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# Before You Sign: A Tenant's Guide to Key Work Letter Issues

For tenants entering into commercial leases, the work letter is more than a technical exhibit; it is the primary tool for protecting the move-in schedule, controlling construction costs, and ensuring a seamless transition into a new space. Although landlords typically prepare the initial draft, tenants should take an active role in negotiating the terms of the work letter to ensure that their operational needs and risk tolerances are accurately reflected. The terms of the work letter should address the following:

Delivery condition and scope of landlord vs tenant work

Tenant improvement allowance—amount, eligible costs, draw mechanics

Design approvals, permits, inspections, and change order protocols

Schedules, rent commencement triggers, and delay remedies

### Defining the Scope of Work

A clear division of responsibilities between landlord and tenant is essential. The work letter should clearly differentiate between the base building work (e.g., HVAC, electrical, and life safety systems, any exclusions or integration points with the building's infrastructure), and the leasehold improvements that will be constructed for the purpose of preparing the space for the tenant's specific use and occupancy. Vague language can lead to costly disputes and project delays. Industry-specific concerns related to the scope of work should also be considered.

### Retail Tenants

Utilities (gas, water, grease interceptor), hood/exhaust path, HVAC tonnage

Storefront design and signage rights; co-tenancy/opening protections

Trash, loading, drive-throughs; reserved and/or online pick-up parking; and availability of non-exclusive parking (each to be designated on an exhibit)

Access to the space via public rights-of-way or cross-access easements, and cost sharing obligations related to the same

Pylon/monument signage locations (and sign panel location(s) available to tenants on the same)

## Industrial Tenants

Clear height, dock/trailer counts, drive-in ramps, ESFR sprinklers

Slab PSI/reinforcement; racking/mezzanine load approvals; power capacity

HazMat protocols; fencing, gates, guard shacks; early access for racking

## Office Tenants

Landlord-funded test-fit

Supplemental cooling; riser access; low-voltage coordination

Lobby signage and brand standards; spec vs custom pricing clarity

Early access period to install furniture, fixtures, and equipment

## **Budgeting and Cost Responsibility**

Negotiating a transparent improvement budget and clear allocation of responsibilities is critical. The work letter should detail the tenant improvement allowance to be paid by landlord, any free rent period intended to offset construction costs, the items to which the tenant improvement allowance can be applied, tenant's approval rights over any change orders and/or excess costs not contemplated under the approved construction budget; the extent to which the tenant improvement allowance may be applied against soft costs like permits, design fees, installation of security systems and card reader systems in the space, data cabling, and furniture, fixtures and equipment. The cost for all landlord-provided items should be consistent with competitive market rates, and any work related to the base building elements should be performed by the landlord at landlord's sole cost and expense (and should not be applied against the tenant improvement allowance). If a tenant will be performing the work, then it must make sure it reserves the right to offset the tenant improvement allowance (with interest) if landlord fails to disburse the same within 30 days following the date the requirements for such disbursement have been met.

## **Approval of General Contractor and Construction Budget**

To the extent the landlord will be constructing the leasehold improvements, it is critical that the following issues be clearly delineated in the work letter:

Approval of the selection of the general contractor (based on a 3-bid process). Note that tenants should not be required to select the lowest bidder, and should have the ability to review the bids to ensure that the scope of work has been accurately reflected on the bids

Approval of the construction cost budget and an opportunity for the tenant to value engineer the scope of the contemplated work; tenant will be responsible for any costs in excess of the tenant improvement allowance

Tenant approval rights over any change orders, and the requirement that the landlord provide a rough order of magnitude related to the same to ensure that tenant has a clear understanding of both the timing and cost impact of such proposed change orders. Landlord-initiated changes should not increase tenant costs or delay the project without tenant's consent. Cost savings from changes should benefit the tenant, and any use of contingency funds should be pre-approved and reconciled

Tenant's obligations related to the timing and approach related to costs in excess of the approved construction budget to ensure that tenant has visibility of the accrual of additional excess costs. Further, tenant should not be obligated to pay more than 50% of such Excess Costs prior to the commencement of the contemplated work. Maintaining a 10% holdback until all items of work (including punchlist items) have been completed and tenant has received final lien waivers provides additional protection for the tenant

Demand open-book pricing, bid tabs, and audit rights to ensure transparency for allowances and any change orders

### **Managing Timing and Milestones**

A detailed schedule is the best defense against delays. Tenants should insist on a critical path timeline with clear milestones: design completion, permit applications, construction start, substantial completion, and final delivery. The work letter should outline how delays will be managed, including float allocation and recovery plans. "Substantial Completion" should mean the space is legally occupiable pursuant to a certificate of occupancy, life-safety and MEP tie-ins are finished, and only minor punchlist items remain. Tenant-caused delays should only be applied if the same actually impacts the substantial completion of the contemplated work, and the landlord must provide prompt, written notice detailing the delay and its impact to avoid being surprised by any alleged tenant delays. If the leasehold improvements have not been completed by the target completion date, then liquidated damages should begin to accrue, with a right of termination and reimbursement to tenants

for all out-of-pocket costs incurred prior to such date. Tenants do not want to be in the position of being on the hook indefinitely for a space if the work is not completed timely.

### **Ensuring Compliance, Building Standards, and Condition of Premises as of Delivery**

All construction must comply with local codes and the landlord's disclosed building standards. If the base building is not up to code when work begins, the landlord should remedy these issues at their own cost, without affecting the schedule or budget. Clarify who is responsible for upgrades triggered by new code interpretations, ADA requirements, or changes to energy and life-safety codes, distinguishing between tenant-specific improvements and building-wide compliance.

### **Specifying Delivery Condition**

Be explicit about the delivery condition of the space. The premises should be broom-clean, all building systems operational, the base building code-compliant, all landlord work substantially complete, the roof should be in a watertight condition, and the space should be free of all HazMat as of the date of delivery, even for an AS IS deal. The space should be free of occupants and personal property. Require commissioning, testing, delivery of O&M manuals, service records and warranties that remain in effect applicable to the utility systems and roof, and delivery of environmental reports within landlord's possession or control. Include pre-possession walk-throughs, punchlist protocols, and clear timelines for completing any outstanding items. For ground leases, consider including a due diligence period to allow tenant time to assess the condition of the property.

### **Remedies and Risk Allocation**

Rent payments should begin only after substantial completion and delivery of the space in the agreed-upon condition. If the landlord is performing the work, then in the event of a work stoppage, or threat of a work stoppage, reserve the right to pay the general contractor and/or sub-contractors directly to avoid a work stoppage, with the obligation to reimburse tenant for the same and/or offset such amounts against rent once the commencement date occurs (together with interest).

### **Insurance, Indemnity, and Lien Protection**

Construction brings risks, so allocate builder's risk, general liability, and workers' compensation insurance appropriately, naming all relevant parties as additional insureds. The landlord should indemnify tenants for claims arising from their work, and tenants should do the same for their contractors. Require lien-free delivery of the premises. Include a prompt process for releasing liens and, if necessary, allow the tenant to bond over or pay and offset as needed.

### **Construction Schedules and Coordination Meetings**

The parties should designate construction representatives with contact information for each, and tenants should be permitted to inspect the progress of construction at any time. If landlord is performing the work, then require landlord to provide a construction schedule, with bi-weekly meetings between the construction representatives to discuss work that has been completed, work landlord contemplates completing within the next two weeks, and whether the construction milestones are being met on a timely basis.

## **A Practical Checklist for Documentation**

To keep the project on track, ensure the work letter includes:

Detailed scope exhibits, space plan, and responsibility matrix

Approved budget, allowance terms, and clear payment mechanics

Competitive bid procedures and open-book pricing

A critical path schedule with milestones and notice procedures

Clear allocation of code compliance responsibilities

Transparent change order protocols

Defined delivery condition standards and punchlist processes

Remedies for late delivery, including liquidated damages and termination rights

Self-help and rent offset rights for contractor nonpayment

Insurance, indemnity, and lien resolution procedures

Multi-tenant coordination and operational commitments

## **Conclusion**

A tenant-focused work letter with these provisions aligns incentives, controls cost and schedule risk, and provides enforceable remedies to keep the project on track. Tenants should be sure to customize these points with project-specific dates, amounts, and thresholds to fit their unique transaction and operational needs. By taking a proactive, detailed approach, tenants can protect their interests and ensure a successful build-out and move-in.

If tenants need guidance navigating work letters or any aspect of their commercial lease, do not hesitate to reach out to Wendy Proctor or Cameron Dobbs at Husch Blackwell. With experience in real estate transactions and tenant representation, the Husch Blackwell team can help negotiate favorable

terms, avoid costly pitfalls, and ensure projects stay on track. Whether planning a new build-out, an expansion, a relocation within an existing building or wanting to review a lease, the Husch Blackwell team is ready to support all real estate needs.