

ORIGINAL
STAMPED IN RED

ORDINANCE NO.: 2018-070

Authorizing the City Manager to execute a Lease between the City of Columbia and the State of South Carolina Department of Administration, Real Property Services for the lease of 2221 Devine Street

BE IT ORDAINED by the Mayor and City Council this 4th day of December, 2018, that the City Manager is authorized to execute the attached Lease between the City of Columbia and the State of South Carolina Department of Administration, Real Property Services for the lease of 2221 Devine Street.

Requested by:

Assistant City Manager Gentry

Mayor



Approved by:

Christa Wilson
City Manager

Approved as to form:

[Signature]
City Attorney

ATTEST:

[Signature]
City Clerk

Introduced: 11/20/2018
Final Reading: 12/4/2018

**EXHIBIT A
GOVERNMENTAL REAL ESTATE LEASE**

THIS LEASE AGREEMENT (the "Lease") is made as of the Executed Date (which is the date on which the Department of Administration, Real Property Services, executes this Lease as set forth on the signature page) by and between: the City of Columbia (the "Landlord") having an address at Post Office Box 147, Columbia, SC 29217, and the SC Department of Administration (the "Tenant"), an agency, institution, department (including any division or bureau thereof) or political subdivision of the State of South Carolina having an address at 1200 Senate Street, 6th Floor, Columbia, SC 29201.

ARTICLE 1 - DEMISE OF PREMISES

1.1. Landlord hereby leases and lets to Tenant and Tenant hereby takes and hires from Landlord, upon and subject to the terms, covenants and provisions hereof, the premises (the "Demised Premises") consisting of 90,988 rentable square feet, the entire building (the "Building"), and a 24,200 square foot parking garage (the "Garage") located at 2221 Devine Street, Columbia, SC 29205, in the County of Richland, State of South Carolina (the "Land"), together with the benefit of any and all easements, appurtenances, rights and privileges now or hereafter belonging thereto.

ARTICLE 2 - TERM

2.1. The term of this Lease shall be six (6) months beginning on the Closing Date of the sale of the Premises to the Landlord, (the "Commencement Date") with two (2) optional three (3) month extended terms.

ARTICLE 3 - BASIC RENT

3.1. Tenant shall pay rent (the "Basic Rent") to Landlord at the rate of \$11.29 per rentable square foot (rounded), \$85,605, payable in advance on or before the tenth (10th) day of each consecutive calendar month. The rate will increase by 10% for each of the 3 month renewable periods if Tenant elects to exercise the renewal options.

3.2. Rentable square footage shall be determined in accordance with the Standard Method for Measuring Floor Area in Office Buildings published by the Building Owners and Managers Association International (BOMA), as revised and adopted June 7, 1996.

3.3. All rental payments to be made by Tenant pursuant to this Lease shall be apportioned and prorated as of the Commencement Date and the Termination Date or as of the date of an earlier termination pursuant to this Lease, as the case may be.

3.4. Unless notified otherwise in writing, all payments of Basic Rent shall be mailed to Landlord at:

City of Columbia
c/o City Manager
Post Office Box 147
Columbia, SC 29217

ARTICLE 4 - USE

4.1. Tenant shall have the right to use the Demised Premises for any lawful purpose. At the Commencement date of this Lease, Tenant plans to use the Demised Premises for office use.

4.2. If during the Term the application of any statute, code or ordinance of any government, authority, agency, official or officer applicable to the Building or the Demised Premises makes it impossible or not economical for Tenant to operate in the Demised Premises in accordance with subparagraph 4.1, then Tenant, at its option, may terminate this Lease, whereupon the Basic Rent and all other charges payable hereunder by Tenant shall be apportioned as of such date of termination.

4.3. Tenant shall have the right to use 5 spaces in the parking facility on nights and weekends and Landlord shall have the right to utilize the remaining parking facility on nights or weekends unless the Tenant notifies the Landlord that they intend to use the parking spaces after normal business hours or on weekends. Such notice shall be provided in writing 30 days in advance of that intended use.

ARTICLE 5 - ASSIGNMENT AND SUBLETTING

5.1. Tenant shall have the right to sublet the Demised Premises to the current occupants: the SC Department of Probation, Parole and Pardon Services, the SC Department of Consumer Affairs, the SC Commission for Minority Affairs, and the University of South Carolina.(collectedly, the "Current Occupants").

5.2. Any act required to be performed by Tenant pursuant to the terms of this Lease may be performed by any one or more of the Current Occupants and the performance of such act shall be deemed to be performance by Tenant.

ARTICLE 6 - SERVICES

6.1. Tenant shall be responsible for all maintenance and operating expenses with the exception of taxes and insurance. Landlord shall be responsible for all taxes, insurance and capital projects deemed necessary by the Landlord. If the Tenant elects to make any improvements to the Demised Premises to accommodate occupants, notice shall be provided in writing to the Landlord and all costs associated with those improvements will be the responsibility of the Tenant.

ARTICLE 7 – LANDLORD'S COVENANTS

7.1. Landlord covenants to Tenant that:

(a) As of the Commencement Date, Landlord is the owner of the Land and Building in fee simple, that title is marketable and not subject to any defects or encumbrances which could adversely affect the use of the Demised Premises as contemplated by this Lease; that Landlord has full right, power and authority to execute and deliver this Lease and to grant to Tenant the exclusive use and possession of the Demised Premises;

(b) The use of the Demised Premises contemplated by the Lease will be a permitted use under all applicable statutes, codes, rules, regulations and ordinances now in effect and, to the best of the Landlord's knowledge, there are no pending proceedings or plans to change such statutes, codes, rules, regulations and ordinances;

(c) Neither the Land, the Building nor the Demised Premises, nor any portion thereof, is being condemned or taken by eminent domain and, to the best of the Landlord's knowledge, no such proceedings are contemplated by any lawful authority;

(d) To the best of Landlord's knowledge and belief, there is available to the Building and the Demised Premises adequate public water, gravity fed storm and sanitary sewers, electricity and telephone service for Tenant's intended use of the Demised Premises as described in this Lease;

(e) Landlord will not discontinue any service required to be provided by Landlord pursuant to this Lease and, if any such discontinuance is contemplated, Landlord will provide Tenant with written notice at least thirty (30) days prior thereto together with a statement of the appropriate reduction in Basic Rent as compensation for such discontinuance;

(f) Landlord will provide peaceful and quiet enjoyment of the Demised Premises to Tenant and will not allow such peaceful and quiet enjoyment to be disrupted or interfered with by any other tenant in the Building, by Landlord, by anyone claiming under Landlord or any other person, party or entity.

7.2. Landlord acknowledges that Tenant is relying upon each of the covenants set forth in subparagraph 7.1 and that the matters covenanted by Landlord are substantial and material to Tenant. In the event such covenants shall be breached by Landlord, Tenant, at its sole election, may terminate this Lease in accordance with subparagraph 13.1(d).

7.3 Landlord shall not be required to make major improvements or upgrades to any of the facility systems in the Demised Premises such as HVAC, electrical, roof, etc, during the lease period, the condition of which is known to the Tenant. Tenant is accepting the lease of the Demised Premises in an "as is" condition.

ARTICLE 8 – TENANT'S COVENANTS

8.1. Tenant covenants and agrees that it shall:

(a) Pay Basic Rent when due (provided a written invoice is submitted thirty (30) days in advance to the Tenant by the Landlord) provided, however, that should any rent become more than fifteen (15) days past due, Landlord shall give Tenant notice in writing to pay the same within fifteen (15) days of receipt of such notice;

(b) Maintain the Demised Premises in a clean and fair condition as it has historically done and shall not be required to pay for or perform any capital projects and Tenant shall return the Demised Premises to Landlord at the termination of this Lease in accordance with Article 17 hereof. Tenant shall not be obligated to pay for or perform any deferred maintenance at the Demised Premises nor shall Tenant be obligated to make any repairs arising out of or in any way caused by 1) settling, 2) defects in labor, workmanship, materials, fixtures or equipment employed, supplied or installed by or on behalf of Landlord, or 3) the negligence of Landlord, its agents or employees.

(c) Comply with all statutes, codes, ordinances, rules and regulations applicable to the Demised Premises;

(d) Give Landlord reasonable notice of any accident, damage, destruction or occurrence affecting the Demised Premises; and

(e) Allow Landlord reasonable access to the Demised Premises for inspections.

ARTICLE 9 - ARCHITECTURAL BARRIERS

9.1. Landlord covenants and agrees that the Land, Building and Demised Premises, being open to the public, shall comply with any and all applicable State law, rules and regulations with respect to architectural barriers or design that would prohibit free and full access to and use of the Land, Building, Demised Premises or any part thereof by the aged, disabled or physically handicapped. In the event the Land, Building or Demised Premises do not so comply as of the Commencement Date of this Lease, Landlord shall, at Landlord's sole cost and expense and within three hundred sixty-five (365) days following the Commencement Date, alter, repair, renovate or otherwise provide at the Land, Building and Demised Premises all reasonable access and use thereof for the aged, disabled or physically handicapped as required by Law.

ARTICLE 10 - ADDITIONS, IMPROVEMENTS AND ALTERATIONS

10.1. Intentionally Omitted.

10.2. Tenant may, with the prior written consent of Landlord, which shall not be unreasonably withheld, make nonstructural additions, improvements or alterations to the Demised Premises ("Improvements") at its sole cost and expense. Each such improvement shall be completed in a good and workmanlike manner and in accordance with all applicable codes, rules and regulations. Tenant shall advise Landlord, when requesting consent to install Tenant Improvements, whether Tenant will remove the Improvements at the termination of this Lease. If Tenant elects not to remove the Improvements, the Improvements shall become part of the Demised Premises and subject to this Lease. If the Improvements will be removed by Tenant, Tenant shall restore the Demised Premises to its condition prior to such installation, reasonable wear and tear and damage by fire or other casualty excepted.

10.3. Landlord agrees that all trade fixtures, signs, equipment, furniture or other personal property of whatever kind or nature kept or installed at the Demised Premises by Tenant shall not become the property of Landlord or a part of the realty no matter how affixed to the Demised Premises and may be removed by Tenant at any time and from time to time during the term of this Lease.

ARTICLE 11 - CONDEMNATION AND CASUALTY

11.1. If there is any damage to or destruction of the Building, the Demised Premises or any portions thereof, or if any proceedings or negotiations are instituted which do or may result in a taking by condemnation or eminent domain ("Taking"), each party will promptly give notice thereof to the other, describing the nature and extent thereof.

11.2. If the restoration, replacement or rebuilding of the Building or the Demised Premises or any portion thereof as nearly as practicable to its value, condition and character immediately prior to any damage, destruction or Taking ("Restoration") can be completed within ninety (90) days after the occurrence, Tenant may elect to either (a) terminate the Lease immediately upon providing notice to Landlord or (b) allow Landlord to commence and complete Restoration of the Building and the Demised Premises.

11.3. If Tenant elects to allow Landlord to Commence and complete Restoration of the Building and the Demised Premises and Restoration cannot be completed within ninety (90) days after the occurrence, then Tenant may terminate this Lease by notice to Landlord given within ten (10) days following the earlier to occur of (a) the date the Restoration should have been completed, or (b) the date on which Landlord advises Tenant that the Restoration cannot be completed within ninety (90) days of the

occurrence, whereupon Basic Rent and all other payments by Tenant hereunder shall be apportioned as of the date of the damage, destruction or Taking.

11.4. Upon damage or destruction to the Building or the Demised Premises or upon a Taking thereof which does not result in termination, Basic Rent and all other payments and charges payable by Tenant hereunder shall abate as of the date of the occurrence, or in the case of partial damage, destruction or Taking which does not cause Tenant to discontinue use of the Demised Premises as contemplated herein, the Basic Rent and all other payments and charges shall be equitably apportioned.

11.5. Nothing contained herein shall be deemed or construed to prevent Tenant from asserting and prosecuting a claim for the value of its leasehold estate, its leasehold improvements or moving and related costs in the event of any Taking.

ARTICLE 12 - INSURANCE AND TAXES

12.1. Landlord shall at all times during the Initial Term and Extended Term, if any, of this Lease maintain, with insurers authorized to do business in the State of South Carolina, fire insurance with extended coverage for the Building of which the Demised Premises is a part in an amount not less than the actual replacement cost, including the cost of debris removal. The policy shall provide for 6 months loss rent coverage.

12.2. Landlord shall pay real estate taxes assessed against the Land and Building when due.

ARTICLE 13 - TENANT CANCELLATION PRIVILEGE

13.1. Tenant shall have the right to cancel this Lease or to relinquish any portion of the Demised Premises upon giving Landlord thirty (30) days written notice of its cancellation hereof upon the occurrence of any one or more of the following:

(a) If appropriations, revenue, income, grants or other funding, from any source (including but not limited to Federal, State and/or County sources), are not provided to the Tenant in an amount sufficient to carry out the purposes and programs of Tenant, including the payment of Basic Rent and all other payment obligations of Tenant pursuant to this Lease, the sufficiency of such funds to be determined solely by the Department of Administration, Real Property Services; or

(b) If the Tenant is dissolved and no longer performs the functions and purposes ascribed to it; or

(c) If Landlord shall have breached any covenant made by Landlord in this Lease and such breach shall have continued uncured or uncorrected for a period of thirty (30) days after notice by Tenant to Landlord of such breach and request to cure or correct, or as otherwise stated herein; or

13.2. In addition to the cancellation privileges set forth in subparagraph 13.1, Tenant shall also have the right to cancel this Lease by giving thirty (30) days' written notice to Landlord of Tenant's intention to vacate the Demised Premises.

ARTICLE 14 - EXEMPTIONS

14.1. Landlord and Tenant agree that Tenant shall be specifically exempt from the payment, furnishing or providing to Landlord of any of the following:

(a) Security deposits for any rents or other charges to be paid by Tenant pursuant to this Lease or for any service or item supplied to Tenant by Landlord;

(b) Liquidated or punitive damages for any cause or reason;

(c) Landlord's attorneys' fees, court costs or costs of collection in connection with any action or inaction by Tenant under this Lease;

(d) Any form of insurance coverage for Landlord or any person or entity other than Tenant or for any real or personal property of any party other than Tenant including, but not limited to, fire, comprehensive general public liability or contractual liability;

(e) Any indemnification, hold harmless, release or waiver agreement by Tenant to Landlord or any other person, party or entity; and

(f) Payment of any late charges or penalties for failure by Tenant to make payment of Basic Rent, Additional Rent or any other charges payable to Landlord pursuant to this Lease.

ARTICLE 15 - SUBORDINATION AND NON-DISTURBANCE

15.1. Any mortgage which may now or hereafter affect the Land, the Building, the Demised Premises, or any part thereof, and any renewals, modifications, consolidations, replacements or extensions thereof shall provide that so long as there shall be no continuing event of default by Tenant hereunder, the leasehold estate of Tenant created hereby and Tenant's peaceful and quiet possession of the Demised Premises shall be undisturbed by any foreclosure of such mortgage. In the event that any such mortgage affects the Land, the Building or the Demised Premises, Landlord shall furnish Tenant with an executed non-disturbance agreement from any such mortgagee.

ARTICLE 16- MINOR REPAIRS

INTENTIONALLY OMITTED

ARTICLE 17 - SURRENDER

17.1. Upon the expiration or earlier termination of this Lease, Tenant shall surrender the Demised Premises to Landlord in substantially the same order and condition as they were upon receipt, except for ordinary wear and tear, permitted additions, improvements or alterations made by Tenant and the results of any damage, destruction or Taking. Tenant shall remove from the Demised Premises on or prior to such expiration or earlier termination all of its property situated therein.

ARTICLE 18 - NOTICES

18.1. All notices, demands, requests, consents, approvals, offers, statements and other instruments or communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been given when either (i) personally delivered, or (ii) sent by first class mail, postage prepaid, or (iii) delivered, costs prepaid, by any reputable delivery service that provides written evidence of delivery, or (iv) sent during normal business hours by facsimile transmission or other electronic transmission, including e-mail, that is evidenced by written mechanical confirmation of delivery or written confirmation from the recipient that the transmission was received, in which case notice shall be deemed given on the date of facsimile or electronic transmission. Notice shall be given at the addresses appearing at the heading of this Lease.

ARTICLE 19 - AMENDMENTS

19.1. This Lease may not be amended, modified or terminated, nor may any obligation hereunder be waived orally, and no such amendment, modification, termination or waiver shall be effective for any purposes unless it is in writing and signed by the party against whom enforcement thereof is sought.

ARTICLE 20 - HOLDOVER

20.1. In the event Tenant shall remain in the Demised Premises after the Term has expired, Tenant shall be deemed to be a tenant from month to month and Tenant shall continue to pay the Basic Rent last in effect under the Lease until either Landlord or Tenant, by thirty (30) days' written notice to the other, shall terminate this Lease, whereupon the Basic Rent and all other charges payable by Tenant hereunder shall be apportioned as of such date of termination.

ARTICLE 21 – PARKING

21.1. Tenant shall have full access to and free use of the surface parking lot/parking garage surrounding the Building. Subject to Paragraph 4.3, Tenant acknowledges Landlord may elect to utilize the parking after normal business hours and on weekends unless Tenant has an event planned that requires the use of such during those periods of time. Tenant also agrees, subject to Tenant's approval, to allow the Landlord to lease any unused parking spaces on a regular basis, during normal business hours if such spaces are mutually identified and such use does not interfere with the Tenant's use of the Demised Premises. Notwithstanding the foregoing or anything herein to the contrary, Tenant shall be given priority in the event of any potential conflict over use of such parking spaces during normal business hours by Landlord or Landlord's other tenants.

ARTICLE 22 - MISCELLANEOUS

22.1. If any provision of this Lease or any application thereof shall be invalid or unenforceable, the remainder of this Lease and any other application of such provision shall not be affected thereby.

22.2. This Lease shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto.

22.3. This Lease may be executed in counterparts, each of which when so executed and delivered, shall constitute an original, fully executed counterpart for all purposes, but such counterparts shall constitute but one instrument.

22.4. The Article headings of this Lease are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

22.5. This Lease shall be governed by and construed in accordance with the laws of the State of South Carolina.

22.6. In the event Landlord is involved in any bankruptcy or insolvency proceedings and Landlord's trustee fails to perform or rejects any of the Landlord's obligations under this Lease, Tenant shall have the option to terminate this Lease.

22.7. Any amendment, renewal, subordination, non-disturbance, attornment, estoppel or other agreement affecting a change to the terms and conditions herein and requiring the signature of Tenant requires the approval of Real Property Services.

22.8. This Lease is subject to and conditioned upon the approval of Real Property Services and shall be of no force or effect until the consent of such office shall be endorsed herein.

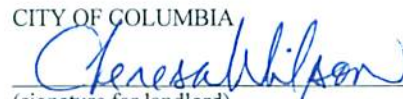
N WITNESS WHEREOF, the parties have executed this Lease as of the day and year indicated under their signature.

WITNESS:


(witness signature)

(witness signature)


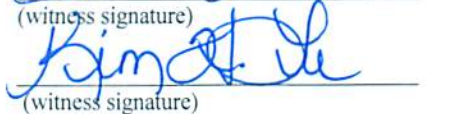
LANDLORD:

CITY OF COLUMBIA

(signature for landlord)
Teresa Wilson, City Manager
(printed name and title of signatory)
12/10/2018
(date signed by landlord)


APPROVED AS TO FORM


Legal Department City of Columbia, SC


WITNESS:


(witness signature)

(witness signature)

TENANT:

SC DEPARTMENT OF ADMINISTRATION

(signature for tenant)
Marcia S. Adams
(printed name and title of signatory)
3/20/2019
(date signed by tenant)

This Lease is approved in accordance with the South Carolina Code of Regulations §19-447.1000 by the Department of Administration, Real Property Services, this 20th day of March, 2018. This Lease was approved by the Joint Bond Review Committee at its Jan. 16, 2018 meeting and by the State Fiscal Accountability Authority at its Jan. 29, 2018 meeting.


Ashlie Lancaster
Director