

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS

Lease No. DACA01-5-20-XXXX CIV. ENG SOUTH ATLANTIC DIVISION
US Army Reserves MOBILE DISTRICT

LAND LEASE

BETWEEN

The Board of County Commissioners, Alachua County, Florida

AND

THE UNITED STATES OF AMERICA

THIS LEASE made and entered into this 30th day of September in the year **2020** by and between **Alachua County**, a charter county and political subdivision of the State of Florida, whose address is:

**12 SE 1ST ST
GAINESVILLE, FL 32601**

and whose interest in the property hereinafter described is that of owner for **itself, it's administrators, successors, and assigns**, hereinafter called the **Lessor**, and **THE UNITED STATES OF AMERICA**, hereinafter called the **Government**, under the authority of Title 10, United States Code, Section 2661, the described Premises on the terms stated herein:

WHEREAS, the Lessor owns the Premises described in paragraph 1 of this Lease, subject to certain easements, reservations, encroachments and other items recorded in the public records; and

WHEREAS, the Government has applied to the County for a lease of the Premises to operate an Army Reserve Equipment Concentration Site thereon, which the Board of County Commissioners has determined will have many economic and non-economic benefit for the residents of Alachua County; and

WHEREAS, the Board of County Commissioners has determined, and has duly adopted a Resolution stating, that the Premises are not needed for County purposes and that Lessee requires the Premises for the operation of an Army Reserve Equipment Concentration Site.

NOW, THEREFORE, in consideration of the foregoing recitals, which be deemed an integral part of this Lease and incorporated hereto by reference, and the covenants and obligations contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follow:

1. The Lessor hereby leases to the Government the following described Premises, viz:

EXCLUSIVE USE 103.47+ acres of improved land known as "Alachua County Fairgrounds Redevelopment Area" located at 3100 NE 39th Ave., Gainesville, FL 32609 for the proposed Army Reserve Equipment Concentration Site (ECS) (MCAR PN82197), but subject to all easements, encumbrances, and any other defect that is recorded in the public records prior to the effective date of this Lease.

Metes and bounds legal description and map is further attached hereto and made a part of hereof marked "**Exhibit A**", together with the right of ingress and egress to the herein described area.

To be used for the following purpose: **Army Reserve Equipment Concentration Site (ECS)**

2. **To Have and to hold** the said Premises for the term beginning **September 30, 2020** through **October 1, 2070**, subject to termination and renewal rights as may hereinafter set forth and subject to adequate appropriation of funds by Congress from year to year for the payment of rentals; and provide further that this lease shall in **no event extend beyond October 1, 2070**.

3. The Government shall pay the Lessor rent at the following rate:

ONE DOLLAR (\$1.00) for the term of this Lease and all renewals hereof, the receipt and sufficiency of which are hereby acknowledged.

4. THE LESSOR HAS NOT MADE, DOES NOT MAKE, AND WILL NOT MAKE ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AS TO THE SUITABILITY OR FITNESS OF THE PREMISES FOR THE GOVERNMENT'S INTENDED USES THEREOF NOR FOR ANY OTHER USES, OR TO THE QUALITY, PHYSICAL CONDITION, UTILITY OR POTENTIAL OF THE PREMISES, AND THE GOVERNMENT AGREES THAT IT HAS NOT RECEIVED OR RELIED UPON ANY SUCH REPRESENTATIONS OR WARRANTIES FROM THE LESSOR. The Government hereby acknowledges, agrees, and represents that it has inspected the Premises and has, in its sole and exclusive discretion, determined that the Premises are suitable for the Government's intended uses of the Premises in its "AS-IS," "WHERE-IS" and "WITH ALL FAULTS" condition.

5. The Lessor shall have no duty or obligation to maintain or repair the Premises or to maintain, repair or replace any fixtures thereon during the term of this Lease. The Government shall have the right during the existence of this lease to construct, demolish, install, remove, replace, maintain and operate an Equipment Concentration Site. The Government may also exercise these rights on any Lessor owned internal utilities and other

services to the Premises, parking, storm water facilities, access driveways and roads, internal driveways and roads, fences, gates, landscaping and anything else related to the Government's use of the Premises for an Equipment Concentration Site. The cost of any such improvements, alterations, or repairs shall be the responsibility of and paid by the Government. All improvements shall be and remain the property of the Government and may be removed or otherwise disposed of by the Government on or before the expiration or termination of this Lease. All improvements, alterations, or repairs made to the Premises shall be performed in a good and workmanlike manner; by licensed, bonded, and fully insured professionals; and in compliance with all applicable governmental rules or regulations.

6. The Government may terminate this Lease at any time by giving One-Hundred and Eighty (180) days' notice in writing to the Lessor, and no rental shall accrue after the effective date of termination.

7. The Lessor shall not have the duty or obligation to maintain any type of insurance regarding the Premises. The Government is self-insured in accordance with the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 2671 et seq.

8. The Government shall comply with all environmental laws, as defined in CERCLA, with respect to the Premises. The Government shall perform environmental reviews to ensure compliance with all appropriate environmental laws, as defined in CERCLA, applicable regulations, executive orders, policy and guidance throughout the term of this Lease.

A Phase 1 environmental condition of property report will be performed prior to any improvements or occupancy of the Premises by the Government. The environmental documentation must address the future operation and maintenance of the facility and also required for real estate vacated by the Army Reserve. An Environmental Assessment (EA) or Environmental Impact Statement (EIS) may be required depending on the Phase 1 findings. The reporting must identify possible contamination resulting from use of the property by the Army Reserve. All aforementioned environmental documentation affecting the Premises shall be provided to the County within a reasonable time period prior to the approval of the remediation plan. Any contamination attributable to the Government's use of the Premises must be mitigated in accordance with an approved remediation plan prior to the expiration or termination of this Lease, said plan will be submitted for review and comment to the County prior to approval.

9. The Government may not sell, assign, or transfer this Lease, or any part or interest therein, or sublet the Premises or any part or interest therein, without the Lessor's prior written consent.

10. Any notice under the terms of this Lease shall be in writing signed by a duly authorized representative of the party giving such notice, and if given by the Government shall be addressed to the **Lessor at The**

Board of County Commissioners, Alachua County, Florida, whose address is: 12 SE 1ST ST., Second Floor, ATTN: County Manager, GAINESVILLE, FL 32601 and if given by the Lessor shall be addressed to the US Army Corps of Engineer, 109 St. Joseph St, Mobile District, ATTN: CESAM-RE, P.O. Box 2288, Mobile, AL 36628-0001.

11. The Lessor 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 Lessor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this Lease without liability or in its discretion to deduct from the lease price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

12. 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.

13. (a) The Government may, by written notice to the Lessor, terminate the right of the Lessor 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 the form of entertainment, gifts, or otherwise) were offered or given by the Lessor, or any agent or representative of the Lessor, to any officer or employee of the Government with a view toward securing a lease or securing favorable treatment with respect to the awarding or amending, or the making of any determinations 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.

(b) In the event this Lease is terminated as provided in paragraph (a) hereof, the Government shall be entitled (i) to pursue the same remedies against the Lessor as it could pursue in the event of a breach of the Lease by the Lessor, and (ii) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Secretary of the Army or his duly authorized representative) which shall be not less than three nor more than ten times the costs incurred by the Lessor in providing any such gratuities to any such officer or employee.

(c) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Lease.

14. The Lessor agrees that the Comptroller General of the United States or any duly authorized representatives 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 Lessor involving transactions related to this Lease.

15. As between the Parties, the Government agrees to be responsible for any death, personal injury or damages to the Premises, including damages as determined by an environmental review or EIS, during the term of this Lease arising from the activity of the Government, its officers, agents, employees or representatives on said Premises, in the exercise of rights under this Lease. However, nothing herein is intended to constitute a waiver of the Parties Sovereign Immunity. Should a mutually acceptable settlement be made hereunder, the parties shall enter into a supplemental agreement hereto effectuating such settlement. The provisions of this lease are without prejudice to any rights the County may have to make a claim under applicable laws. This lease is subject to 41 U.S.C chapter 71, Contract Disputes Act. This provision shall survive the expiration or termination of this Lease but only as to occurrences that occur during the Government's possession of the Premises.

16. The Lease may also be terminated under the following conditions:
At Lessor's option for cause:

(i) If the Government fails to commence site construction of the Equipment Concentration Site on the Premises within three years following the proposed date of February 25, 2021 or;

(ii) if the Government does not complete construction of the Equipment Concentration Site on the Premises and commence operation of the Equipment Concentration Site within three years following the date of February 25, 2021; and

(iii) if the Government ceases operation of the Facility for a period of 365 consecutive days or more after the Government completes construction of the Equipment Concentration Site; or

(iv) At such time when the Government receives approval to accept the fee simple donation of the subject lands from the Lessor and the said fee conveyance can be effected.

17. The exercise by the Lessor of any right or remedy to collect rent or enforce the Lessor's rights arising under this Lease shall in no wise constitute a waiver of, or a binding election precluding the exercise of, any other right or remedy afforded the Lessor by this Lease Agreement.

18. Upon expiration or earlier termination of this Lease, Government shall surrender the Premises to Landlord.

19. The cost of connections, improvements, and service for electricity, telephone, solid waste collection and disposal, water, internet, or any other utility or service to the Premises are the responsibility of the Government.

20. Radon Gas. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your County health unit.

21. Non-Waiver. The failure of any party to exercise any right in this Lease is not a waiver of such right. Failure by the Parties to insist upon the strict performance of any of the terms, conditions, or provisions of this Lease is not a waiver of such terms, conditions, or provisions, and the Parties, notwithstanding such failure, retain the right hereafter to insist upon strict performance of any or all such terms and conditions of this Lease, as set forth herein.

22. Venue. Any action arising under this lease will be under Federal Jurisdiction.

23. Construction. This Lease shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by one of the Parties. It is recognized that both Parties have substantially contributed to the preparation of this Lease.

24. Amendments. The Parties may amend this Lease only by mutual written agreement of the Parties, executed with the same formalities as this Lease.

25. Attachments. All Exhibits and amendments attached to this Lease are incorporated into and made part of this Lease by reference.

26. Entire Agreement. This Lease constitutes the entire agreement of the Parties and supersedes all prior written or oral agreements, understandings, or representations.

IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names as of the date above written.

ALACHUA COUNTY, FLORIDA

By: _____
Robert Hutchinson, Chair
Board of County Commissioners

ATTEST

J.K. “Jess” Irby, Esq., Clerk
(SEAL)

APPROVED AS TO FORM

Alachua County Attorney’s Office

THE UNITED STATES OF AMERICA

BY: _____