

Legislation Text

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Authorizing the Commissioner of Public Property, on behalf of The City of Philadelphia, to amend an existing sublease agreement between the Philadelphia Municipal Authority as landlord and The City of Philadelphia as tenant, for use of certain office space located at 1327-39 Chestnut Street, under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. The Commissioner of Public Property, on behalf of The City of Philadelphia, is hereby authorized to amend its sublease agreement with the Philadelphia Municipal Authority as landlord and The City of Philadelphia as tenant for office space occupied by the District Attorney's Office at 1327-39 Chestnut Street to increase the size of the demised premises by 24,000 rentable square feet.

SECTION 2. The sublease amendment shall be substantially in the form set forth in Exhibit "1" attached hereto with such changes as the City Solicitor deems necessary or appropriate to protect the interests of the City.

EXHIBIT "1" (to Ordinance)

FIRST AMENDMENT TO SUBLEASE

THIS FIRST AMENDMENT TO SUBLEASE (this "**Amendment**") dated the ___ day of August, 2010, between THE PHILADELPHIA MUNICIPAL AUTHORITY, a municipal authority organized under the Pennsylvania Municipal Authorities Act of 1945 (hereinafter referred to as the "**Authority**") and the CITY OF PHILADELPHIA, a body politic and corporate organized under the laws of the Commonwealth of Pennsylvania, acting through its Department of Public Property (the "**City**").

Background

A. The Authority, as tenant, entered into a lease dated August 1, 2005 (the "**Master Lease**") with Chestnut Street Realty Limited Partnership and Widener Partners, L.P., for approximately one hundred seventy six thousand one hundred and fourteen (176,114) rentable square feet in the Widener Building, also known as 1327-39 Chestnut Street, Philadelphia, Pennsylvania (the "**Premises**").

B. On July 1, 2005, the Authority and the City entered into a Sublease (the "**Sublease**"), pursuant to which the Authority subleased to City, and City subleased from Authority the Premises.

C. The Master Lease has been amended by the First Amendment to Lease, dated August 13, 2010, to add additional space to the Premises and, following enactment of an ordinance of City Council authorizing the Commissioner of Public Property to enter into a long term Sublease for the additional space and to extend the term of the Sublease, to extend the Term of the Master Lease (the "**First Amendment to Lease**"). A copy of the First Amendment to Lease is attached hereto as **Exhibit "A."**

D. The Authority and the City now desire to amend the Sublease as set forth herein.

NOW THEREFORE, in consideration of the covenants and conditions hereinafter contained, and intending to be legally bound hereby, the parties hereto hereby agree as follows:

1. Background Incorporated; Defined Terms. The Background section above is hereby incorporated herein by reference. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Sublease.
2. Amendment of Sublease. The Sublease is hereby amended in all respects necessary to reflect the amendment of the Master Lease pursuant to the First Amendment to Lease.
3. Ratification. Except as expressly amended hereby, the Sublease shall remain in full force and effect in accordance with its terms and is hereby ratified and confirmed.
4. Counterparts. This Amendment may be executed in one or more counterparts, each of which counterpart shall be deemed an original, as against any party whose signature appears thereon, but all of which taken together shall constitute but one in the same Amendment.

IN WITNESS WHEREOF the Authority and the City have executed this Amendment on the respective dates set forth below, to be effective as of the day and year first above written.

**THE PHILADELPHIA MUNICIPAL
AUTHORITY**

By: _____
Name:
Title:

Approved as to form:
Shelley R. Smith, City Solicitor

CITY OF PHILADELPHIA, through
its Department of Public Property

Per: _____
Deputy City Solicitor

By: _____
Joan Schlotterbeck
Commissioner

EXHIBIT "A" (to Sublease)

FIRST AMENDMENT TO LEASE

THIS FIRST AMENDMENT TO LEASE (hereinafter referred to as this "Amendment") made as of the ___ day of August, 2010, between **CHESTNUT STREET REALTY LIMITED PARTNERSHIP**, a

Pennsylvania limited partnership, and **WIDENER PARTNER, L.P.**, a Pennsylvania limited partnership, each having an office at 1481 47th Street, Brooklyn, New York 11219 (hereinafter collectively referred to as "Landlord"), and **PHILADELPHIA MUNICIPAL AUTHORITY**, an authority organized and existing under the Commonwealth of Pennsylvania upon the following terms and conditions (hereinafter referred to as "Tenant"), Landlord and Tenant are sometimes referred to individually as a "Party" and collectively, as "Parties").

WITNESSETH:

WHEREAS, Landlord and Tenant entered into a written lease dated the 1st day of August, 2005 (hereinafter referred to as the "Lease") for a portion of the Building known as 1327-39 Chestnut Street, Philadelphia, Pennsylvania (the "Building");

WHEREAS, Tenant subleases the Premises to the City of Philadelphia (the "City");

WHEREAS, Tenant desires to lease from Landlord and Landlord desires to lease to Tenant, the third (3rd) floor of the Building;

WHEREAS, the Term of the Lease expires on January 31, 2021 and Landlord and Tenant desire to extend the Term to January 31, 2026;

WHEREAS, concurrently with the execution of this Amendment, Tenant and City shall execute an amendment to the Sublease;

WHEREAS, as specified herein, certain provisions of this Amendment shall be conditioned upon enactment of an ordinance of the City Council of the City of Philadelphia ("City Council") authorizing the City to amend the Sublease to add additional space to the Premises and to extend the Term of the Sublease;

NOW, THEREFORE, in consideration of the mutual covenants herein contain, Owner and Tenant hereby agree, as follows:

1. Capitalized Terms: For the purposes of this Amendment, capitalized terms shall have the meaning ascribed to them in the Lease, unless otherwise defined herein;

2. Additional Premises:

A. Section 1.02 of the Lease is hereby amended to add the third (3rd) floor of the Building (the "Additional Premises") to the Premises as of the date Landlord tenders the Additional Premises to Tenant with Landlord's Additional Premises Work (exclusive of the Item 7 Work, as hereinafter defined), as hereinafter defined, Substantially Completed (the "Additional Premises Commencement Date").

B. Section 1.03 of the Lease is hereby amended to increase the Rentable Area of the Premises by 24,000 rentable square feet, from 176,114 rentable square feet to 200,114 rentable square feet.

C. Landlord agrees, at Landlord's sole cost and expense, but subject to Paragraph 7 below, to use its commercially reasonable efforts to "Substantially Complete" all of the work

described in Exhibit A to this Amendment (“Landlord’s Additional Premises Work”), exclusive of the Item 7 Work described below, prior to August 28, 2010. "Substantially Completed" as used herein shall mean that the Landlord's Additional Premises Work shall be completed in compliance with Applicable Law, subject to minor defective items and minor incomplete items identified in a punch list created by Tenant after a walk through of the Additional Premises, and that Tenant will be able to use the Premises for the conduct of Tenants general office business without material interference. For the purposes of this Amendment, the term Item 7 Work shall mean the work listed on Exhibit A as Item 7- Upgrade Phone Systems And Data Infrastructure (the “Item 7 Work”).

- D. Subject to Paragraph 7 of this Amendment, upon no less than one hundred fifty (150) days prior written notice from Tenant to Landlord during Lease Years Eleven (11), Lease Year Twelve (12) or Lease Year Thirteen (13), Landlord shall make available to Tenant up to Four Dollars (\$4.00) per rentable square foot of the Additional Premises, in the aggregate amount of Ninety Six Thousand Dollars (\$96,000.00) for refurbishment, by Landlord, of the Additional Premises, including but not limited to repainting, re-carpeting or other modernization and/or upgrades (the “Refurbishment of Additional Premises”). Subject to Tenant’s reasonable prior written approval of the plans and specifications for the Refurbishment of Additional Premises, Landlord shall thereafter perform the Refurbishment of Additional Premises in a prompt and diligent manner, in accordance with Applicable Laws, and without unreasonably interfering with Tenant’s Permitted Use of the Premises and/or Additional Premises. Tenant shall reasonably cooperate with Landlord and its contractors in connection with performance of the Refurbishment of Additional Premises. If Landlord, in its reasonable judgment, cannot perform the Refurbishment of Additional Premises during normal business hours without interfering with Tenant’s business, Landlord may perform whatever portion of the Refurbishment of Additional Premises as required during other than normal business hours, the cost of which shall be deducted from the sums available to Tenant for the Refurbishment of Additional Premises. Also deductible from such available sums are any costs incurred by Landlord in moving Tenant’s furniture, furnishings and other personal property to accommodate the Refurbishing.
- E. Tenant acknowledges that Tenant has exercised option b in Section Article 8.02 C (2) of the Lease and Tenant acknowledges and agrees that electric and gas service to the Additional Premises will be measured by a submeter in the same manner as electric and gas service is measure in the current Premises.
- F. From and after the Additional Premises Commencement Date, Tenant shall pay to Landlord, in addition to the Base Rent provided for in Section 1.06 of the Lease, Base Rent for the Additional Premises (the “Additional Premises Base Rent’), at the time and in the manner provide for in Article 4.0 of the Lease; it being understood that Tenant shall pay Base Rent from the Additional Premises Commencement Date at the rate Tenant would have been paying Base Rent had the Additional Premises been a part of the Premises on the Commencement Date, as follows:

Period	Base Rent Per RSF	Annual Base Rent	Monthly Base Rent
Lease Year Five	\$18.25	\$438,000.00*	\$36,500.00*

Lease Year Six	\$18.75	\$450,000.00	\$37,500.00
Lease Year Seven	\$19.25	\$462,000.00	\$38,500.00
Lease Year Eight	\$19.75	\$474,000.00	\$39,500.00
Lease Year Nine	\$20.25	\$486,000.00	\$40,500.00
Lease Year Ten	\$20.75	\$498,000.00	\$41,500.00
Lease Year Eleven	\$21.25	\$510,000.00	\$42,500.00
Lease Year Twelve	\$21.75	\$522,000.00	\$43,500.00
Lease Year Thirteen	\$22.25	\$534,000.00	\$44,500.00
Lease Year Fourteen	\$22.75	\$546,000.00	\$45,500.00
Lease Year Fifteen	\$23.25	\$558,000.00	\$46,500.00
Lease Year Sixteen	\$24.00	\$576,000.00	\$48,000.00
Lease Year Seventeen	\$24.75	\$594,000.00	\$49,500.00
Lease Year Eighteen	\$25.50	\$612,000.00	\$51,000.00
Lease Year Nineteen	\$26.25	\$630,000.00	\$52,500.00
Lease Year Twenty	\$27.00	\$648,000.00	\$54,000.00

*Assuming a 9/1/10 Additional Premises Commencement Date, the Base Rent due for the period from 9/1/10 to 1/31/11 would be \$182,500.00.

G. From and after the Additional Premises Commencement Date, in addition to the Additional Rent provided for in Section 4.05, Tenant shall pay to Landlord Additional Rent for the increases in Property Taxes and Operating Expenses (the “Additional Premises Property and Operating Expenses Additional Rent”). For the purposes of calculating the Additional Premises Property and Operating Expenses Additional Rent the following shall apply:

(i) The Base Year shall mean the calendar year 2010; and

(ii) Tenant’s Percentage shall be 6.31%

3. Term: Subject to Paragraph 7 of this Amendment (i) Article 1.04 of the Lease is hereby amended to extend the Term for a period of five (5) years (the “Extended Term”), from January 31, 2021 to and including January 31, 2026 and (ii) Article 3.02 of the Lease is hereby amended to delete all references to a first Renewal Option.

4. Additional Term Rent: Subject to Paragraph 7 of this Amendment, Article 1.06 of the Lease is hereby amended, as of Additional Rent Commencement Date, to reduce the Base Rent for Lease Year Six through Lease Year Fifteen and to add the following Base Rents for Lease Year Sixteen through Lease Year Twenty, as follows:

Period	Base Rent Per RSF	Annual Base Rent	Monthly Base Rent
Lease Year Five	\$18.25	\$3,214,080.50*	\$267,840.04*
Lease Year Six	\$18.75	\$3,302,137.50	\$275,178.13
Lease Year Seven	\$19.25	\$3,390,194.50	\$282,516.21
Lease Year Eight	\$19.75	\$3,478,251.50	\$289,854.29
Lease Year Nine	\$20.25	\$3,566,308.50	\$297,192.38
Lease Year Ten	\$20.75	\$3,654,365.50	\$304,530.46
Lease Year Eleven	\$21.25	\$3,742,422.50	\$311,868.54

Lease Year Twelve	\$21.75	\$3,830,479.50	\$319,206.63
Lease Year Thirteen	\$22.25	\$3,918,536.50	\$326,544.71
Lease Year Fourteen	\$22.75	\$4,006,593.50	\$333,882.79
Lease Year Fifteen	\$23.25	\$4,094,650.50	\$341,220.88
Lease Year Sixteen	\$24.00	\$4,226,736.00	\$352,228.00
Lease Year Seventeen	\$24.75	\$4,358,821.50	\$363,235.13
Lease Year Eighteen	\$25.50	\$4,490,907.00	\$374,242.25
Lease Year Nineteen	\$26.25	\$4,622,992.50	\$385,249.38
Lease Year Twenty	\$27.00	\$4,755,078.00	\$396,256.50

*Assuming the Additional Premises Commencement Date is 9/1/10, the Base Rent due for the period from 9/1/10 to 1/31/11 would be \$1,339,200.21 instead of the \$1,364,883.50 currently provided for under the Lease

5. Intentionally Omitted:

6. Non-Applicable Provisions: The following provisions of the Lease shall not be applicable to the Additional Premises: Sections 1.06, 1.13, 1.15 through 1.21, 2.04, Article 6, Exhibit C, Exhibit D and Exhibit E. Any terms defined in the provisions listed in the preceding sentence shall continue to have the same meaning in this Amendment.

7. Ordinance of City Council: Unless an ordinance of the City Council of the City of Philadelphia ("City Council"), authorizing the Commissioner of Public Property to enter into an amendment to the Sublease adding the Additional Premises to the Sublease and extending the term of the Sublease as set forth herein, has been passed by City Council by March 31, 2011, then:

A. the Term of the Lease pertaining to the Additional Premises shall be deemed to be the one (1) year beginning on the Additional Premises Commencement Date and ending on the last day of the calendar month in which occurs the first anniversary of the Additional Premises Commencement Date, and Tenant shall have the right, in its sole discretion, to renew the Term of the Lease as amended, pertaining to the Additional Premises, on an annual basis, for consecutive one-year periods concurrent with the Term of the Lease, including any Renewal Terms exercised by Tenant, by giving Landlord not less than six (6) months prior written notice of Tenant's election to so; and

B. Tenant shall pay to Landlord the Additional Premises Base Rent as set forth in Paragraph 2(F) of this Amendment and the Additional Premises Property and Operating Expenses Additional Rent as set forth in Paragraph 2(G) of this Amendment; and

C. Tenant shall reimburse Landlord, no later than June 30, 2011, for the reasonable and documented costs expended by Landlord for Landlord's Additional Premises Work including, without limitation, the Item 7 Work; and

D. Paragraph 2(D), Paragraph 3, Paragraph 4, and Paragraph 5 of this Amendment shall have no force and effect, however, any differential between the Base Rent provided for in Paragraph 4 of this Amendment and the Base Rent provided for in the Lease, shall be paid by Tenant on or before June 30, 2011.

8. No Default: Tenant represents, warrants and covenants that Landlord has fully completed all of Landlord's Work as set forth in the Lease; that Landlord is not in default under any of its obligations under the Lease and; that to the best of Tenant's knowledge, Tenant is not in default of any of its obligations under the

