


State of Collaboration

Common Transactions for Real Property Leases





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Agenda


- Lease Overview
- Lease Package
- Common Lease Transactions
- Lease Clauses
- Best Practices
- Q & A



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Lease Overview



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Background

- A lease is ***an agreement where an owner of real property (landlord) gives the right of possession to another (tenant) for a specific period of time and for a specific consideration.***
- Public Buildings Law § 3 requires OGS to negotiate leases for all Executive Branch agencies
 - OGS listed as tenant agency and interacts with landlord
 - Occupying agency responsible for funding



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Lease Development

- Advertise
- Negotiate lease specifications
- Draft lease document
- Write need and cost justifications
- Perform Vendor Responsibility review
- Compile lease package
- Send to Attorney General for review (if applicable)
- Send to OSC for approval (if applicable)



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Leases Requiring OSC Approval

- State Finance Law § 112
- Standard leases with contract or intrinsic value that exceeds \$50,000
- Revenue leases with contract or intrinsic value that exceeds \$25,000



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Lease Package



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Lease Transaction Documents



- Cover letter
- STS/AC340-S
- Contract/amendment document
- Justifications
- Cost breakdown, calculations, and funds reservation
- Vendor Responsibility documentation
- Budget approval B-1184



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Cover Letter

- Lease number
- Property address
- Description of transaction
- Contact information
- Address any unusual circumstances



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Justifications

Best site at the best price for agency requirements

- Need
 - Legislative Mandate
 - Program Needs
- Cost & Site
 - Comparable Market Analysis
 - Location





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Lease Costs

- Base rent
- Tax escalations
- Operating escalations
- Utilities
- Janitorial services
- Parking
- Security services
- Other expenses

STS/AC340-S Value Total to be paid directly to the Landlord

Intrinsic Value Total of all associated costs including items not paid directly to the Landlord



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Calculation Example - New Lease

	Proposed	10 Year Cost
Location	1 John Doe Street	
Rentable Sq. Footage	12,500	
Rate per Square Foot	\$16.38	
Annual Rent*	\$204,750.00	\$2,273,750.00
Other Cost:		
Electric	\$18,750.00	\$187,500.00
Escalations-Operating		\$41,550.00
Escalations-Tax		\$24,199.00
Parking	\$22,500	\$225,000.00
Total Annual Cost	\$246,000.00	\$2,751,999.00

*Reflects rental rate increase to \$20 psf in years 6-10

Note: Costs in highlighted BOLD italics are not part of this agreement and should not be included in the AC-340-S/STS

Total Cost	minus	Electric	=	STS Value
\$2,751,999.00	-	\$187,500.00	=	\$2,564,499.00




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Funds Reservation

- Provide explanation of funds reservation
- Funds reservation required through the end of the current fiscal year
 - State fiscal year ends March 31
 - SUNY/CUNY fiscal year ends June 30
 - Federal fiscal year ends September 30

❖ [GFO Section XI.2.C Contract Funds Reservation](#)




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Funds Reservation

- Description
- Marked as “Include for Release”
- Status
- Merchandise Amount

Line	Item	Description	UOM	Category				Include for Release	Status	Amnt Only	Merchandise Amount
1		FY 19-20 RENT	EA	8031500					Active		21,007.00
2		FY 19-20 PARKING	EA	7210304					Active		3,960.00
3		FY 19-20 UTILITIES	EA	8310100					Active		3,301.12




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Vendor Responsibility

- Vendor Responsible Profile
- Vendor Responsibility Questionnaire (if applicable)
- Workers’ Compensation & Disability Benefits Certificates or exemption


❖ [GFO XI.16 Vendor Responsibility](#)

❖ [OSC Vendor Responsibility Website](#)



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Common Lease Transactions





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Lease Modification

Formal amendment negotiated by OGS or Agency

- Lease language changes
 - Renewal
 - Add/Reduce Space
- Reallocation of Space





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Reallocation of Space

OGS Reallocation Letter provides:


- Effective date
- Square footage
- Rental rate
- Agency share
- Reallocation table




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Reallocation Table

Agency	Rentable SF	Rate per SF	Monthly Rent	Annual Rent	Pro-rata Share of Building	Pro-rata Share of Parking	Additional Rent
A	5,664	\$16	\$7,552	\$90,624	8.85%	27	\$928.37
B	58,336	\$16	\$77,781.34	\$933,376	91.15%	273	\$9,561.64
Totals	64,000	\$16	\$85,333.34	\$1,024,000	100%	300	\$10,490.01


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- ### Lease Assignment Overview
- Two STS/AC340-S forms:
 - Amend original lease
 - Create new lease
 - Contract assignment agreement with effective date
 - Vendor Responsibility documentation
 - Cover letter
 - ❖ [GFO Section XI.12.B Contract Assignments](#)
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Lease Assignment: Amend Original Lease

- End Date adjusted to day before assignment effective date
- Reduce Contract Amount

Contract Value	\$100,000
LTD	<u>-\$40,000</u>
Remainder	\$60,000
Amendment STS =	-\$60,000




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Lease Assignment: Create New Lease

- STS/AC340-S equal to amount reduced from the original lease
- Begin Date equal to effective date of assignment
- End Date equal to original lease end date
- Funds reservation through current fiscal year



Lease Renewal

- Refer to lease agreement
 - Renewal timelines
 - Term dates
 - Rates
 - Pre-determined rate
 - To-be-negotiated rate



Holdover

As specified in the lease agreement

- Current rate
- Higher rate

OGS standard language:

Any holdover after the expiration of the Term, or any extensions thereof, shall be construed to be a tenancy from month-to-month and shall to the extent not inconsistent with this provision be on the same terms and conditions as set forth in this Lease.

Holdover Submission Requirements

- STS/AC340-S
- Holdover letter
- Cost breakdown
- Cover letter
- Funds reservation



Holdover Cost Breakdown Example

Expense	Amount	Frequency	Total
Rent	\$ 1,000	12 months	\$ 12,000
Electric	\$ 200	12 months	\$ 2,400
Tax escalations	\$ 5,000	2019	\$ 5,000
Operating escalations	\$ 2,000	2019	\$ 2,000
Total			\$ 21,400
Remaining Amount			\$ (3,750)
STS value			\$ 17,650


Date Changes

- STS/AC340-S
- Notice to Landlord
- Rent obligation date
- Term adjusted based on:
 - Substantial completion
 - Execution, approval, and delivery to the landlord




Reducing the Contract

- Verify that all outstanding payments have been made
- Process negative STS/AC340-S equal to remaining amount
- Once contract status is changed to closed in SFS, no payments can be made



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Lease Clauses



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Standard Clauses

- General
 - Term
 - Possession clause
 - Escalations
 - Fixed Rent
 - Build Out
- During the lease term
 - Assignment
 - Utilities
 - Tenant Work
 - Termination
- End of the lease term
 - Renewal
 - Holdover



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Prior Lease / Cancellation

OGS standard language:

Upon the Commencement Date, as that term is defined in Sections 2 and 7 of this Lease, this Lease cancels and supersedes OSC Lease No. _____ dated _____. In the event rent has been paid under such lease (or as a holdover under such lease) that is attributable to the Lease Term set forth herein, the Tenant, on behalf of the Occupying Agency, shall receive a full credit for such payments to be applied to Fixed Rent otherwise due hereunder. If OSC Lease No. _____ allowed for escalations, the Occupying Agency and the landlord shall still be bound by the provisions of that lease pertaining to the same and the escalation year shall terminate upon the date that OSC Lease No. _____ is cancelled.



Best Practices




Best Practices

- Send a cover letter with every transaction
 - Include agency contact information
- Send a cost breakdown
- Verify contract signatories are authorized
- Obtain a copy of your lease from OGS
- Add descriptions to funds reservation lines
- Contact us with questions



Reference Materials

- [Common Lease Terminology](#)
- [Holdover Lease Cost Calculation](#)
- [Sample Holdover Letter](#)



- ❖ <https://www.osc.state.ny.us/agencies/guide/MyWebHelp/>
- ❖ www.openbooknewyork.com/
- ❖ https://www.osc.state.ny.us/vendrep/info_vrsystem.htm

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Questions?

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Thank you!

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Determine Remaining Amount

Maximum amount	\$72,000.00
Total released amount	\$5,230.00
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Remaining amount	\$66,770.00 ←
