




METRO

Date: December 9, 1993

To: Neil Saling, Regional Facilities Director

From: Daniel B. Cooper, General Counsel 

Regarding: CONVERSATION WITH STEVE JANIK
Our file: 1.§9.B

Neil, Steve Janik called me and gave me his and Helen Kowalik's response to your proposed changes to the AMCO/Metro Master Lease document.

Proposed amendments 1, 2, 3, and 4 are fine with AMCO.

As to paragraph 5, their response is their agreement is to allow Metro a credit for one-half of any free rent given by Metro to a tenant, not to exceed six months. The credit would be used by Metro during the period that Metro was giving the tenant the free rent. For example, if Metro signs a lease with a tenant for five years at \$5,000 per month and the free rent is for a six-month period, Metro would have a credit against its payment due to AMCO in the amount of \$2,500 for each of those six months that the tenant was receiving the free rent.

Proposed paragraph 6, the amendments to paragraph 8.6, were OK with them.

The amendments to adding the new paragraph 8.8 required some discussion. First, Steve believes they have agreed that we should define what we mean by "tenant improvements" and that would include things like the ceiling tile and grid, and associated lighting, and carpet, as well as other tenant improvements. Their commitment is that they would pay one-half of the tenant improvement allowance for any specific tenant up to the first \$15 per sq. ft., anything over \$15 per sq. ft. would be for Metro and/or the subtenant to pay without any contribution from AMCO.

The language regarding the ADA, Steve believes is too broad. Helen has informed him that you have told her about a specific list of ADA improvements that she viewed as being relative minor expenses and they have agreed to pay for those costs, however, they want to limit their commitment to an agreed upon list of specific improvements and not have it in a

broad form because they fear exposure to much more expensive improvements that they are not in agreement on paying for fully at this time.

The sprinkler system commitment is a commitment to install a sprinkler system that meets Building Code requirements. To the extent that additional costs for sprinklers are necessary because of specific configurations required by individual tenants, those costs would be included as part of the tenant improvement allowance and be subject to cost-sharing as described above.

Steve voices a concern on their part that HVAC system improvements be closely scrutinized to determine which are truly part of a tenant improvement package which AMCO is willing to share, and which might be considered to be maintenance and repair of the existing HVAC system which they view currently as Metro's obligation to return the building to Roger in reasonable condition, etc., which might include maintenance of the HVAC system. For example, Steve agreed that rerouting ductwork in the ceiling area as part of the ceiling tile grid/sprinkler system renovations would certainly be considered to be tenant improvement cost by them. Likewise, adding additional capacity to the chillers on the roof over and above what they presently are rated as to meet the needs of a tenant would also be a tenant improvement. However, replacement of existing parts in the chillers which may be needed because they are expected to fail before the end of the lease are items they want to be able to exclude from tenant improvements. Steve feels it may be necessary for specific agreement on any HVAC system cost as to what are and are not appropriately characterized as tenant improvements.

On the tenant improvement cost-share, AMCO's proposal is that as each tenant begins to occupy their space, which they view as being the time at which the tenant improvement work is completed, a determination would be made as to what the actual cost for tenant improvements for that tenant were. When that was resolved, Metro would then have a rent credit available to it in the amount of one-half of the tenant improvement amount up to the \$15 cap which it could then apply to monthly rent until the credits were used up. So if a tenant had a \$15,000 tenant improvement cost for 1,000 sq. ft. of space, Metro would have available to it a \$7,500 rent credit that it could immediately apply to its first monthly rent payment due after the tenant moved into the space. These rent credits could be taken at the same time as the free rent credit mentioned above and to the extent that Metro had excess rent credits available it would carry them forward and apply against future months rent.

Steve indicated that as an alternative they would consider determining a factor for amortizing the cost of the tenant improvement over the remaining life of the lease and granting Metro a credit each month in that amount over the life of the lease. I indicated that I thought we would prefer having the credits applied up-front as soon as possible. Steve told me that Helen had considered your request that AMCO front the costs of all the tenant improvements

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and Metro pay that back in the form of increased rent over the life of the lease, and that was something they were not willing to do. I let Steve know that we thought that increased the risk that the Council would not approve this package because of the need for a supplemental budget on the part of Metro if it was to up-front all the tenant improvements itself, and Steve acknowledged that they were aware that that was a factor on our part, but still were not willing to up-front the money themselves. He did indicate that AMCO was willing to act as the contracting entity on the tenant improvements, but was not willing to take on additional liability for doing such work. I did not discuss that detail with him in any great amount after learning that they were not willing to up-front the cost. It is my view that if we are up-fronting the cost we might as well go ahead and be the contractor, make sure the work gets done the way we want it to, and that it would be rather messy and not very logical if we are paying the full cost for all the tenant improvements to give that money to AMCO so that it can hire the contractors where we wouldn't have any control over what was being paid.

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