agreement shall be binding on, and shall inure to the benefit of, the parties’ successors and assigns.

IN WITNESS WHEREOF, each of the undersigned have caused its duly authorized representative to execute this Subordination, Nondisturbance, and Attornment, Agreement as of the date first written above.

LANDLORD: The XYZ Limited Partnership

By: _____
Name

Title

LESSEE:

The United States of America By and Through



Attachment 4: Subordination, Nondisturbance and Attornment Agreement

The General Services Administration

By: _____
Name

Title

LENDER: ABC Bank, Inc.

By: _____
Name

Title

Attachment 5: Notice of Procedures for Assignment and Assumption of Lease

Date:

Name of Current Lessor
Address
City, State Zip Code

Re: Notice of Procedure for Assignment and Assumption of Lease
Lease No. [Lease Number]
Address of Leased Premises
City, State Zip Code

Dear [name of Current Lessor]:

The above referenced property includes space leased by the United States. It is my understanding that you wish to transfer your interest, or may have already transferred your interest, in the above lease to a third party (Transferee). Section 6305 of Title 41 of the United States Code generally prohibits the transfer of federal contracts from the contractor to a third party. However, the Federal Acquisition Regulation (FAR), subpart 42.12, Novation and Change of Name Agreements, allows such a transfer when it is in the best interests of the Government to recognize a third party as successor in interest. GSA has established procedures to process such requests in a timely manner.

Attached for your convenience are the following documents:

1. Novation Agreement. This three-party agreement is entered into pursuant to section 2.6 of the lease, "Change of Ownership," as well as 41 U.S.C. § 6305 and is otherwise based on 48 C.F.R. § 42.1204. Three executed copies must be returned to GSA for agency review.
2. Novation checklist. This checklist must be returned to the LCO along with all requested documents. To the extent documents are not provided, a detailed statement explaining the absence of any document must be included.

SAM Registration. The Transferee must register for purposes of "All Awards" in the System for Award Management (SAM). [Please note that you must have a DUNS number before registering in SAM. You may obtain a DUNS number (i) via the Internet at <http://fedgov.dnb.com/webform> or if you do not have internet access, you may call Dun and Bradstreet at 1-866-705-5711 if located within the United States; or (ii) If located outside the United States, by contacting the local Dun and Bradstreet office.] In addition to registering in SAM, the transferee must complete the online representations and certifications in SAM. Proof of the transferee's registration in SAM must be included in the novation package.



The Government will commence its review of the proposed novation when all the necessary documents have been properly executed and returned to the Government. Until that time, the Government will continue to send all rental payments to the current lessor in accordance with the terms and conditions of the lease. If you have any questions, please contact me at [insert phone LCO/LS phone number] or [insert LS/LCO email address].

Sincerely,

[signature of Lease Contracting Officer or Lease Specialist]

Enclosures

1. Proposed Novation Agreement
2. Novation Checklist

Attachment 6: Novation Agreement

NOVATION AGREEMENT

The ABC Corporation (Transferor), a corporation duly organized and existing under the laws of _____ [insert State] with its principal office in _____ [insert city]; the XYZ Corporation (Transferee), [if appropriate add "formerly known as the EFG Corporation"] a corporation duly organized and existing under the laws of _____ [insert State] with its principal office in _____ [insert city]; and the United States of America (Government) enter into this Agreement as of _____ [insert the date transfer of assets became effective under applicable State law].

(a) The parties agree to the following facts:

(1) The Government, represented by various Contracting Officers of the _____ [insert name(s) of agency(ies)], has entered into that certain lease with the Transferor, namely: _____ [insert lease number]. The term "Lease," as used in this Agreement, means the above described lease, including all modifications, made between the Government and the Transferor or its predecessor before the effective date of this Agreement (whether or not performance and payment have been completed and releases executed if the Government or the Transferor has any remaining rights, duties, or obligations under the Lease). Included in the term "Lease" are also all modifications made under the terms and conditions of the Lease between the Government and the Transferee, on or after the effective date of this Agreement.

(2) As of _____, 20____, the Transferor has transferred to the Transferee all the assets of the Transferor involved in performing its obligations under the Lease by virtue of a _____ [insert term descriptive of the legal transaction involved—for example, "a grant deed to the Property"] between the Transferor and the Transferee.

(3) The Transferee has acquired all the assets of the Transferor involved in performing the Lease by virtue of the above transfer.

(4) The Transferee has assumed all obligations and liabilities of the Transferor under the Lease by virtue of the above transfer.

(5) The Transferee is in a position to fully perform all obligations that may exist under the Lease.

(6) It is consistent with the Government's interest to recognize the Transferee as the successor party to the Lease.

(7) Evidence of the above transfer has been filed with the Government.

(8) Transferor and Transferee represent that the transfer has been properly effected and agree that the Government may rely on this representation.

(9) Transferee will abide by Clause 52.209-6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment, contained within the Lease.

(b) In consideration of these facts, the parties agree that by this Agreement—

(1) The Transferor confirms the transfer to the Transferee, and waives any claims and rights against the Government that it now has or may have in the future in connection with the Lease.

(2) The Transferee agrees to be bound by and to perform the Lease in accordance with the conditions contained in the Lease. The Transferee also assumes all obligations and liabilities of, and all claims against, the Transferor under the Lease as if the Transferee were the original party to the Lease.

(3) The Transferee is bound by all previous actions taken by the Transferor with respect to the Lease, with the same force and effect as if the action had been taken by the Transferee.

(4) The Government recognizes the Transferee as the Transferor's successor in interest in and to the Lease. The Transferee by this Agreement becomes entitled to all rights, titles, and interests of the Transferor in and to the Lease as if the Transferee were the original party to the Lease. Following the effective date of this Agreement, the term "Lessor," as used in the Lease, shall refer to the Transferee.

(5) Except as expressly provided in this Agreement, nothing in it shall be construed as a waiver of any rights of the Government against the Transferor.

(6) All payments and reimbursements previously made by the Government to the Transferor, and all other previous actions taken by the Government under the Lease, shall be considered to have discharged those parts of the Government's obligations under the contracts. All payments and reimbursements made by the Government after the date of this Agreement in the name of or to the Transferor shall have the same force and effect as if made to the Transferee, and shall constitute a complete discharge of the Government's obligations under the Lease, to the extent of the amounts paid or reimbursed.

(7) The Transferor and the Transferee agree that the Government is not obligated to pay or reimburse either of them for, or otherwise give effect to, any costs, taxes, or other expenses, or any related increases, directly or indirectly



arising out of or resulting from the transfer or this Agreement, other than those that the Government in the absence of this transfer or Agreement would have been obligated to pay or reimburse under the terms of the Lease.

(8) The Transferor guarantees payment of all liabilities and the performance of all obligations that the Transferee—

(i) Assumes under this Agreement; or

(ii) May undertake in the future should these contracts be modified under their terms and conditions. The

Transferor waives notice of, and consents to, any such future modifications.

(9) The Lease shall remain in full force and effect, except as modified by this Agreement. Each party has executed this Agreement as of the day and year first above written.

UNITED STATES OF AMERICA,

By _____

Title _____

ABC CORPORATION,

By _____

Title _____

[Corporate Seal]

XYZ CORPORATION,

By _____

Title _____

[Corporate Seal]

CERTIFICATE

I, _____, certify that I am the Secretary of ABC Corporation, that _____, who signed this Agreement for this corporation, was then _____ of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers. Witness my hand and the seal of this corporation this day of _____ 20__.

By _____

[Corporate Seal]

CERTIFICATE

I, _____, certify that I am the Secretary of XYZ Corporation, that _____, who signed this Agreement for this corporation, was then _____ of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers. Witness my hand and the seal of this corporation this day of _____ 20__.

By _____

[Corporate Seal]



Attachment 7: Novation Checklist

NOVATION CHECKLIST This checklist must be returned to the Administrative Lease Contracting Officer (ALCO).		Lease No.:	Address of Premises:		
DESCRIPTION OF ITEM	TO BE FILLED OUT BY TRANSFEREE CHECK IF ENCLOSED	TO BE FILLED OUT BY TRANSFEREE REMARKS	TO BE FILLED OUT BY ALCO CHECK IF ENCLOSED	TO BE FILLED OUT BY ALCO REMARKS	
1. Three signed copies of the proposed novation agreement. (See Attachment ____). <i>Note:</i> The novation agreement must be signed an official authorized to act on behalf of the transferor and transferee. Transferor and transferee must provide evidence of the signatories authority to bind the entity.					
2. The document describing the proposed transaction. This could include the purchase/sale agreement, asset purchase agreement or a recorded deed. The effective date of the transfer from the recorded transaction document should be reflected in the novation agreement, paragraph (a)(2).					
3. If the transferor holds multiple leases, a list of all affected leases or contracts between the existing lessor and the government, as of the date of sale or transfer of assets, showing: the lease number and type, name and address of contracting office, total dollar value, as amended, and approximate remaining contract balance, including remaining lease term. <i>Note:</i> If transferor holds multiple leases that are being transferred to the same transferee, one novation agreement may be signed for all affected leases. However, separate lease amendments for each affected lease must be executed.					
4. Evidence of the transferee's eligibility and financial capability to perform. This includes balance sheets of the transferee, dated immediately before and after the transfer of assets. If available, an independent auditor report should be included.					
5. Statement that transferee has registered for "All Awards" in the System for Award Management (SAM) in addition to completing all required representations and certifications within SAM.					
6. If Transferee is a Corporation include: a. Copy of the Transferee's articles of incorporation and bylaws. b. Copy of resolution signed by all the necessary directors of the corporation authorizing the corporate officer who will sign the Novation Agreement to bind the corporation to the Lease. c. Incumbency certificate signed by the Secretary of the Corporation. If the corporation was formed for a purpose of other than to receive the transferor's assets, include a statement to that effect.					
7. If Transferee is a Partnership include: a. Copy of the Partnership Agreement, Statement of Partnership, or Statement of Limited Partnership.					

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<p>b. Evidence of authority of signatory to bind the partnership if not expressly authorized by the previous item.</p> <p>c. If signing partner is a partnership or corporation, submit all items required above for each partnership or corporate layer.</p> <p>If the partnership was formed for a purpose of other than to receive the transferor's assets, include a statement to that effect.</p>				
<p>8. If Transferee is a Limited Liability Company include:</p> <p>a. Copy of Articles of Organization and Operating Agreement</p> <p>b. Evidence of the authority of the signing manager (if company is manager-managed) or member (if the company is member-managed) to sign, if not expressly authorized by the previous item.</p> <p>c. If the signing manager or member is itself another business entity, submit all items required herein for each such partnership, corporate, limited liability company or other business entity layer.</p> <p>If the limited liability company was formed for a purpose of other than to receive the transferor's assets, include a statement to that effect.</p>				
<p>The ALCO may also require one copy of the documents listed below.</p>				
<p>9. A certified copy of Board resolutions (for both the transferor and transferee) authorizing the transfer of the assets.</p> <p><i>Note: If either the transferor or transferee do not have a Board of Directors, include a statement to that effect and confirm in the Articles of Incorporation that the company elected not to have a Board of Directors.</i></p>				
<p>10. A certified copy of stockholder Meeting Minutes (for both transferor and transferee) approving the transfer of assets, as applicable.</p>				
<p>11. Consent of sureties if bonds are used.</p>				
<p>12. Evidence that any security clearances will be met. If high level security clearances are required as part of the lease, or by the customer agency, the security clearance requirements must be met before the novation process is complete.</p>				
<p>13. Additional information:</p>				
<p style="text-align: center;">NOTICE</p> <p>If all documents as specified above are not submitted, a detailed statement explaining absence of documents must be submitted. Transferor/Transferee are hereby notified that the failure to submit all necessary documents will delay review of proposed transfer.</p>				

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Attachment 8: Responsibility Determination Results Memorandum to Lease File

RESPONSIBILITY DETERMINATION RESULTS MEMORANDUM TO LEASE FILE

I, _____ (insert ALCO name), the Administrative Lease Contracting Officer for Lease No. _____ (fill in Lease No.) have completed a responsibility determination for the proposed transferee _____ (insert transferee name) for the above referenced Lease. In making my determination, I reviewed and/or completed the following:

- (1) The financial resources of the transferee and their ability to financially perform the terms of the Lease;
- (2) Any existing past performance issues related to the transferee;
- (3) System for Award Management (SAM) data for any exclusion record associated with transferee;
- (4) Department of Treasury’s list of Specially Designated Nationals (SDNs); and
- (5) Any other factor that might impair the transferee’s ability to successfully perform under the Lease.
- (6) Discussed the Change of Ownership with the contract Lease Contracting Officer

Based upon my review of the information obtained about transferee, I find as follows:

- (1) Is the transferee fiscally capable of assuming the lease? ___ Yes ___ No

If no, why not?

- (2) Is the transferee capable of performing under the lease? ___ Yes ___ No

If no, why not?

- (3) Is there an exclusion record associated with the transferee? ___ Yes ___ No



Attachment 8: Responsibility Determination Results Memorandum to Lease File

If yes, explain:

(4) Is the transferee on the Department of Treasury’s list of Specially Designated Nationals (SDNs)? ___ Yes ___ No

If yes, explain:

(5) Is the novation otherwise in the government’s best interest? ___ Yes ___ No

If no, why not?

(6) Have you discussed the Novation with the Lease Contracting Officer? ___ Yes ___ No

If **yes**, provide a memorandum to file regarding the discussion or an e-mail chain of the discussion. If **no**, please do so and attach a memorandum to file regarding the discussion or an e-mail chain of the discussion. The novation will not be approved by legal until such proof is provided.

Based upon my review of the information obtained about transferee, I recommend that:

	I recommend approval of the novation agreement.
	I do not recommend approval of the novation agreement.

Comments:



In the event approval is not recommended, please provide information to the Office of General Counsel for discussion before notifying the transferee.

I have ____/have not ____ informed transferee of my findings.

Signature of

ALCO: _____ Date: _____

Attach all relevant documents used in making responsibility determination



Attachment 9: Request for Review of Novation Agreement

Request for Review of Novation Agreement

LCO should forward the complete Novation package to Regional Counsel. A complete package includes all documents requested in the Novation Checklist, the LCO's Responsibility Determination and a draft Lease Amendment.

Lease No.: _____

Address: _____

Lease Contracting Officer

Phone No.: _____

Leasing Specialist:

Phone No.: _____

Expiration Date of Lease: _____

Square Footage of Lease: _____ (RSF) _____ (ABOA)

Are There Other GSA Leases in the Building(s)? _____

If Yes, Lease No.(s): _____

PREVIOUS LEGAL ASSISTANCE/REVIEW

If an attorney has previously reviewed this novation request or other issues related to this Lease, please identify the attorney:

CHECKLIST OF DOCUMENTS NEEDED TO REVIEW CHANGE OF OWNERSHIP (Please initial in box to indicate document is included in package.)

	Novation Agreement completed and executed by the transferor and transferee
	All documents requested in the Novation Checklist



	Draft Lease Amendment
	LCO's Responsibility Determination (including all relevant documents)

Comments:



Attachment 10: Assignment of Claims

ASSIGNMENT OF CLAIMS

[US GOVERNMENT CONTRACT]

KNOW ALL PEOPLE BY THESE PRESENTS:

That Name of Company (the "Borrower"), a State and legal title of company, having its principal place of business at Location, City, State, Zip Code, in consideration of financial accommodations provided, and pursuant to the provisions of the Assignment of Claims Act of 1940, 31 U.S.C. § 3727, and the Anti-Assignment Act, 41 U.S.C. § 6305 does hereby assign, set over, transfer and convey to Name of Lending Institution ("Lender"), all of its rights, title and interest which it had, now has or may have in and to the moneys due or to become due from the UNITED STATES OF AMERICA, acting by and through the United States General Services Administration ("Government") under that certain Lease Agreement known as lease number GS-XXB-XXXXX (the "Lease Contract"), pursuant to which Name of Company has leased certain office and related space in the office building to be located on location name, address, city, state, zip code of leased premises to the Government.

A true copy of the instrument of assignment executed on Date, is attached hereto.

IN WITNESS WHEREOF, Name of Company has caused these presents to be signed by Name of Owner or Legal Representative, Title.

Name of Company

By: Signature of Owner or Legal Representative

Title

[Notary}