

LEASE AGREEMENT

Lease Agreement made as of the _____ day of _____, 2003, by the United States of America (and hereinafter referred to as the "Tenant"), and the CITY OF MILWAUKEE, a Wisconsin municipal corporation, by and through its Board of Harbor Commissioners (hereinafter collectively referred to as the "City").

WITNESSETH:

City hereby leases, demises and lets unto Tenant the real property upon which the Tenant has made and owns improvements and comprised of approximately 5.90 acres of land (hereinafter referred to as the "Property"), located at 2401 S. Lincoln Memorial Drive, Milwaukee, Wisconsin. The Property is more particularly described in Exhibit A, Legal Description and Exhibit B, Site Plan, which are affixed hereto.

This lease is entered into by the parties under the following terms and conditions:

1. **Term.** The fixed rental term of this Lease shall be for a period of five years beginning October 1, 2003 and terminating on September 30, 2008 subject to termination and renewal rights as are hereinafter set forth in Clause 5. This Lease may be extended for a second and third five-year fixed rental term at the option of Tenant, provided that written notice of intent to renew shall be given by Tenant at least one hundred eighty days (180) before the end of the initial or any subsequent term. If the tenant chooses not to renew the Lease, the Lease will expire on its own terms. This Lease shall in no event extend beyond September 30, 2018.

2. **Rent.** For each year during the first five years of the Lease (October 1, 2003 through September 30, 2008), Tenant shall pay City a sum of Sixty Seven Thousand Eight Hundred Sixty Dollars (\$67,860) per year, payable at a rate of Five Thousand Six Hundred Fifty Five Dollars (\$5,655) monthly in arrears. Rent for a lessor period shall be prorated.

For each year of the second five successive one year terms (October 1, 2008 through September 30, 2013), Tenant shall pay City a sum of Seventy Six Thousand Seven Hundred Seventy Six Dollars (\$76,776) per year, payable at the rate of Six

thousand Three Hundred Ninety **Eight** Dollars (\$6,398) monthly in arrears. Rent for a lessor period shall be prorated.

For each of the third five successive one year terms (October 1, 2013 through September 30, 2018), Tenant shall pay City a sum of Ninety One Thousand One Hundred **Seventy Six** Dollars (\$91,176) per year, payable at the rate of Seven Thousand Five Hundred Ninety **Eight** Dollars (\$7,598) monthly in arrears. Rent for a lessor period shall be prorated.

Rent shall be made payable to:

The City of Milwaukee
Board of Harbor Commissioners
Port of Milwaukee
2323 S. Lincoln Memorial Drive
Milwaukee, WI 53207

Payment shall be made via Electronic Funds Transfer (EFT), and the City shall register in the Central Contractor Registration (CCR) in accordance with the instructions provided on the CCR website www.ccr.gov.

3. **Use of the Property.** Tenant shall use the Property for a Naval Armory and Reserve Center and such other purposes as are incidental to the Tenant's national defense mission, including military training, equipment storage, buildings and vehicle parking facilities. Additional uses of the Property are not permitted without the prior written approval of the Municipal Port Director

4. **Occupancy Subject to Existing Easements and Restrictions.** Tenant's occupancy of the Property is subject to any recorded easements and restrictions of record.

5. **Termination and Vacation.**

A. **Notice.** The Tenant may terminate this Lease at any time, by giving at least ninety (90) days notice in writing to the City, and no rental shall accrue after the effective date of termination. Said notice shall be computed commencing with the date of receipt by City through **transmittal as described in Clause 19. Notice.** This Lease or renewal thereof and all provisions contained therein will terminate automatically on September 30th of each year if adequate appropriations are not available for the payment of annual rent as well as any other monetary obligations contained herein for the fiscal year, which begins on October 1st and ends on September 30th.

B. Vacation. Tenant shall vacate the Property upon the expiration of this Lease. Except as described in the Status of Improvements provision of this Lease, the Property shall be returned to the City by Tenant in substantially the same condition in which it was received, except for reasonable wear and tear.

6. **Default**. The occurrence of one or more of the following events shall constitute default under the terms of this Lease:

A. Abandonment. Tenant shall abandon the Property for a period of thirty (30) days or be delinquent in any payments due under this Lease required to be made by Tenant hereunder and such delinquency shall continue for at least sixty (60) days after notice thereof in writing to Tenant. Mobilization shall not be considered abandonment; or

B. Covenants. Tenant shall breach any material covenant or agreement herein contained to be kept, observed and performed by Tenant, and such breach shall continue for ninety (90) days after notice thereof in writing to Tenant; or

C. Conveyance. Tenant shall **not** make any assignment, transfer, conveyance or other disposition of its interest in the Property without the express written consent of City.

Upon default, it shall be lawful for City to provide the Tenant with 180 days notice to vacate the premises. If Tenant breaches any material, covenant, agreement, condition or undertaking herein contained but commences to eliminate the cause of such default within ninety (90) days and proceeds diligently and with reasonable dispatch to take all steps and do all work required to cure such default and thereafter does so cure such default, then City shall not have the right to declare the term of this Lease as ended. However, the curing of any default in such manner shall not be construed to limit or restrict the right of the City to declare this Lease ended and terminated as the result of the Tenant not curing another condition of default, and to enforce all of City's rights and remedies hereunder for any other default not so cured.

7. **Maintenance and Housekeeping**. Routine maintenance, housekeeping and cleanliness shall be the responsibility of Tenant. The City retains the right to inspect the Property at all reasonable times subject to national security requirements. Tenant shall be required to grant access to the Property at such times, provided that City shall give

Tenant twenty-four (24) hours advance notice of such an inspection. City recognizes the security requirements for certain Tenant operations conducted on the Property. Inspections shall not be made on drill weekends or mobilization periods, except in the case of emergencies. Tenant will provide a schedule of these events to the City.

8. **Utilities.** Tenant shall be solely responsible for the installation and purchase of all utility services required by Tenant during the term of this Lease.

9. **Assignment and Subleasing.** Except with the prior written consent of City, Tenant shall not assign any interest in this Lease, nor sublet any portion of the Property. Tenant may permit the surplus use of the Property for up to thirty (30) days per year, by authorized organizations in accordance with Navy regulations.

10. **Indemnification.** The City shall not be responsible or liable for injuries to persons or damage to property when such injuries or damage are solely caused by or result from the use by the Tenant or its representatives, agents, contractors and assigns, of the Property, unless such injuries are caused solely by the negligence of the City. The City reserves all rights, legal or equitable, against the United States Government for any damages, losses, costs or injuries suffered by the City as a result of the United States Government's operations under this agreement.

11. **Insurance.** It is the Policy of the Tenant, the United States of America, to assume its own risk of loss both in tort matters and damage to its own property. Tenant shall assure compliance with State of Wisconsin Worker's Compensation Laws and Federal Acquisition Regulations regarding Worker's Compensation requirements for its agents and contractors to the extent such laws are or may be applicable.

12. **Status of Improvements.** Tenant shall vacate the Property free and clear of all improvements, materials and equipment.

A. Tenant shall make no additional substantial improvements upon the Property without the prior written consent of City. The City acknowledges Tenant has made improvements to the Property under a Lease between the City of Milwaukee and the United States of America, dated May 28, 1952, Lease No. NOY (R)-46779 as amended.

B. The Tenant shall have the right, during the existence of this Lease, to make alterations, attach fixtures, and erect additions, structures, or signs upon the premises hereby leased; which fixtures, additions or structures so placed in or upon or attached to said premises shall be and remain the property of the Tenant and **subject to the availability of appropriated funds** shall be removed therefrom by the Tenant prior to the termination of the Lease, or within six (6) months after termination of this Lease, unless Tenant and City by mutual written agreement provide for a different disposition of such improvements. **Tenant will make its best effort to secure appropriate funding.**

13. **Condition Survey.** The Tenant and the City will jointly conduct a Condition Survey of the Leased Property, to include its environmental condition, prior to lease execution by either party. The Condition Survey will be documented in a Condition Survey report prepared by the Tenant, signed by the duly authorized representatives of both parties, and attached as Exhibit "C" to this Lease. The Condition Survey report will refer to and incorporate by reference the Environmental Baseline Survey (EBS) prepared by the Tenant, as well as any other environmental conditions that may not be specifically identified in the EBS. Preceding expiration, revocation or termination of this Lease, the Tenant and the City will jointly conduct a Closeout Survey. **Subject to the availability of appropriated funds, Tenant shall prepare an updated EBS that will document the environmental condition of the Property at that time as part of the Closeout Survey. Tenant will make its best effort to secure funding for the EBS.** The Closeout Survey and report will refer to and incorporate by reference, the updated EBS. All significant variances from the initial Condition Survey report shall be clearly documented in the Closeout Survey report. This Closeout Survey report will show any property damaged, contaminated, or destroyed during the Lease term.

14. **Compliance with Laws and Orders.** Tenant agrees to observe fully and to comply with any lawful rule, regulation or directive which shall emanate from any state, federal or local departments or agencies having jurisdiction.

15. **Environmental Compliance and Obligations.**

A. **For Environmental Purposes of this Agreement:** The term "Environmental Laws" shall mean and include (a) the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901-6987, as amended by the Hazardous and Solid Waste Amendments of

1984; (b) the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 9601-9657; (c) the Hazardous Materials Transportation Act of 1975, 49 U.S.C. § 1801-1812; (d) the Toxic Substances Control Act, 15 U.S.C. § 2601, et. seq.; (e) the Clean Air Act, 42 U.S.C. § 7401, et. seq.; (f) the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136, et. seq.; (g) Chapters 280-299 of Wisconsin Code; and all similar federal, state, or local environmental laws, ordinances, rules, codes and regulations, and as any of the foregoing may have been amended, supplemented, or supplanted and any other federal, state or local laws, ordinances, rules, codes and regulations now existing relating to the environment or the regulation or control or imposing liability or standards of conduct concerning toxic or hazardous waste, substances or materials; and

B. The term "Hazardous Substance" shall mean and include any, each and all substances or materials regulated pursuant to any Environmental Laws, including, but not limited to, any such substance, emission or material now defined as or deemed to be a regulated substance, hazardous waste or any similar or like classification or categorization thereunder, provided, however, that Hazardous Substances shall not include materials used or stored in connection with the operation or maintenance of the Leased Property and in compliance in all material respects with all Environmental Laws, including petroleum products and any waste products generated therefrom.

C. Compliance with Environmental Regulations. Tenant shall fully comply with all Environmental Laws statutes, regulations, or other applicable requirements imposed by any federal, state, or municipal agency with respect to the environmental condition of the Property and/or with respect to any activities or operations that Tenant may conduct upon the Property (hereinafter referred to as "Environmental Requirements"). Tenant shall not cause, permit or suffer the existence or commission by Tenant, its agents, employees, contractors or invitees, of any violation of any Environmental Requirements upon, about or beneath the Property or any portion thereof.

D. Hazardous Substance. Except to the extent commonly used in the day-to-day operation of the Property, and in strict compliance with all Environmental Requirements (including those relating to storage, use and disposal), Tenant shall not cause, permit or suffer any "hazardous material" or "hazardous substance" (as defined by

applicable Federal or State statutes or regulations) to be brought upon, treated, kept, stored, disposed of, discharged, released, produced, manufactured, generated, refined, or used upon, about, or beneath the Property or any portion thereof by Tenant, its agents, employees, contractors, tenants or invitees, or any other person without the prior written consent of the City. Any request by Tenant for such consent by the City shall be in writing and shall demonstrate to the reasonable satisfaction of the City that such "hazardous substances" is necessary to the conduct of the business of Tenant and will be stored, used, and disposed of in a manner that complies with all applicable Environmental Requirements.

E. Obligation to Investigate, Test and/or Remediate. **As authorized by applicable law and subject to the availability of funds, Tenant will be responsible for taking** all actions to remediate the environmental condition of the Property which may be required by any federal, state or local laws, ordinances, rules, codes and regulations which remediation is necessitated from, or attributable to, the presence upon, about, or beneath the Property of any "hazardous substances" or any violation of Environmental Requirements caused by the presence of and/or activities or operations conducted by the Tenant upon the Property. **Tenant will make its best effort to secure appropriate funding.** Tenant agrees to allow entry upon the Property by the City, or agents, contractors or employees of the City for purposes of conducting environmental audits and/or other tests to determine the impact of Tenant's presence and/or activities or operations upon or with respect to the Property upon the environmental condition thereof, subject to actual notice of mutually agreeable times for such entry and national security requirements. If sampling is done, City shall split samples and provide to Tenant one set of samples, if requested, and shall also provide copies of any reports or other documentation produced as a result of such entry. **Any hazardous substance release to the soil by the Tenant which requires notification under applicable environmental regulations shall also be reported to the City.**

F. Survival of Obligations. Tenant's obligations with respect to the environmental condition of the Property (as more fully set forth in subparagraphs (a) through (d) above) shall survive the expiration or termination of this Lease, in accord with applicable federal, state, interstate and local law.

G. Nothing in this agreement shall be deemed to be or constitute a waiver by the City of any defense available to it as a governmental entity pursuant to 42 U.S.C. § 9601 (35) (A) (ii) and § 9607 (b) (3).

H. Nothing in this agreement shall be deemed to be or constitute a waiver by the tenant to its sovereign immunity.

16. **Time of the Essence.** It is expressly understood and agreed to by the parties hereto that time is of the essence for each term and provision of this Lease.

17. **Waiver.** One or more waivers by any party of any covenant or condition of this Lease shall not be construed as a waiver of a subsequent breach of the same or of any other covenant or condition. The consent or approval given by any party with respect to any act by the other party requiring such consent or approval shall not be deemed to waive or render unnecessary further consent or approval of any subsequent similar act by such party.

18. **Sole Agreement and Amendment.** This Lease and the attached exhibits to which reference is made herein contain all of the agreements and covenants made between the parties and shall be binding upon the parties hereto and their respective successors and assigns, and may not be modified orally or in any other manner other than by agreement, in writing, signed by each of the parties to this Lease. The City shall grant to the Tenant utility line and access road rights of way or easements, as described in Exhibit "D" "Easements and Rights of Way."

19. **Notice.** Any notice provided for herein or given pursuant to this Lease, shall be deemed in compliance herewith if in writing and sent by United States certified or registered mail, postage prepaid, return receipt requested, or by receipted personal delivery to the parties as follows:

To the City:

BOARD OF HARBOR COMMISSIONERS
2323 S. Lincoln Memorial Drive
Milwaukee, WI 53207
Attention: Municipal Port Director

To The Tenant:

Commander
Southern Division
Naval Facilities Engineering Command
Attn: Director, Real Estate Division
P.O. Box 190010
2155 Eagle Drive
North Charleston, SC 29419-9010

20. **Severability.** If any term or provision of this Lease or any exhibits hereto, or the application thereof to any person or circumstance, shall to any extent be declared invalid or unenforceable, then the remainder of this Lease and exhibits, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by applicable law.

21. **Officials Not to Benefit.** No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this Lease or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this lease if made with a corporation for its general benefit.

22. **Gratuities.**

A. The right of the City to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the City, its agent, or another representative:

1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Tenant; and

2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

B. The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

C. If this contract is terminated under Paragraph A above, the Tenant is entitled to:

1) Pursue the same remedies as in a breach of the contract; and

2) In addition to any other damages provided by law, to exemplary damages of not less than three (3) nor more than ten (10) times the cost incurred by the Tenant in giving gratuities to the person concerned, as determined by the agency head or a designee.

D. The rights and remedies of the Tenant provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

23. **Contingent Fees.** The City warrants that no person or selling agency has been employed or retained to solicit or secure this Lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the City for the purpose of securing business.

24. **Examination of Records.** Until the expiration of three (3) years after final payment of the agreed rental, The City agrees to maintain records associated with the lease and to allow the Comptroller General of the United States or any duly authorized representative access to and the right to examine any directly pertinent books, documents, papers and records of the City involving transactions related to this Lease.

25. **Counterparts.** This Lease may be executed in any number of counterparts, each of which shall constitute an original and all of which shall constitute one and the same Lease. The terms "Board of Harbor Commissioner" and "City" whenever used herein shall mean and include the Board of Harbor Commissioners of the City of Milwaukee and/or its successors and assigns in authority, as the context may require.

26. **Approval.** IT IS FURTHER AGREED AND UNDERSTOOD that this Lease must be submitted to the Common Council of the City of Milwaukee and that the same must be approved by the Common Council and its execution authorized.

IN WITNESS WHEREOF, the parties hereto have by their duly authorized officers executed this Lease Agreement under seal as of the day and year first above written.

In the Presence of:

CITY OF MILWAUKEE

John O. Norquist, Mayor

City Clerk

COUNTERSIGNED:

City Comptroller

In the Presence of:

BOARD OF HARBOR COMMISSIONERS

Daniel J. Steininger, President

Donna C. Luty, Secretary

In the Presence of:

THE UNITED STATES OF AMERICA

STATE OF WISCONSIN
MILWAUKEE COUNTY

Personally came before me this _____ day of _____, 2003, John O. Norquist, Mayor of the above-named municipal corporation, who by its authority and on its behalf executed the foregoing instrument and acknowledged the same.

NOTARY PUBLIC, State of Wisconsin
My Commission Expires _____

STATE OF WISCONSIN
MILWAUKEE COUNTY

Personally came before me this _____ day of _____, 2003, _____, the _____ City Clerk of the above-named municipal corporation, who by its authority and on its behalf executed the foregoing instrument and acknowledged the same.

NOTARY PUBLIC, State of Wisconsin
My Commission Expires _____

STATE OF WISCONSIN
MILWAUKEE COUNTY

Personally came before me this _____ day of _____, 2003, _____, the _____ City Comptroller of the above-named municipal corporation, who by its authority and on its behalf executed the foregoing and acknowledged the same.

NOTARY PUBLIC, State of Wisconsin
My Commission Expires _____

STATE OF WISCONSIN
MILWAUKEE COUNTY

Personally came before me this _____ day of _____, 2003, Daniel J. Steininger, President, and Donna C. Luty, Secretary of the Board of Harbor Commissioners, who by its authority and on its behalf executed the foregoing instrument and acknowledged the same.

NOTARY PUBLIC, State of Wisconsin
My Commission Expires _____

STATE OF WISCONSIN
MILWAUKEE COUNTY

Personally came before me this _____ day of _____, 2003,
_____, the _____, and _____,
the _____, of the Department of the Navy who by its authority and on
its behalf executed the foregoing instrument and acknowledged the same.

NOTARY PUBLIC, State of Wisconsin
My Commission Expires _____

APPROVED as to Form and Execution this
_____ day of _____, 2003.

Assistant City Attorney

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