

TEMPORARY EMERGENCY POWER SOURCE ADDENDUM

THIS TEMPORARY EMERGENCY POWER SOURCE ADDENDUM (the “Addendum”) is made this 31st day of October, 2022, between **SENECA CENTER II, LLC** a Maryland limited liability company (the “Landlord”) and **MONTGOMERY COUNTY, MARYLAND**, a political subdivision of the State of Maryland (the “County”).

RECITALS

- A. Pursuant to that certain Lease Agreement, dated November 3, 2008, between Landlord and County (the “2008 Lease”), Landlord demised to the County, and the County leased from the Landlord, approximately 54,190 square feet of warehouse space located at 18753 North Frederick Avenue, Gaithersburg, Maryland (the “Building”) consisting of multiple Bays as more particularly depicted on Exhibit A to the Original Lease and also those Bays depicted on Exhibit A-1 to the Original Lease (collectively, the “2008 Leased Premises”).
- B. Pursuant to that certain Lease Agreement, dated February 20, 2015, between the Landlord and the County (the “2015 Lease”), the Landlord demised to the County, and the County leased from the Landlord, approximately 13,483 square feet of additional warehouse space located at 18753 North Frederick Avenue, Gaithersburg, Maryland (the “Building”) consisting of Bays 100 (aka “N”), 101 (aka “O”), 102 (aka “P”) and 103 (aka “Q”) as depicted on the attached Exhibit “A” of the 2015 Lease (the “2015 Leased Premises”)(the 2008 Leased Premises and the 2015 Leased Premises are referred to together as the “BOE Premises”).
- C. County has requested Landlord’s consent to allow for the temporary installation and alterations to the existing electrical service of the BOE Premises based on the proposed scope of work outlined on Attachment 1 attached hereto (the “Emergency Power Source Work”) to allow for the connection and operation of two exterior gas generators to serve as an emergency power source to the BOE Premises to support County’s operations during elections and Landlord is willing to permit and consent to the Emergency Power Source Work subject to the terms and conditions of this Addendum.
- D. This Addendum shall be effective upon full execution by County and Landlord as an amendment to the 2008 Lease and the 2015 Lease.

NOW THEREFORE, in consideration of the mutual premises set forth above, and for the further consideration described below, the legal sufficiency of which is hereby acknowledged, the Landlord and the County agree as follows:

1. Recitals. The foregoing Recitals are incorporated herein by reference as is fully set forth herein.

2. Defined Terms. Any defined term that is used herein that is defined in the 2008 Lease or the 2015 Lease shall have the same meaning as specified in each such lease unless otherwise specifically provided for herein.

3. County Temporary Right to Perform Emergency Power Source Work. The Landlord grants the County permission to perform the Emergency Power Source Work following the date of this Addendum, which shall be at the sole cost and expense of County. The County shall be entitled to maintain the connection to two (2) exterior gas generators. The parties expressly acknowledge and agree that this Addendum, and the Landlord's consent to the performance of the Emergency Power Source Work does not limit the Landlord's right to impose additional conditions or requirements on County in connection with any future requests for similar work. County further acknowledges and agrees that, at the option of Landlord, County shall remove the alterations and connections made to the BOE Premises electrical services at any time following the 2022 elections or at the expiration or earlier termination of the 2008 Lease or 2015 Lease, respectively, and County shall be responsible for restoring the electrical service to the existing condition and configuration existing prior to the performance of the Emergency Power Source Work.

4. Conditions to County Emergency Power Source Installation and Operation.

- A. Prior to the commencement of work on the Emergency Power Source Work, County shall obtain any permits required under applicable code for the installation and connection of the Emergency Power Source Work to the existing electrical service serving the BOE Premises. County shall also cause the generator(s) intended to serve as the emergency power source to be thoroughly inspected both prior to, and upon completion of, the installation to confirm that there are no leaks of any fuel source or other products from the generator(s). County shall locate the generators on the upper parking lot and County acknowledges that because these generators will be located outside the BOE Premises, County shall be solely responsible for maintaining, protecting and securing the generators at all times and Landlord shall have no obligation or liability to County for any loss, damage, theft or destruction to the generators and Landlord shall not be required to provide any security to the Property to protect or prevent any such loss, damage, theft or destruction.
- B. Except to extent caused by the Landlord's negligence or willful misconduct, the Landlord shall not be liable in any way for any failure or termination of or interruption in any utility services to or for the benefit of the BOE Premises, and the County hereby releases the Landlord from any and all liabilities or damages of any kind which may result by reason of any such failure, termination, or interruption.

- C. The County agrees that its use and operation of the emergency power source and any generators shall at all times be in full compliance with all applicable federal, state and local laws, regulations and the Landlord's policies and procedures.
- D. The County shall be responsible for any unreasonable wear or tear or damage caused to the BOE Premises, the Property and/or any damage to equipment, including any costs incurred to clean or repair the same arising out of the performance and/or the operation of the Emergency Power Source Work to the BOE Premises' existing electrical service or the County's generators.

5. Condition of BOE Premises; Liability. The Landlord makes no warranties whatsoever regarding the suitability of the BOE Premises' existing electrical services to support the Emergency Power Source Work and the operation of the generators to be connected thereto and the County warrants to Landlord that it has conducted an independent inspection of the existing electrical service and systems serving the BOE Premises and found it suitable for the Emergency Power Source Work and the County's intended purposes.

The County hereby agrees to indemnify and hold harmless the Landlord, its officers, employees and agents from and against any and all claims, damages, losses, suits, judgments, costs and expenses ("Claims") resulting from the County's performance of the Emergency Power Source Work and/or the operation of the connections of the gas generators to the existing electrical service as modified by the Emergency Power Source Work occasioned wholly or in part to such extent by any negligent act or omission of the County, except to the extent that such Claims arise out of the wrongful acts or omissions of the Landlord, Landlord's agents, contactors or employees; provided however that the Landlord provides to the County within 30 days of the receipt thereof notice of any and all Claims under which Landlord will rely on this indemnification. The County's liability under this paragraph is subject to, limited by, and contingent upon the appropriation and availability of funds, as well as the damage caps and notice requirements stated in the Local Government Tort Claims Act, Md. Code Ann., Cts. & Jud. Proc. § 5-301, et seq. (2017); Md. Code Ann., Cts. & Jud. Proc. § 5-303, et seq. and Md. Code Ann., Cts. & Jud. Proc. § 5-509 (2017), and Md. Code Ann., Cts. & Jud. Proc. § 5-5A-02 (together the "County Indemnification Statutes"), all as amended from time to time. This indemnification is not intended to create any rights or causes of action in any third parties or to increase the Tenant's liability above the caps provided in the County Indemnification Statutes, as applicable. The County shall have the right to self-insure.

6. Miscellaneous. Nothing herein shall constitute any modification or amendment of the terms and provisions of the 2008 Lease or the 2015 Lease except as expressly provided herein.

7. Counterparts. This Addendum may be executed in two or more counterparts each of which shall be deemed an original, and all of which when taken together shall constitute one and the same instrument. The parties agree that signatures scanned into PDF format and sent by e-mail or facsimile signatures shall be deemed original signatures.

[Signature page follows.]

IN WITNESS WHEREOF, the parties have executed this Addendum as of the first date written above.

LANDLORD:

SENECA CENTER II, LLC, a Maryland limited liability company




Witness

By: 

Paul L. Klinedinst
Manager

COUNTY:

MONTGOMERY COUNTY, MARYLAND
a political subdivision of the State of Maryland



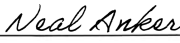
Witness

By: 

Name: Yaakov "Jake" Weissmann
Title: Assistant Chief Administrative Officer

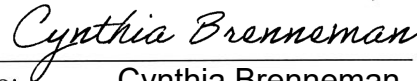
Approved as to form and legality
Office of the County Attorney

Recommended

By: 

Name: Neal Anker

Title: Associate County Attorney

By: 

Name: Cynthia Brenneman

Title: Director, Office of Real Estate