

# LEASE AGREEMENT

Between

THE BOARD OF HARBOR COMMISSIONERS/  
CITY OF MILWAUKEE

And

THE UNITED STATES OF AMERICA  
U.S. ARMY CORPS OF ENGINEERS

For: 5.97 acres of bare land located at 2372 S. Logan Avenue

Term: October 1, 2005 – September 30, 2006

Date of Agreement:

LEASE AGREEMENT

Lease Agreement made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2005, by the United State 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 unimproved real property comprised of approximately 5.97 acres of bare land (hereinafter referred to as the "Property"), located at 2372 S. Logan Avenue, Milwaukee, Wisconsin. The Property is more particularly described in Exhibit A, which is affixed hereto and incorporated into this document by this reference.

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

1. Term. The term of this lease shall be for a period beginning October 1, 2005 through September 30, 2006.
2. Rent. For the one (1) year period (October 1, 2005 through September 30, 2006), Tenant shall pay City a sum of Sixty-Nine Thousand Five Hundred Dollars (\$69,500) per year, payable at a rate of Seventeen Thousand Three Hundred Seventy Five and 00/100 Dollars (\$17,375.00) quarterly in arrears. Rent for a lesser 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 Paper Checks paid by: Vendor Payments, 506 Roeder Circle, Ft. Snelling, Minnesota 55111-4009.

3. Use of the Property. Tenant shall use the Property for armories and such other purposes as are incidental to Governmental purposes to accomplish its 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, after the one year firm term ending September 30, 2006, 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 day after the date of mailing. This Lease or any renewal thereof and all provisions contained therein will terminate automatically on October 1<sup>st</sup> 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 1 October and ends on 30 September.

B. Vacation. Tenant shall vacate the Property upon the expiration of this Lease. The Property shall be returned to City by the 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 be considered events of 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; or

B. Covenants. Tenant shall default in any of the other covenants or agreements herein contained to be kept, observed and performed by Tenant, and such default shall continue for thirty (30) 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 occurrence of any one or more of such events of default, it shall be lawful for City to provide the Tenant with 180 days notice to vacate the premises. If default shall be made in any covenants, agreements, conditions or undertakings herein contained, to be observed and performed by Tenant, which cannot with due diligence be cured within a period of ninety (90) days, and if notice thereof in writing shall have been given to Tenant, and if Tenant prior to the expiration of said ninety (90) days from and after the giving of such notice, commences to eliminate the cause of such default 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; provided, however, that the curing of any default in such manner shall not be construed to limit or restrict the right of City to

declare this Lease ended and terminated, and to enforce all of City's right 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. City retains the right to inspect the Property at all reasonable times and Tenant shall be required to grant full access to the Property at such times, provided that City shall give Tenant twenty-four (24) hours advance notice of such an inspection.

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. Tenant shall not, except with the prior written consent of City, assign any interest in this Lease, nor sublet any portion of the Property. Tenant may permit the short duration use of the property for up to thirty (30) days per year, by authorized organizations in accordance with Army 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 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 owner as a result of the United State 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. This policy is based on the theory that the magnitude of the Government's resources makes it

more advantageous to carry its own risk than to have them assumed by private insurers at rates sufficient to cover all losses, pay their operating expenses and make a profit.

Tenant shall assure compliance with State of Wisconsin Worker's Compensation Laws on the part of 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 materials and equipment.

A. Tenant shall make no additional substantial improvements upon the Property without the prior written consent of City. 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 31, 1950, Lease No. DA-11-032-ENG-186.

B. Upon termination of this Lease, Tenant shall, upon notice from the City, be required to remove from said Property at any time within six (6) months after the termination of this Lease, or any renewal or extension thereof, however effected, or within such additional time as may be mutually agreed upon, all buildings, or other improvements and any and all appurtenances thereto brought or placed upon said Property by Tenant. If six (6) months is not enough time to complete the required removal items, the Tenant shall be required to pay monthly rental (equal to one-third of the quarterly payments in the amount of \$5,125) in the same amount indicated in Condition 2 – "Rent." At the mutual agreement of the City and tenant, Tenant may in lieu of removal require convey title to such improvements to the City, free and clear of all liens and encumbrances.

13. Condition Survey. The Tenant and the City will jointly conduct a Condition Survey of the 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 "B" 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 Closeout Survey. The Tenant shall fully fund the preparation of an updated EBS that will document the environmental condition of the Property at that time as part of the Closeout Survey. 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. 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 Clear 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, as any of the foregoing may have been from time to time 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 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 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") in the same manner, and to the same extent, as any person is subject to such 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 substance" 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, 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 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. Tenant shall promptly take all actions to investigate, test and/or remediate the environmental condition of the Property which may be required by any federal, state or local governmental agency or political subdivision and which such investigation, testing or remediation is necessitated from, or attributable to, the presence upon, about, or beneath the Property of any "hazardous material" or "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, in the same manner, and to the same extent, as any person is subject to such requirements. 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 for the purpose of determining 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. If sampling is done, City shall split samples and provide one set of samples to Tenant if requested, and shall provide copies of any reports or other documentation produced as a result of such entry to Tenant. In the event that Tenant performs any such environmental audit and/or test on its own behalf, it shall provide to the City full and complete copies of any results and/or reports that are generated in connection with the above activities.

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 (c) above) shall survive the expiration or termination of this Lease, in accord with applicable federal, state, interstate and local law.

16. Environmental Performance.

A. During the term of this Lease Agreement, Tenant shall conduct its activities on the Property in conformance with applicable federal and state environmental laws and regulations including, but not limited to, the Resource Conservation and recovery Act of 1976, 42 U.S.C. § 6901, et. seq., otherwise known as RCRA, and the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601, et. seq., otherwise known as CERCLA.

B. 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).

17. 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.

18. 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.

19. 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 hereto, 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.

20. 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:

Department of the Army  
Omaha District  
U.S. Army Corps of Engineers  
Attn: CENWO-RE-AP  
215 North 17<sup>th</sup> Street  
Omaha, NE 68102-4978

21. 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.

22. 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.

23. Gratuities. The Tenant may, by written notice to the City, terminate the right of the City to proceed under this Lease if it is found, after notice and hearing, by the Secretary of the Army or his duly authorized representative, that gratuities (in form of entertainment, gifts, or otherwise) were offered or given by the City, or any agent or representative of the City, to any officer or employee of the Tenant with a view toward securing a lease or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performing, of such lease; provided, that the existence of facts upon which the Secretary of the Army or his

duly authorized representative makes such findings shall be in issue and may be reviewed in any competent court.

24. 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.

25. Examination of Records. The City agrees that the Comptroller General of the United States or any duly authorized representative shall, until the expiration of three (3) years after final payment of the agreed rental, have access to and the right to examine any directly pertinent books, documents, papers and records of the City involving transactions related to this Lease.

26. Nondiscrimination. Tenant hereby agrees that in its use of the Property and in its activities undertaken pursuant hereto it shall not discriminate, permit discrimination or restriction on the basis of race, color, religion (creed), sex, disability, family status, or national origin.

27. 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.

28. 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

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Tom Barrett, Mayor  
\_\_\_\_\_  
Ronald D. Leonhardt, City Clerk

COUNTERSIGNED:

\_\_\_\_\_

\_\_\_\_\_  
W. Martin Morics, 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 \_\_\_\_\_, 2005, Tom Barrett, 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 \_\_\_\_\_, 2005, W. Martin Morics, 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 \_\_\_\_\_, 2005, Ronald D. Leonhardt, 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 \_\_\_\_\_, 2005, Daniel J. Steining, 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 \_\_\_\_\_, 2005, \_\_\_\_\_, the \_\_\_\_\_, and \_\_\_\_\_, the \_\_\_\_\_, of the United States of America (U.S. Army), 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 \_\_\_\_\_, 2005.

\_\_\_\_\_  
Assistant City Attorney

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