

DEPARTMENT OF THE ARMY
LEASE NO. DACA67-1-22-0500
UNDER
BASE REALIGNMENT AND CLOSURE (BRAC)
Fort Lawton Army Reserve Complex
King County, Washington

THIS LEASE, made on behalf of the United States, between the **SECRETARY OF THE ARMY ("Lessor")**, and the **CITY OF SEATTLE ("Lessee")**, a municipal corporation of the State of Washington.

WITNESSETH:

That the Secretary of the Army, by the authority of Title 10, United States Code, Section 2667(g), and for the consideration hereinafter set forth, hereby leases to the Lessee the property legally described in **Exhibit "A"** and depicted in **Exhibit "B"** with buildings and structures identified in **Exhibit "C"**, attached hereto and made a part hereof, hereinafter referred to as the "Leased Premises", within the Fort Lawton Army Reserve Complex, 4585 West Texas Way (Facility ID WA030, Robert R. Leisy USARC and Facility WA031, CAPT James R. Harvey USARC, 4510 and 4570 West Texas Way), Seattle, Washington.

THIS LEASE is granted subject to the following conditions:

1. AUTHORIZED REPRESENTATIVES

The Secretary of the Army, the "Lessor", may act by and through the Commander, Seattle District (District Engineer) or his successor. The District Engineer may also act by and through his duly authorized representatives. Except as otherwise specifically provided, any reference herein to "Lessor," "District Engineer," or "said officer" shall include their duly authorized representatives. The Lessee also may act by and through duly authorized representatives. Any reference to "Lessee" shall include any assignees, or successors and their duly authorized representatives.

2. USE OF THE LEASED PREMISES

a. The primary purpose for which the entire Leased Premises is to be used, in the absence of prior written approval of the Lessor for any other use, is for administration, training, storage and minor maintenance.

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b. All uses of the Leased Premises are nonexclusive, but only to the extent of any required actions by the Lessor in accordance with Base Realignment and Closure responsibilities "BRAC". All aspects of use by the Lessee are further subject to the conditions, restrictions, and notifications in the Environmental Protection Provisions in **Exhibit "D"**.

c. The Lessor, in the Lessor's sole discretion, must approve any change to the uses of the Leased Premises set forth in **Section 2. a**. Prior to approval of any changes in use requested by the Lessee, the Lessee shall furnish, at the Lessee's expense, any additional environmental analyses and documentation deemed necessary by the Lessor to comply with the National Environmental Policy Act of 1969, as amended, and implementing regulations, and other applicable environmental laws and regulations. In granting approval for the change in use, the Lessor reserves the right to impose such additional environmental protection provisions and restrictions as the Lessor deems appropriate.

3. TERM

The Premises are leased for a term of one (1) base year, with four (4) one (1) year options. Provided that this Lease is signed by each party, the term shall begin on 1 January 2022 and end 31 December 2022. If Lessee intends to exercise any of the one (1) year options, Lessee shall give at least ninety (90) days' written notice in the manner prescribed in **Section 6 Notices**, before the end of the Lease term. The term may end if the Lessor or the Lessee shall give notice of termination in accordance with **Section 6 Notices** and under one or more of the conditions described in **Section 4 Termination, Default, Relinquishment, and Remedies**; however, in no event shall the term extend beyond 31 December 2026, if all the option years are exercised.

4. TERMINATION, DEFAULT, REMEDIES AND RELINQUISHMENT

a. Termination.

(1) In the event of Lessor's decision to convey the Leased Premises, or a portion thereof, to the Lessee or to a third party, this Lease shall terminate as to that portion of the Leased Premises so conveyed effective upon the date conveyed, provided the lessor shall give the Lessee thirty (30) days or more notice prior to the effective date.

(2) In the event of Lessee's default, including but not limited to one or more of the events described in **Section 4.b**, the Lessor may terminate this lease.

(3) The Lessor may terminate this Lease in the event of a national emergency declared by the President or the Congress of the United States.

(4) The Lessor may also terminate this Lease effective with no less than sixty (60) days' notice for any of the following reasons:

(i) The Lessee has not submitted a request to the Army for the City acquisition of the appropriate portions of the Lease Premises within sixty (60) days of receipt of Federal Department of Housing and Urban Development (HUD) approval of the Redevelopment Plan.

(ii) The Lessee has not provided the Army with adequate surveys for the appropriate portions of the Leased Premises with one hundred twenty (120) days of receipt of the HUD approval of the Redevelopment Plan.

(5) The Lessor shall not terminate this lease if the City fails to meet either condition under Subsection 4.a. (4) (i) or (ii) above as the result of an event of force majeure (as defined in Section 34).

b. Default. The following events shall be deemed to be events of default by the Lessee under this Lease:

(1) Lessee fails to comply with any condition, provision, covenant, or warranty made under this Lease by Lessee and does not cure such failure within sixty (60) days after written notice thereof to Lessee, unless said failure to comply results from the violation of any federal, state, or local law or regulation, in which case the cure period and any extension thereof given by the federal, state, or local governmental agency authorized to enforce such law shall apply.

(2) Lessee becomes insolvent, or makes a transfer in fraud of creditors, or makes an assignment for the benefit of creditors.

(3) Lessee files a petition under any Section or Chapter of the United States Bankruptcy Code, as amended, or under any similar law or statute of the United States or any State thereof, or there is filed against the Lessee a petition for reorganization or for an insolvency or a similar proceeding filed against Lessee.

(4) A receiver or trustee is appointed for all, or substantially all, of the assets of the Lessee.

(5) Lessee does or permits to be done anything which creates a lien upon the Leased Premises, unless such lien is discharged or otherwise satisfied by a bond or other appropriate mechanism, within sixty (60) days of its imposition.

c. Remedies Upon termination, except for the reason set forth in Section 4.a.(1) the Lessee shall immediately surrender the Leased Premises to Lessor, and if Lessee fails to do so. Lessor may, without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession of the Leased Premises and expel or remove Lessee and any other person who may be occupying said Leased Premises or any part thereof, without being liable for any claim of damages; therefore, Lessee hereby agreeing to pay to Lessor on demand the amount of all loss and damage which Lessor may suffer by reason of such termination. Pursuit of any of the foregoing remedies shall not preclude pursuit of any other remedy herein provided, including closure of the Leased Premises or temporary suspension of activities under the Lease, or any other remedy provided by law or at equity, nor shall pursuit of any remedy herein provided constitute an election of remedies, thereby excluding the later election of an alternate remedy. Forbearance by Lessor to enforce one or more of the remedies herein provided shall not be deemed or construed to constitute a waiver of such remedies.

Lessee agrees to pay to Lessor all costs and expenses incurred by Lessor in the enforcement of this Lease, including, without limitation, the reasonable fees of Lessor's attorneys when such attorneys are employed by Lessor to effect collection of any sums due hereunder or to enforce any right or remedy of Lessor.

d. Relinquishment. This Lease may be terminated or relinquished by the Lessee by giving thirty (30) days prior written notice to the District Engineer, in the manner prescribed in **Section 6 Notices**.

5. CONSIDERATION

a. The consideration for this Lease is the operation, caretaker, custody, security, and maintenance of the Leased Premises by the Lessee for the benefit of the United States and the general public in accordance with the conditions herein set forth. This obligation includes maintenance of the Leased Premises in accordance with City of Seattle Department of Parks and Recreation Landscape, Horticulture and Urban Forestry Best Practices-September 1999 and the payment of stormwater assessments and any other related fees from King County associated with the Leased Premises during the Lease term. The Lessee shall work with the King County Assessor's Offices to have the annual stormwater assessment notices for the Leased Premises sent directly to the Lessee. Lessee will provide the Lessor with copies of statements indicating payment of the stormwater assessments within thirty (30) days of receipt.

Copies of payment statements shall be sent to the Army Corps of Engineers, Seattle District, Real Estate Division, ATTN: CENWS-RE-TR, 4735 East Marginal Way South, Bldg. 1202, Seattle, WA 98124-2388. Payment of the annual stormwater assessment for any portion of the Lease term that is less than an entire calendar year shall be on a prorated basis.

b. All monies received by the Lessee from operations conducted on the Leased Premises shall be utilized by the Lessee for the protection, operation, maintenance, repair, and costs related to the protection and preservation of the Leased Premises. The Lessee shall provide an annual statement of receipts and expenditures to the District Engineer. The Lessor shall have the right to perform audits or to require the Lessee to audit the records and accounts of the Lessee in accordance with auditing standards and procedures promulgated by the American Institute of Certified Public Accountants or by the state and furnish the Lessor with the results of such an audit.

6. NOTICES

All correspondence and notices given pursuant to this Lease shall be addressed, if to the Lessee, to the City of Seattle, Department of Finance and Administrative Services, Seattle Municipal Tower, 700 Fifth Avenue, Suite 5200, or P. O. Box 94689, Seattle, WA 98124-4689, and if to the United States, to District Engineer, Attention: USACE, Seattle District Corps of Engineers, CENWS-RE, 4735 East Marginal Way South, Bldg. 1202 Seattle, WA, 98134-2388, or as may from time to time otherwise be directed by the parties. The service of the notice shall be deemed complete upon the receipt of said notice, or the refusal thereof, by the applicable party.

7. SUPERVISION OF THE LEASED PREMISES

The use and occupation of the Leased Premises shall be subject to the general supervision and approval of the Army Base Realignment and Closure Branch, Environmental Division (DAIN-ISE), Installation Services Directorate, Office of Deputy Chief of Staff, G-9 hereinafter also referred to as "said officer", and to such rules and regulations as may be prescribed from time to time by said officer, all consistent with and in furtherance of the terms of this Lease.

8. APPLICABLE LAWS AND REGULATIONS

a. The Lessee shall comply with all applicable Federal, state, and local laws, ordinances, regulations, and standards that are or may become applicable to their activities on the Leased Premises.

b. Additional compliance conditions are included in **Section 21 Environmental Protection**.

9. CONDITION OF THE LEASED PREMISES

a. No warranties either expressed or implied are given with regard to the condition of the Leased Premises, including, without limitation, whether the Leased Premises does or does not contain asbestos or lead-based paint. The Lessee shall be deemed to have relied solely on its own judgment in assessing the overall condition of all or any portion of the Leased Premises, including, without limitation, any asbestos, lead-based paint, or other conditions on the Leased Premises. The failure of the Lessee to inspect, or to exercise due diligence to be fully informed as to the condition of all or any portion of the Leased Premises offered, will not constitute grounds for any claim or demand against the United States.

b. The Lessee acknowledges that it has inspected the Leased Premises, knows its condition, and understands that the same is leased in an "as is" and "where is" condition, without any representations or warranties whatsoever and without obligation on the part of the United States to make any alterations, repairs, or additions thereto, except as may be specifically provided herein.

c. Environmental Condition of Property. An Environmental Condition of Property (ECP) report was prepared in September 2007 and supplemented by an ECP update report in April 2013 and an ECP recertification in June of 2016, and an ECP Update (ECP-U) Report in August 2021. The Lessee has had the opportunity to conduct an environmental survey of the Leased Premises to verify the observable environmental conditions, prior to the execution of this Lease. At the expiration, revocation, or termination of this Lease, the Lessor and the Lessee will jointly conduct an environmental condition close-out survey using the ECP Report, the update, and the recertification to ascertain any changes in the environmental condition of the Leased Premises. If the Lessee refuses to participate in the close-out survey, then the Lessor will conduct the close-out survey at the Lessee's expense and provide a copy to the Lessee. Environmentally significant changes will be documented as an update to the ECP Report, and the Lessee will be required to make suitable compensation to the extent the changed conditions are due to the Lessee's use and occupancy. The ECP Report, the update and the recertification will constitute the basis for settlement by the parties and determining any environmental restoration requirements to be completed by the Lessee in accordance with Section 15 Restoration.

d. Physical Condition of Property. The Lessee has had the opportunity to conduct an inventory and physical condition survey of the Leased Premises to ascertain the components and physical condition of the property, including vegetation, drainages, structures, utilities, and other appurtenances and fixtures on the Leased Premises, a list of which is attached as **Exhibit "C"**. The results of that survey are identified in the

attached Joint Survey and Inspection of Physical Condition, **Exhibit "E"**. At the expiration or termination of this Lease, the Lessor and the Lessee will jointly conduct an inventory and physical condition close-out survey to ascertain any changes in the physical condition of the Leased Premises. If the Lessee refuses to participate in the inventory and physical condition close-out survey, then the Lessor will conduct the close-out survey at the Lessee's expense and provide a copy to the Lessee. The findings of the inventory and physical condition close-out survey will constitute the basis for settlement by the parties for the restoration, in accordance with Section 15 Restoration, of any leased property shown to be lost, damaged, or destroyed during the Lease term.

10. COST OF UTILITIES

a. The Lessee shall pay the cost, as determined by the officer having jurisdiction over the Leased Premises, of producing and/or supplying any utilities and other services furnished by the government or through government-owned facilities for the use of the Lessee, including the Lessee's proportionate share of the cost of operation and maintenance of the government-owned facilities by which such utilities or services are produced or supplied. Payment to Lessor shall be made in a manner prescribed by the Lessors' Officer having such jurisdiction.

b. The Lessee has the option of obtaining utility services directly from local utility providers. The Lessor reserves the right to require the Lessee to install separate meters at its own expense for these services and require Lessee to obtain service in its own name. The Lessee shall pay for utilities on a prorated basis until meters are installed. The Lessor shall be under no obligation to furnish utilities or services; however, prior to terminating services to Lessee, Lessee shall be provided with reasonable notice and opportunity to obtain and install utility services from a commercial provider.

11. PROTECTION OF PROPERTY

The Lessee shall keep the Leased Premises in good order and in a clean, safe condition by and at the expense of the Lessee. The Lessee shall be responsible for any damage that may be caused to property of the United States by the activities of the Lessee under this Lease and shall exercise due diligence in the protection of all property located on the Leased Premises against fire or damage from any and all other causes. If the Leased Premises are destroyed or damaged in whole or in part because of Lessee's use, Lessee shall repair or replace the Leased Premises to its prior condition, normal wear and tear excepted; unless said officer determines that Lessee may pay the cost to repair or replace the Leased Premises, except personal property, to a condition satisfactory to said officer.

12. INSURANCE

a. As to those structures and improvements on the Leased Premises constructed by or owned by the United States, for such periods as the Lessee is in possession of the Leased Premises pursuant to the terms and conditions of this Lease, the Lessee shall procure and maintain at the Lessee's cost a standard fire and extended coverage insurance policy or policies on the Leased Premises to the full insurable value thereof. The Lessee shall procure such insurance from a reputable company or companies. The insurance policy shall provide that in the event of loss thereunder, the proceeds of the policy or policies, at the election of the United States, shall be payable to the Lessee to be used solely for the repair, restoration or replacement of the property damaged or destroyed, and any balance of the proceeds not required for such repair, restoration or replacement shall be paid to the United States. If the United States does not elect by notice in writing to the insurer within sixty (60) days after the damage or destruction occurs to have the proceeds paid to the Lessee for the purposes hereinabove set forth, then such proceeds shall be paid to the United States, provided however that the insurer, after payment of any proceeds to the Lessee in accordance with the provision of the policy or policies, shall have no obligation or liability with respect to the use or disposition of the proceeds by the Lessee. Nothing herein contained shall be construed as an obligation upon the United States to repair, restore or replace the Leased Premises or any part thereof should it be diminished in value, damaged, or destroyed.

b. The Lessee shall require that the insurance company give the District Engineer thirty (30) days written notice of any cancellation or change in such insurance in the manner prescribed in Section 6 Notices. The District Engineer may require closure of any or all the Leased Premises during any period for which the Lessee does not have the required insurance coverage. The Lessee shall require its insurance company to furnish to the District Engineer, certificates of insurance evidencing the purchase of such insurance.

13. RIGHT TO ENTER

a. The United States, its officers, agents and employees, reserve a right to enter upon the Leased Premises at any time and for any purpose necessary or convenient in connection with U.S. government purposes; to make inspections, to make any other use of the lands as may be necessary in connection with U.S. Government purposes, and the Lessee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee thereof, except as may be authorized under the Federal Tort Claims Act or other applicable law.

b. Additional rights to enter are reserved in **Section 21 Environmental Protection**.

14. INDEMNITY AND HOLD HARMLESS

a. To the extent permitted by law, the Lessee agrees to assume all risks of all loss or damage to property and injury or death to persons by reason of or incident to its possession and/or use of the Leased Premises or the activities conducted under this Lease. The Lessee expressly waives all claims against the United States of America for any such loss, damage, personal injury, or death caused by or occurring as a consequence of possession and/or use of the Leased Premises by the Lessee. The Lessee, to the extent authorized by applicable law further agrees to indemnify and hold harmless the Army, its officers, agents, and employees, from and against all suits, claims, demands or actions, liabilities, judgments, costs, and attorneys' fees arising out of, or in any manner predicated upon, personal injury, death, or property damage resulting from, related to, caused by, or arising out of the possession and/or use of the Leased Premises by the Lessee. The Army will give the Lessee notice of any claim against it covered by this indemnity as soon after learning of such claim as practicable.

b. The Lessee shall indemnify and hold harmless the United States of America from any costs, expenses, liabilities, fines, or penalties resulting from any discharges, releases, emissions, spills, storage, disposal, or any other action caused by the Lessee which gives rise to any claim or action to determine if the United States of America has any potential liability, civil or criminal, or responsibility under Federal, state, or local environmental laws.

c. The obligations of the Lessee under this Section 14 shall survive the expiration or termination of the Lease and any conveyance of the Leased Premises. The Lessee's obligation hereunder shall apply whenever the United States of America incurs costs or liabilities for the Lessee actions giving rise to liability under this section, except as limited by law.

d. The Lessee shall be responsible for any costs, expenses, liabilities, fines, or penalties under Federal state or local environmental laws, resulting from discharges, release, emissions, spills, storage, or disposal of hazardous substances caused by Lessee activities on the Leased Premises during the term of the Lease.

15. RESTORATION

a. Except in case of termination under Section 4.a.(l), on or before the expiration of this Lease or its termination by the Lessor or relinquishment by the Lessee, the Lessee shall vacate the Leased Premises, remove the property of the Lessee, and restore the Leased Premises to a condition existing as of term commencement, ordinary wear and tear excepted, as reasonably determined by said officer within such time as the said officer may designate. If the Lessee shall fail or neglect to remove said property

and restore the Leased Premises, then, at the option of the said officer, the property shall either become the property of the United States without compensation therefor, or the said officer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The Lessee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, relinquishment, or termination of this Lease in restoring the Leased Premises to its condition as of the time of this Lease, provided Lessor-approved modifications and normal wear and tear are excepted.

b. During the previous Lease to Lessee DACA67-1-17-27 (effective 1 January 2017 through 31 December 2021), a fire occurred on 22 January 2018 at Harvey Hall, in the auditorium, which resulted in damages estimated at \$110,000. Per **Section 11, Protection of Property**, Lessee is required to repair or replace the Leased Premises to its prior condition or pay the cost to Lessor. At the time of the fire, Lessor and Lessee agreed to defer payment until such time as Lessee either accepted the property by fee conveyance, in which case Lessor would forgive the debt, or Lessee terminated conveyance negotiations and the Lease, at which time, Lessee would pay Lessor the damages owing. Lessee shall pay for any damages owing to Lessor upon early termination of this Lease or failure to complete fee conveyance at the end of the Lease.

16. NON-DISCRIMINATION

a. The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessee's operations, programs, or activities conducted on the Leased Premises because of race, color, religion, sex, age, handicap, or national origin.

b. The Lessee, by acceptance of this Lease, is receiving a type of Federal assistance and, therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d); the Age Discrimination Act of 1975 (42 U.S.C. § 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 300).

17. SUBJECT TO EASEMENTS

This Lease is subject to all existing easements, or those subsequently granted as well as established access routes for roadways and utilities located, or to be located, on the Leased Premises, provided that the proposed grant of any new easement or route will be coordinated with the Lessee, and easements will not be granted which will, in the

opinion of the District Commander, interfere with the current use of the Leased Premises by the Lessee.

18. PROHIBITED USES

a. The Lessee shall not permit gambling on the Leased Premises, except for state lottery tickets in accordance with applicable state and local laws and regulations, or install or operate, or permit to be installed or operated thereon, any device which is illegal; or use the Leased Premises or permit it to be used for any illegal business or purpose. There shall not be conducted on or permitted upon the Leased Premises any activity which constitutes a nuisance.

b. The Lessee shall not construct or place any structure, improvement, or advertising sign or allow or permit such construction or placement without prior written approval of the District Engineer.

c. The Lessee shall not sell, store, or dispense, or permit the sale, storage, or dispensing of beer or other intoxicating liquors on the Leased Premises.

d. The Lessee shall not construct or operate any mobile or temporary fuel storage or dispensing facility and shall use designated existing facilities for storage of small fuel quantities in accordance with State and Federal regulations. Lessee shall not utilize the property for commercial vehicle parking except as necessary for the permitted uses described in **Section 2 Use of the Leased Premises**.

e. The Lessee shall not conduct any destructive police training on or in any buildings of the Leased premises.

f. See additional Use Restrictions in the Environmental Protection Provisions, **Exhibit "D"**.

g. The Lessee shall not transfer, assign, license or sublease the Leased Premises, without prior written approval by the District Engineer.

19. WASTE OF NATURAL RESOURCES

The Lessee shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the Leased Premises except as authorized in writing by the Lessor. However, the Lessee may cut trees which pose a danger or could impact existing infrastructure as a part of normal grounds maintenance.

20. DISPUTES CLAUSE

a. Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. 7101-7109) as amended, (the Act), all disputes arising under or relating to this Lease shall be resolved under this clause and the provisions of the Act.

b. "Claim", as used in this clause, means a written demand or written assertion by the Lessee seeking, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of Lease terms, or other relief arising under this Lease. A claim arising under this Lease, unlike a claim relating to this Lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the Lessee. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified as required by subparagraph c. (2) below.

c. See below:

(1) A claim by the Lessee shall be made in writing and submitted to the District Engineer for a written decision. A claim by the Government against the Lessee shall be made in writing and shall have a written response by the Director of Finance and Administrative Services of the Lessee.

(2) For Lessee claims exceeding \$100,000, the Lessee shall submit with the claim a certification that:

(i) the claim is made in good faith; and

(ii) supporting data are accurate and complete to the best of the Lessee's knowledge and belief; and

(iii) the amount requested accurately reflects the Lease adjustment for which the Lessee believes the Lessor is liable.

(3) If the Lessee is an individual, the certificate shall be executed by that individual. If the Lessee is not an individual, the certification shall be executed by:

(i) a senior company official in charge of the Lessee's location involved; or

(ii) an officer or general partner of the Lessee having overall responsibility of the conduct of the Lessee's affairs.

d. For Lessee claims of \$100,000 or less, the District Engineer must, if requested in writing by the Lessee, render a decision within 60 days of the request. For Lessee-certified claims over \$100,000, the District Engineer must, within 60 days, decide the claim or notify the Lessee of the date by which the decision will be made.

e. The District Engineer's decision shall be final unless the Lessee appeals or files a suit as provided in the Act.

f. At the time a claim by the Lessee is submitted to the District Engineer or a claim by the Government is presented to the Lessee, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certificate described in sub condition c. (2) of this condition, and be executed in accordance with sub condition c. (3) of this condition.

g. The Government shall pay interest, or the amount found due and unpaid by the Lessor from:

(1) the date the District Engineer received the claim (properly certified if required),

or

(2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the District Engineer receives the claim and then at the rate applicable for each six-month period as fixed by the Treasury Secretary during the pendency of the claim.

h. The Lessee shall proceed diligently with the performance of the Lease, pending final resolution of any request for relief, claim, or action arising under the Lease, and comply with any decision of the District Engineer.

i. The process for submitting and determining a claim as set forth in Subsections 20.c through 20.h above shall only apply to a claim from the Lessee against the Lessor.

21. ENVIRONMENTAL PROTECTION

a. The Lessee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs from activities of the Lessee, the Lessee shall be liable to remediate the environment and/or restore the damaged. The Lessee shall not disrupt, damage, obstruct, or impede environmental restoration work, operations, or facilities on the Leased Premises. The Lessee shall indemnify the Lessor, to the extent authorized by applicable law, for any costs incurred as a result of Lessee's breach of this provision. The Lessee must obtain approval in writing from said officer, as identified in **Section 7 Supervision of Leased Premises**, before any pesticides or herbicides are applied to the Leased Premises.

b. The Lessee shall be solely responsible for obtaining at its cost and expense any regulatory or environmental permits required for its operations under the Lease, independent of any existing permits. The Lessee shall be required to obtain its own EPA Identification Number, if applicable.

c. The Lessor's rights under this Lease specifically include the right of Government officials to inspect, upon reasonable notice, the Leased Premises for compliance with environmental, safety, and occupational health laws and regulations, whether or not the Government is responsible for enforcing them. Such inspections are without prejudice to the right of duly constituted enforcement officials to make such inspections. The Lessor normally will give the Lessee twenty-four (24) hours prior notice of its intention to enter the Leased Premises unless it determines the entry is required for safety, environmental operations, or security purposes. The Lessee shall have no claim on account of any such entry against the Lessor or any officer, agent, employee, or contractor thereof.

d. The Government, its officers, agents, employees, contractors, and subcontractors have the right, upon reasonable notice to the Lessee, to enter upon the Leased Premises for the purposes enumerated in this condition;

(1) to conduct investigations and surveys, including, where necessary, drilling, soil and water sampling, test pitting, testing soil borings, and other environmental investigations;

(2) to inspect field activities of the Lessor and its employees, agents, contractors, and subcontractors for environmental compliance;

(3) to construct, operate, maintain, or undertake any other response or remedial action.

e. Any inspection, survey, investigation, or other response or remedial action will, to the extent practical, be coordinated with representatives designated by the Lessee. The Lessee shall have no claim on account of such entries against the United States or any officer, agent, employee, contractor, or subcontractor thereof, except as may be authorized under other applicable law. In addition, the Lessee shall comply with all applicable Federal, state, and local occupational safety and health regulations.

f. The Lessee shall not store or dispose of any toxic or hazardous materials on the Leased Premises unless authorized pursuant to 10 U.S.C. 2692. The Lessee shall strictly comply with the hazardous waste requirements under Resource Conservation and Recovery Act (RCRA), or its Washington State Department of Ecology (WSDOE) equivalent. Except as specifically authorized by the Lessor in writing, the Lessee must provide at its own expense hazardous waste management facilities, complying with all

laws and regulations. Lessor hazardous waste management facilities will not be available to the Lessee. Any violation of the requirements of this condition shall be deemed a material breach of this Lease.

g. Also see the conditions, restrictions, and notifications in **Exhibit "D"**.

22. HAZARDOUS SUBSTANCES NOTICE

To the extent such information is available on the basis of a complete search of Lessor's files, notice regarding hazardous substances stored for one year or more, known to have been released or disposed of on the Leased Premises, is provided in the Environmental Condition of Property (ECP). The Lessee should consult the ECP for more detailed information.

23. SITE SPECIFIC CONDITIONS AND RESTRICTIONS

a. If used by the Lessee, any herbicides and pesticides must be approved by Federal, state, and local laws and regulations. In addition, the use, permitting, application, reporting and disposal of these agents are required to be in accordance with these laws.

b. Maintenance of the buildings and grounds of the Leased Premises shall be performed in conformance with the City of Seattle Parks and Recreation Landscape, Horticulture and Urban Forestry Best Management Practices-September 1999.

c. All maintenance requested by Lessee on the Leased Premises is the sole responsibility of the Lessee and must be funded by the Lessee. If maintenance is provided by the Lessor or a Lessor sub-contractor at Lessee's request, the Lessee shall reimburse the Lessor directly following the completion of services. The costs for those services will be equal to the Lessor's cost.

d. If it is necessary for the Lessee to access the Leased Premises through the Fort Lawton Cemetery Gate, access will be restricted to the area immediately adjacent to the fence along the southern boundary of the cemetery.

e. All equipment on site and in buildings such as generators, space heaters, fans, wire cages, etc., and non-attached personal property such as desks, chairs, curtains, shelves, and other furniture is considered property of the Federal Government and is not to be removed from the Leased Premises. Requests to relocate and use these items off the Leased Premises should be addressed to the District Engineer.

24. HISTORIC PRESERVATION

The Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural, or other cultural artifacts, relics,

remains, or objects of antiquity located or discovered on the Leased Premises. In the event such items are discovered on the Leased Premises, the Lessee shall immediately notify said officer and protect the site and the material from further disturbance until said officer gives clearance to proceed.

25. SOIL AND WATER CONSERVATION

The Lessee shall maintain, in a manner satisfactory to said officer, all soil and water conservation structures that may be in existence upon said Leased Premises at the beginning of, or that may be constructed by the Lessee during the term of this Lease, and the Lessee shall take appropriate measures to prevent or control soil erosion within the Leased Premises. Any soil erosion occurring outside the Leased Premises resulting from the activities of the Lessee shall be corrected by the Lessee as directed by the said officer.

26. TAXES

Any and all taxes imposed by the state or its political subdivisions upon the property or interest of the Lessee in the Leased Premises shall be paid promptly by the Lessee. If and to the extent that the property owned by the United States is later made taxable by state or local governments under an Act of Congress, the Lease shall be renegotiated.

27. COVENANT AGAINST CONTINGENT FEES

The Lessee 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, except bona fide employees or established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this Lease without liability or, in its discretion, to require the Lessee to pay, in addition to the Lease rental or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

28. 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 benefits to arise therefrom. However, nothing herein contained shall be construed to extend to any incorporated company if this Lease is for the general benefit of such corporation or company.

29. MODIFICATIONS

This Lease contains the entire agreement between the parties hereto, and no modification of this agreement, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative, and this provision shall apply to this condition as well as all other conditions of this Lease.

30. NO COMMITMENTS FOR FUTURE USE

This Lease does not commit the United States to any renewals of the use authorized herein beyond the extension of the term, if provided for in the Condition on TERM or to any future reuse or disposal and does not create any right or expectation for the Lessee to acquire the leased property.

31. DISCLAIMER

This Lease is effective only insofar as the rights of the United States in the Leased Premises are concerned; and the Lessee shall obtain any permit or license which may be required by applicable Federal, state, or local statute in connection with the use of the Leased Premises. It is understood that the granting of this Lease does not preclude the necessity of obtaining a Department of the Army permit for activities which involve the discharge of dredge or fill material or the placement of fixed structures in the waters of the United States, pursuant to the provisions of Section 10 of the Rivers and Harbors Act of March 3, 1899 (33 U.S.C. 403), and Section 404 of the Clean Waters Act (33 U.S.C. 1344).

32. AVAILABILITY OF FUNDS

The Lessor's obligation to pay or reimburse any money under this Lease is subject to the availability of appropriated funds, and nothing in this Lease shall be interpreted to require obligations or payments by the United States in violation of the Anti-Deficiency Act, provided that the Lessor shall otherwise comply with applicable statutory requirements and its obligations under the terms of this Lease.

33. IMPROVEMENTS TO LEASE PREMISES

- a. The Lessee may make improvements to the Leased Premises:
 - (1) upon prior written consent of the Lessor;
 - (2) said improvements are undertaken or constructed in a good and workmanlike manner and in accordance with all requirements of applicable Federal, state, and local ordinances and with the rules, regulations and requirements of all departments, boards, bureaus, officials, and authorities having jurisdiction thereover.

(3) said improvements will not preclude the use of the Leased Premises for purposes anticipated by disposal-related documentation prepared to satisfy the requirements of the National Environmental Policy Act of 1969, as amended, which documentation may include, without limitation, a Record of Environmental Consideration, or an Environmental Assessment, or by the Reuse Plan; and

(4) all necessary permits for such improvements shall be obtained by the Lessee.

b. If required by applicable law, the Lessor agrees to cooperate with the Lessee and to execute any documents or permits reasonably required for the undertaking by the Lessee of any such improvements, provided that the Lessee shall discharge any expense or liability of the Lessor in connection therewith.

c. The Lessee shall provide to the Lessor, at the Lessee's expense, upon receipt thereof by the Lessee, copies of all permits, certificates of occupancy, and other approvals, including copies of all plans submitted in connection therewith, obtained from governmental authorities in connection with the use and occupancy of such building or improvement.

d. This provision shall not apply to the performance of routine maintenance activities at the Leased Premises by the Lessee.

34. FORCE MAJEURE

Neither Lessor nor Lessee shall be deemed in default under this Lease, nor liable for damages, nor subject to termination, for failure to perform duties or obligations or meet conditions under this Lease if such failure is arising from any natural cause or event beyond a party's reasonable control, including, but not limited to, an act of nature, fire, flood, windstorm, or earthquake, or delay caused by third-party challenges, actions or lawsuits but not including strike or labor disturbance, civil commotion, or delay in transportation. In no event, shall this clause operate to extend the term of this lease.

35. SPECIAL CONDITIONS

a. The Leased Premises is subject to completed and ongoing Environmental Restoration work and operating CERCLA Remedies. The Grantee shall not conduct or allow any sub-tenants, agents, or assigns to conduct any excavation, digging, trenching, new construction, demolition work or any type of soil disturbing activities without the expressed written consent of the Real Estate Contracting Officer, in the manner prescribed in **Section 6 Notices**.

b. This Lease is subject to the requirements of Executive Order 14042 as attached in **Exhibit "F"**.

36. COMPLIANCE WITH EXECUTIVE ORDER 13658

a. It has been determined this contract is not subject to Executive Order 13658 or the regulations issued by the Secretary of Labor in 29 CFR part 10 pursuant to the Executive Order, and the following provisions.

b. If a duly authorized representative of the United States discovers or determines, whether before or subsequent to executing this contract, that an erroneous determination regarding the applicability of Executive Order 13658 was made, contractor, to the extent permitted by law, agrees to indemnify and hold harmless the United States, its officers, agents, and employees, for and from any and all liabilities, losses, claims, expenses, suits, fines, penalties, judgments, demands or actions, costs, fees, and damages directly or indirectly arising out of, caused by, related to, resulting from or in any way predicated upon, in whole or in part, the erroneous Executive Order 13658 determination. This includes contractor releasing any claim or entitlement it would otherwise have to an equitable adjustment to the contract and indemnifying and holding harmless the United States from the claims of subcontractors and contractor employees.

37. COMPLIANCE WITH EXECUTIVE ORDER 13706

It has been determined this contract is not subject to Executive Order 13706 or the regulations issued by the Secretary of Labor in 29 CFR part 13 pursuant to the Executive Order.

38. EXHIBITS

Listed Exhibits are incorporated and made a part of this Lease:

Exhibit "A" – Legal Description

Exhibit "B" – Map, Tax Parcel Information & Facilities Map

Exhibit "C" – Fixtures, appurtenances, and improvements

Exhibit "D" – Environmental Protection Provisions

Exhibit "E" – Joint Survey of Physical Condition

Exhibit "F" – Executive Order 14042

THIS LEASE is not subject to Title 10, United States Code, Section 2662, as amended.

IN WITNESS WHEREOF, I have hereunto set my hand by authority of the Secretary of the Army this _____ day of _____ 2021.

TODD L. CZARNECKI

Chief of Real Estate, Northwestern Division
Real Estate Contracting Officer

THIS LEASE is also executed by the Lessee this _____ day of _____ 2021.

THE CITY OF SEATTLE

A Municipal Corporation of the
State of Washington

Signature

Printed Name

Title

Fort Lawton, WA
Lease No. DACA67-1-22-0500