

RESOLUTION NO. 2018-100

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA APPROVING A LEASE AMENDMENT BETWEEN THE CITY OF MARINA AND THE UNITED STATES OF AMERICA FOR LEASE NO. 6247311PIP00174 FOR A PORTION OF BUILDING 507 LOCATED AT 3200 IMJIN ROAD AT THE MARINA MUNICIPAL AIRPORT, AUTHORIZING FINANCE DIRECTOR TO MAKE NECESSARY ACCOUNTING AND BUDGETARY ENTRIES, AND AUTHORIZING CITY MANAGER TO EXECUTE LEASE AMENDMENT ON BEHALF OF THE CITY, SUBJECT TO FINAL REVIEW AND APPROVAL BY CITY ATTORNEY

WHEREAS, Currently Building 507 is leased by the United States of America (CIRPAS) and has a total leased space of 64,920 square feet of hangar, storage and office space; and

WHEREAS, the United States of America (CIRPAS) desires to reduce the amount of space they lease in Building 507; and

WHEREAS, the United States of America would like to reduce the space leased from 64,920 square feet to approximately 30,460 square feet; and

WHEREAS, the remaining terms and conditions of the existing lease remain the same; and

WHEREAS, Joby Aero Inc. will be leasing the vacated 34,460 square feet of Building 507 under the same rate of \$0.33 per square foot.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Marina does hereby:

1. Approve Lease Amendment between City of Marina and the United States Government (CIRPAS) for the building located at 3200 Imjin Road (Building 507) at the Marina Municipal Airport; and
2. Authorize Finance Director to make necessary accounting and budgetary entries; and
3. Authorize City Manager to execute Lease Amendment on behalf of the City, subject to final review and approval by City Attorney.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 21st day of August 2018, by the following vote:

AYES, COUNCIL MEMBERS: Amadeo, Morton, O'Connell, Delgado

NOES, COUNCIL MEMBERS: None

ABSENT, COUNCIL MEMBERS: Brown

ABSTAIN, COUNCIL MEMBERS: None

Bruce C. Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk

EXHIBIT A

AMENDMENT

This modification to Lease N6247311RP00174 makes the following changes:

1. Paragraph 1, of the Lease is amended by deleting therefrom

“The Lessor hereby leases to the Government for the Government’s exclusive use the following described premises: a portion of the Marina Municipal Airport, located within and around Building Number 507 located at 3200 Imjin Road, Marina, County of Monterey, California as shown on Exhibit A attached hereto and made a part hereof, including adjacent parking area for no more than twenty (20) vehicles. The interior space leased consists of approximately 64,920 square feet of hangar and office space on within Hangar 507 as outlined and designated on Exhibit B attached hereto and made a part hereof.”

And inserting in place thereof

“The Lessor hereby leases to the Government for the Government’s exclusive use the following described premises: a portion of the Marina Municipal Airport, located within and around Building Number 507 located at 3200 Imjin Road, Marina, County of Monterey, California as shown on Exhibit A attached hereto and made a part hereof, including adjacent parking area for no more than twenty (20) vehicles. The interior space leased consists of approximately 30,460 square feet of hangar and office space on within Hangar 507 as outlined and designated on Exhibit B-1 attached hereto and made a part hereof.”

2. Exhibit B, Hangar 507 Floor Plan, of the Lease is hereby deleted in its entirety and replaced with Exhibit B-1, Reduced Hangar 507 Floor Plan, attached hereto and made a part hereof.

3. Paragraph 5, of the Lease is amended by deleting therefrom

“(g) for the seventh one-year renewal term (01 October 2017 – 30 September 2018) the gross rent shall be an annual rent of \$264,873.60 at the rate of \$22,072.80 per month.”

And inserting in place thereof

“(g) for the seventh one-year renewal term (01 October 2017 – 30 September 2018) the gross rent shall be an annual rent of \$253,157.20, at the rate of \$22,072.80 for the months of October 2017 through August 2018, and the rate of \$10,356.40 for the month of September 2018.”

4. Paragraph 5, of the Lease is amended by deleting therefrom

“(h) for the eighth one-year renewal term (01 October 2018 – 30 September 2019) the gross rent shall be an annual rent of \$272,664.00 at the rate of \$22,722.00 per month; (i) for the ninth one-year renewal term (01 October 2019 – 30 September 2020) the gross rent shall be an annual rent of \$280,454.40 at the rate of \$23,371.20 per month.”

And inserting in place thereof

“(h) for the eighth one-year renewal term (01 October 2018 – 30 September 2019) the gross rent shall be an annual rent of \$127,932.00 at the rate of \$10,661.00 per month; (i) for the ninth one-year renewal term (01 October 2019 – 30 September 2020) the gross rent shall be an annual rent of \$131,587.20 at the rate of \$10,965.60 per month.”

5. Paragraph 14 of the Special Provisions, Maintenance & Repair Responsibilities of the Government, is amended by deleting therefrom:

“Government shall be responsible for the following maintenance and repair of the leased premises within Building 507 for the initial and any renewal term of the Lease:

(a) Maintenance, including painting, repair or replacement of interior systems and components for the electrical, plumbing, ventilation, and mechanical systems and for the overhead crane. Government understands the heating boiler for Hangar 507 is currently inoperable and need not be repaired at this time, however, if the need arises to have it repaired, the Government will notify the Lessor and obtain Lessor’s prior written consent or approval before proceeding with any work to be done.

(b) Interior and exterior glass, glazing, windows or doors.

(c) The hangar doors.

(d) All interior walls, ceiling, floors, bathrooms, drains and other structures or components. Lessor shall ensure floor drains in the second floor bathrooms are functional and sanitary.

(e) All communications systems and components.”

And inserting in place thereof

“Government shall be responsible for one hundred percent (100%) of the following maintenance and repair of the leased premises within Building 507 and fifty percent (50%) of the following maintenance and repair of the shared/common space within Building 507, for the initial and any renewal term of the Lease:

(a) Maintenance, including painting, repair or replacement of interior systems and components for the electrical, plumbing, ventilation, and mechanical systems. Government understands the heating boiler for Hangar 507 is currently inoperable and need not be repaired at this time, however, if the need arises to have it repaired, the Government will notify the Lessor and obtain Lessor’s prior written consent or approval before proceeding with any work to be done.

(b) Interior and exterior glass, glazing, windows or doors.

(c) The hangar doors.

(d) All interior walls, ceiling, floors, bathrooms, drains and other structures or components. Lessor shall ensure floor drains in the second floor bathrooms are functional and sanitary.

(e) All communications systems and components.”

6. Paragraph 14 of the Special Provisions, Maintenance & Repair Responsibilities of the Government, is amended by deleting therefrom:

“(f) The deluge fire suppression system. Lessor tested the deluge fire suppression system on or about March 9, 2011 and made repair or adjustment necessary to its full functionality. Thereafter testing and maintenance of the deluge fire suppression system will be a Government responsibility, subject to the Lessor’s Fire and Building Department requirements for its periodic testing no less frequently than every five (5) years by a state licensed C-16 contractor.”

And inserting in place thereof

“(f) the deluge fire suppression system. Lessor tested the deluge fire suppression system on or about March 9, 2011 and made repair or adjustment necessary to its full functionality. Thereafter no more than fifty percent (50%) of testing of the deluge fire suppression system will be a Government responsibility, subject to the Lessor’s Fire and Building Department requirements for its periodic testing no less frequently than every five (5) years by a state licensed C-16 contractor.”

7. Paragraph 14 of the Special Provisions, Maintenance & Repair Responsibilities of the Government, is amended by adding the following subparagraph (g):

“(g) The Government shall be responsible for twenty-five percent (25%) of the cost of maintenance and repair of the overhead crane.”

8. Paragraph 15 of the Special Provisions, Maintenance and Repair responsibilities of the Lessor, is amended by inserting the following

“(f) Maintaining and repairing the deluge fire suppression system.”

9. Paragraph 18 of the Special Provisions, Payment for Utilities, is amended by deleting therefrom

“Government agrees upon entering into occupancy of the premises to pay directly to the utility providers for all utility services provided under the terms of any contract between the Government and the utility provider and to the Lessor for all utility services provided under the terms of any contract between the Lessor and a utility provider serving the premises through existing lines and connections. Government shall be responsible to provide and pay for all new connection equipment and any fees required.”

And inserting in place thereof

“Government agrees upon entering into occupancy of the premises to pay directly to the utility providers for all utility services provided under the terms of any contract between the Government and the utility provider and to pay the Lessor a pro-rated portion for all utility services provided under the terms of any contract between the Lessor and a utility provider serving the premises through existing

lines and connections. - Pro-rata charges shall be based upon a schedule mutually agreed upon by the Government and the City.

Exhibit B-1

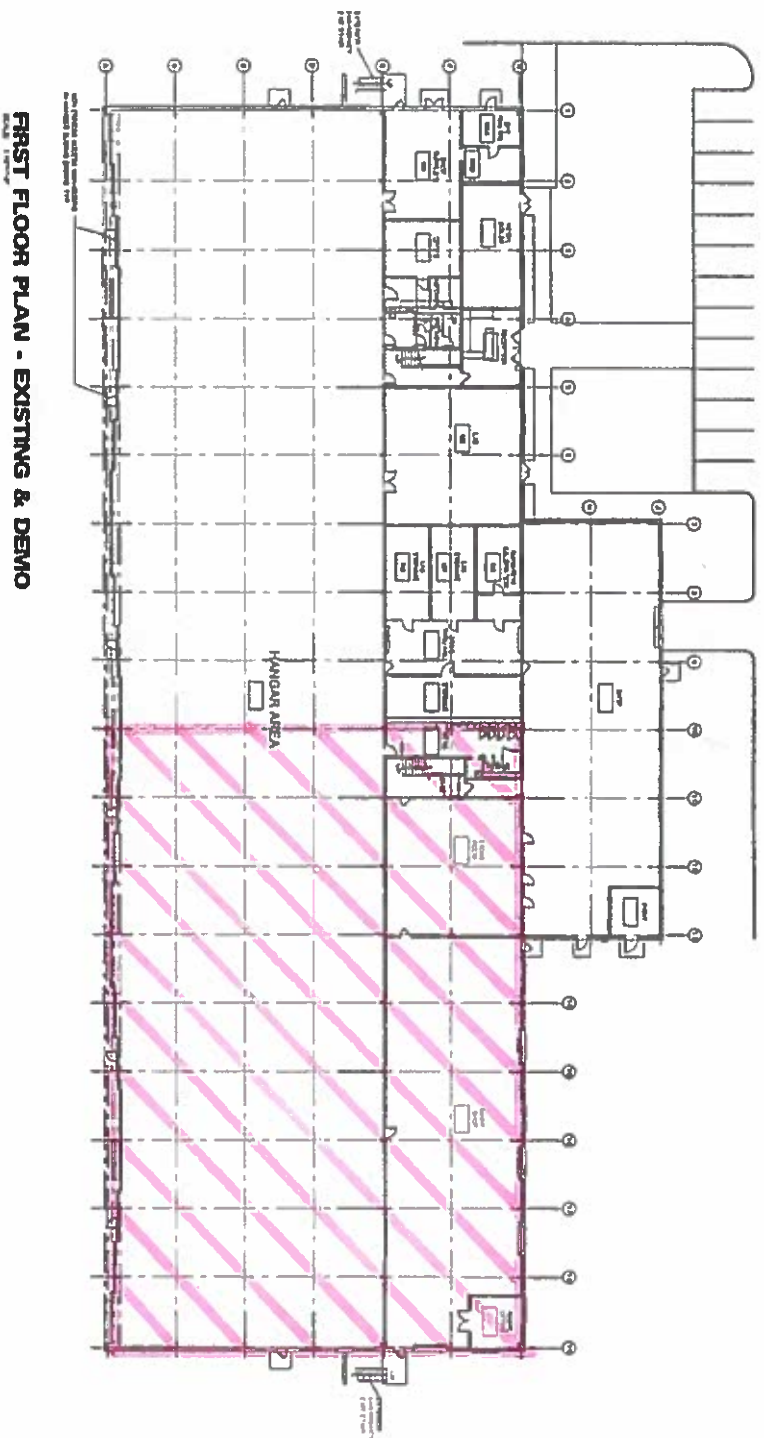
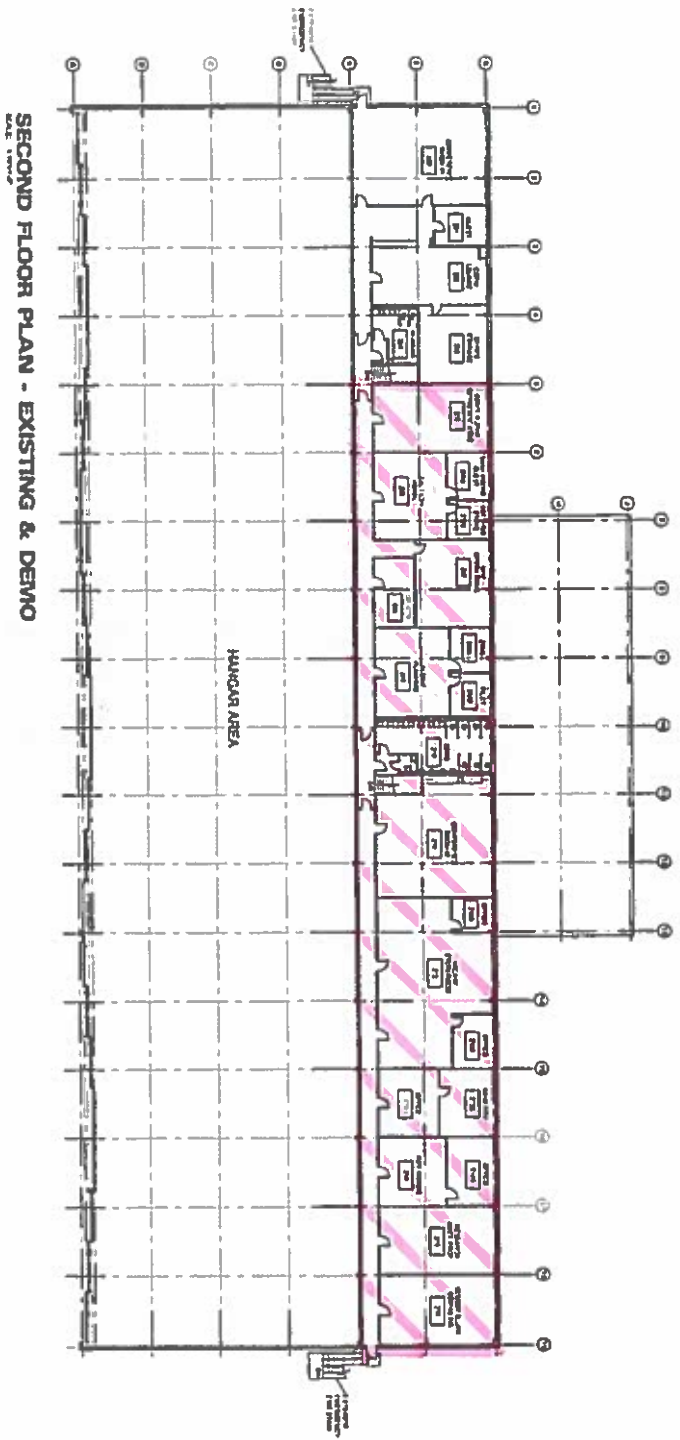


Exhibit B-1



U.S. GOVERNMENT LEASE FOR REAL PROPERTY

DATE OF LEASE

01 June 2011

LEASE NO.

N6247311RP00174

THIS LEASE, made and entered into this date by and between

The CITY OF MARINA, a California charter city and municipal corporation,

whose address is 211 Hillcrest Avenue, Marina, California 93933, and whose interest in the property hereinafter described is that of the owner, hereinafter called the Lessor; and

The UNITED STATES OF AMERICA, hereinafter called the Government.

WITNESSETH:

The parties hereto for the considerations hereinafter mentioned, covenant and agree as follows:

1. The Lessor hereby leases to the Government for the Government's exclusive use the following described premises:

a portion of the Marina Municipal Airport, located within and around Building Number 507 located at 3200 Imjin Road, Marina, County of Monterey, California, as shown on Exhibit A attached hereto and made a part hereof, including the adjacent parking area for no more than twenty (20) vehicles. The interior space leased consists of approximately 64,920 square feet of hangar and office space on within Hangar 507 as outlined and designated on Exhibit B attached hereto and made a part hereof.

The Premises are to be used for a base of operations by the U.S. Naval Postgraduate School, Monterey, Center for Interdisciplinary Remotely Piloted Aircraft Study ("CIRPAS"). CIRPAS' activities at Hangar 507 shall be limited to operation of air and ground-based vehicles used to conduct atmospheric and oceanographic scientific research and activities involving the operation of Unmanned Aerial Vehicles. Consistent with these uses, CIRPAS may also utilize Hangar 507 for storage, maintenance, systems integration, equipment fabrication, roof and ground-based scientific observation and telemetry/data link activities. CIRPAS will not use the leased premises, or any part thereof, or permit them to be used for any other purposes. An easement is granted for ingress to and egress from the leased Premises for vehicles.

2. TO HAVE AND TO HOLD the said premises with their appurtenances for the term beginning on 01 June 2011 through 30 September 2011, subject to termination and renewal rights as may be hereinafter set forth.

3. The Government shall pay the Lessor \$72,710.40 for the four (4) months of firm term at the rate of \$18,177.60 per month in arrears. Annual rent for the first one (1) year option will be \$218,131.20 at the rate of \$18,177.60 per month in arrears. The rent payable under this Lease shall be gross. Rent for a lesser period shall be prorated. Rent shall be made by electronic funds transfer payable to: The City of Marina.

4. The Government may terminate this lease at any time by giving at least thirty (30) days' notice in writing to the Lessor 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.

5. This lease may be renewed at the option of the Government, for the following terms and at the following rentals: for nine (9) additional one (1) year periods, renewed annually, subject to availability of funds, provided notice be given in writing to the Lessor at least thirty (30) days before the end of the original lease term or any renewal term. The gross rent for the optional renewal terms shall be as follows: (a) for the **first** one-year renewal term (01 October 2011 – 30 September 2012) the gross rent shall be an annual rent of \$218,131.20 at the rate of \$18,177.60 per month; (b) for the **second** one-year renewal term (01 October 2012 – 30 September 2013) the gross rent shall be an annual rent of \$225,921.60 at the rate of \$18,826.80 per month; (c) for the **third** one-year renewal term (01 October 2013 – 30 September 2014) the gross rent shall be an annual rent of \$233,712.00 at the rate of \$19,476.00 per month; (d) for the **fourth** one-year renewal term (01 October 2014 – 30 September 2015) the gross rent shall be an annual rent of \$241,502.40 at the rate of \$20,125.20 per month; (e) for the **fifth** one-year renewal term (01 October 2015 – 30 September 2016) the gross rent shall be an annual rent of \$249,292.80 at the rate of \$20,774.40 per month; (f) for the **sixth** one-year renewal term (01 October 2016 – 30 September 2017) the gross rent shall be an annual rent of \$257,083.20 at the rate of \$21,423.60 per month; (g) for the **seventh** one-year renewal term (01 October 2017 – 30 September 2018) the gross rent shall be an annual rent of \$264,873.60 at the rate of \$22,072.80 per month; (h) for the **eighth** one-year renewal term (01 October 2018 – 30 September 2019) the gross rent shall be an annual rent of \$272,664.00 at the rate of \$22,722.00 per month; (i) for the **ninth** one-year renewal term (01 October 2019 – 30 September 2020) the gross rent shall be an annual rent of \$280,454.40 at the rate of \$23,371.20 per month. All other terms and conditions of this lease shall remain the same during any renewal term. Said notice shall be computed commencing with the day after the date of mailing. (SEE ATTACHED RENT SCHEDULE)

6. The Lessor shall furnish to the Government, as part of the rental consideration, the following:
As set forth in the Special Provisions attached hereto.

7. The following are attached and made a part hereof:

The General Clauses,
The Special Provisions
Exhibit A (plat of the exterior premises)
Exhibit B (plat of the interior premises)
Exhibit C (Asbestos Survey for Hangar 507)
Exhibit D (CIRPAS Rent Payment Schedule)

8. The following changes were made in this lease prior to its execution: n/a

Government Line of Accounting: AA 17 11111804 22MY 0230 62271 0 068566 2D CK0112 622711I93SLM \$72,710.40

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

SIGNATURE

LESSOR
SIGNATURE

NAME OF SIGNER

NAME OF SIGNER

SIGNATURE

SIGNATURE

NAME OF SIGNER

NAME OF SIGNER

UNITED STATES OF AMERICA

SIGNATURE

NAME OF SIGNER

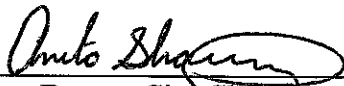
KAREN P. RINGEL
Real Estate Contracting Officer

OFFICIAL TITLE OF SIGNER

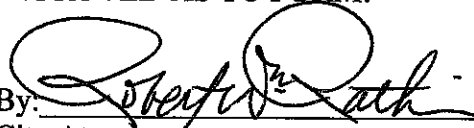
CITY OF MARINA

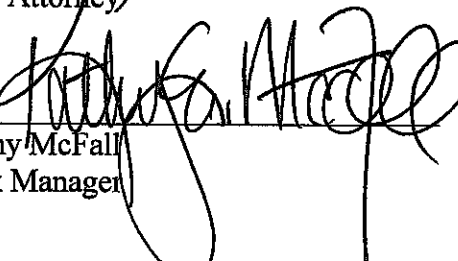
Pursuant to Resolution No. 2011- 49

ATTEST:

By: 
Acting Deputy City Clerk

APPROVED AS TO FORM:

for the By: 
City Attorney

By: 
Kathy McFall
Risk Manager

GENERAL CLAUSES (Acquisition of Leasehold Interests in Real Property)

CATEGORY	CLAUSE NO.	48 CFR REF.	CLAUSE TITLE
DEFINITIONS GENERAL	1	552.270-4	Definitions (Variation)
		552.270-5	Subletting and Assignment Successors
	2 3	552.270-11	Bound
	4	552.270-23	Subordination, Nondisturbance and Attornment
PERFORMANCE	5	552.270-24	Statement of Lease
	6 7	552.270-25	Substitution of Tenant Agency No Waiver
		552.270-26	
	8 9	552.270-27	Integrated Agreement Mutuality of Obligation
		552.270-28	
		552.270-17	Delivery and Condition Default in
		552.270-18	Delivery—Time Extensions(Variation)
		552.270-19	Progressive Occupancy Effect of
		552.270-21	Acceptance and Occupancy Maintenance
	10 11 12 13 14	552.270-6	of Building and Premises—Right of Entry
	15	552.270-10	(Variation) Failure in Performance
	16 17 18 19	552.270-22	Default by Lessor During the Term Fire and Casualty Damage Compliance with Applicable Law Alterations
INSPECTION PAYMENT		552.270-7	
		552.270-8	
		552.270-12	
	20	552.270-29	Acceptance of Space (Variation)
	21	552.270-9	Inspection—Right of Entry
	22 23 24 25 26	52.204-7	Central Contractor Registration (Variation)
		552.232-75	Prompt Payment Electronic Funds Transfer
		552.232-76	Payment(Variation) Invoice Requirements
		552.232-70	(Variation) Assignment of Claims
STANDARDS OF CONDUCT		52.232-23	
	27	552.270-20	Payment (Variation)
		552.203-5	Covenant Against Contingent Fees
	28 29	52.203-7	Anti-Kickback Procedures
ADJUSTMENTS	30	52.223-6	Drug-Free Workplace
	31 32	552.203-70	Price Adjustment for Illegal or Improper
AUDITS		52.215-10	Activity Price Reduction for Defective Cost or Pricing Data
	33 34	552.270-13	Proposals for Adjustment Changes
		552.270-14	(Variation)
	35 36	552.215-70	Examination of Records by GSA Audit and Records—Negotiation
DISPUTES	37	52.215-2	
LABOR STANDARDS		52.233-1	Disputes
	38 39 40	52.222-26	Equal Opportunity Preaward On-Site Equal
	41 42	52.222-24	Opportunity Compliance Evaluation
		52.222-21	Prohibition of Segregated Facilities Equal
		52.222-35	Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other
		52.222-36	Eligible Veterans Affirmative Action for Workers with
			Disabilities
	43	52.222-37	Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans
SUBCONTRACTING			Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment
		52.209-6	
		52.215-12	Subcontractor Cost or Pricing Data

GENERAL CLAUSES (Acquisition of Leasehold Interests in Real Property)

CATEGORY	CLAUSE NO.	48 CFR REF.	CLAUSE TITLE
DEFINITIONS GENERAL	1	552.270-4	Definitions (Variation)
		552.270-5	Subletting and Assignment Successors
	2 3	552.270-11	Bound
	4	552.270-23	Subordination, Nondisturbance and Attornment
	5	552.270-24	Statement of Lease
	6 7	552.270-25	Substitution of Tenant Agency No Waiver
		552.270-26	
	8 9	552.270-27	Integrated Agreement Mutuality of Obligation
		552.270-28	
PERFORMANCE		552.270-17	Delivery and Condition Default in
		552.270-18	Delivery—Time Extensions (Variation)
		552.270-19	Progressive Occupancy Effect of
		552.270-21	Acceptance and Occupancy Maintenance
	10 11 12 13 14	552.270-6	of Building and Premises—Right of Entry
	15	552.270-10	(Variation) Failure in Performance
	16 17 18 19	552.270-22	Default by Lessor During the Term Fire and
		552.270-7	Casualty Damage Compliance with
		552.270-8	Applicable Law Alterations
		552.270-12	
	20	552.270-29	Acceptance of Space (Variation)
INSPECTION PAYMENT	21	552.270-9	Inspection—Right of Entry
	22 23 24 25 26	52.204-7	Central Contractor Registration (Variation)
		552.232-75	Prompt Payment Electronic Funds Transfer
		552.232-76	Payment (Variation) Invoice Requirements
		552.232-70	(Variation) Assignment of Claims
STANDARDS OF CONDUCT		52.232-23	
	27	552.270-20	Payment (Variation)
		552.203-5	Covenant Against Contingent Fees
	28 29	52.203-7	Anti-Kickback Procedures
	30	52.223-6	Drug-Free Workplace
ADJUSTMENTS	31 32	552.203-70	Price Adjustment for Illegal or Improper
		52.215-10	Activity Price Reduction for Defective Cost
			or Pricing Data
AUDITS	33 34	552.270-13	Proposals for Adjustment Changes
		552.270-14	(Variation)
	35 36	552.215-70	Examination of Records by GSA Audit and
DISPUTES		52.215-2	Records—Negotiation
	37	52.233-1	Disputes
LABOR STANDARDS	38 39 40	52.222-26	Equal Opportunity Preaward On-Site Equal
	41 42	52.222-24	Opportunity Compliance Evaluation
		52.222-21	Prohibition of Segregated Facilities Equal
		52.222-35	Opportunity for Special Disabled Veterans,
		52.222-36	Veterans of the Vietnam Era, and Other
			Eligible Veterans Affirmative Action for
			Workers with
			Disabilities
	43	52.222-37	Employment Reports on Special Disabled
			Veterans, Veterans of the Vietnam Era, and
SUBCONTRACTING			Other Eligible Veterans
			Protecting the Government's Interest When
		52.209-6	Subcontracting With Contractors Debarred,
		52.215-12	Suspended, or Proposed for Debarment
			Subcontractor Cost or Pricing Data

GENERAL CLAUSES (Acquisition of Leasehold Interests in Real Property)

REDLINE CHANGES BY MARINA CITY ATTORNEY FOR CIRPAS LEASE

1. 552.270-4 DEFINITIONS (SEP 1999) (VARIATION)

The following terms and phrases (except as otherwise expressly provided or unless the context otherwise requires) for all purposes of this lease shall have the respective meanings hereinafter specified:

- (a) "Commencement Date" means the first day of the term.
- (b) "Contract" and "Contractor" means "Lease" and "Lessor," respectively.
- (c) "Contracting Officer" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.
- (d) "Delivery Date" means the date specified in or determined pursuant to the provisions of this lease for delivery of the premises to the Government, improved in accordance with the provisions of this lease and substantially complete, as such date may be modified in accordance with the provisions of this lease.
- (e) "Delivery Time" means the number of days provided by this lease for delivery of the premises to the Government, as such number may be modified in accordance with the provisions of this lease.
- (f) "Excusable Delays" mean delays arising without the fault or negligence of Lessor and Lessor's subcontractors and suppliers at any tier, and shall include, without limitation:
 - (1) acts of God or of the public enemy,
 - (2) acts of the United States of America in either its sovereign or contractual capacity,
 - (3) acts of another contractor in the performance of a contract with the Government,
 - (4) fires,
 - (5) floods,
 - (6) epidemics,
 - (7) quarantine restrictions,
 - (8) strikes,
 - (9) freight embargoes,
 - (10) unusually severe weather, or
 - (11) delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Lessor and any such subcontractor or supplier.
- (g) "Lessor" means the sub-lessor if this lease is a sublease.
- (h) "Lessor shall provide" means the Lessor shall furnish and install at Lessor's expense.
- (i) "Notice" means written notice sent by certified or registered mail, Express Mail or Comparable service, or delivered by hand. Notice shall be effective on the date delivery is accepted or refused.
- (j) "Premises" means the space described on the Standard Form 2, U.S. Government Lease for Real Property, of this lease.
- (l) "Quitclaim Deed" means that that certain Quitclaim Deed for Surplus Airport Property dated August 11, 1995, wherein the United States of America, acting by and through the Secretary of the Army, conveyed the property to the Lessor.
- (m) "Special Provisions" means the 9 pages attached to the Lease.
- (n) "Substantially complete" and "substantial completion" means that the work, the common and other areas of the building, and all other things necessary for the Government's access to the premises and occupancy, possession, use and enjoyment thereof, as provided in this lease, have been completed or obtained, excepting only such minor matters as do not interfere with or materially diminish such access, occupancy, possession, use or enjoyment.

(o) "Usable square feet" means the ANSI/BOMA Z65.1-1996 definition for BOMA usable office area, which means "The area where a tenant normally houses personnel and/or furniture, for which a measurement is to be computed."

(p) "Work" means all alterations, improvements, modifications, and other things required for the preparation or continued occupancy of the premises by the Government as specified in this lease.

2. 552.270-5 SUBLETTING AND ASSIGNMENT (SEP 1999)

The Government may sublet any part of the premises but shall not be relieved from any obligations under this lease by reason of any such subletting. The Government may at any time assign this lease, and be relieved from all obligations to Lessor under this lease excepting only unpaid rent and other liabilities, if any, that have accrued to the date of said assignment. Any assignment shall be subject to prior written consent of Lessor, which shall not be unreasonably withheld.

3. 552.270-11 SUCCESSORS BOUND (SEP 1999)

This lease shall bind, and inure to the benefit of, the parties and their respective heirs, executors, administrators, successors, and assigns.

4. 552.270-23 SUBORDINATION, NONDISTURBANCE AND ATTORNMENT (SEP 1999)

(a) Lessor warrants that it holds such title to or other interest in the premises and other property as is necessary to the Government's access to the premises and full use and enjoyment thereof in accordance with the provisions of this lease, the Special Provisions, and the Quitclaim Deed. Government agrees, in consideration of the warranties and conditions set forth in this clause, that this lease is subject and subordinate to the provisions of the Quitclaim Deed and to any and all recorded mortgages, deeds of trust and other liens now or hereafter existing or imposed upon the premises, and to any renewal, modification or extension thereof. It is the intention of the parties that this provision shall be self-operative and that no further instrument shall be required to effect the present or subsequent subordination of this lease. Government agrees, however, within twenty (20) business days next following the Contracting Officer's receipt of a written demand, to execute such instruments as Lessor may reasonably request to evidence further the subordination of this lease to any existing or future mortgage, deed of trust or other security interest pertaining to the premises, and to any water, sewer or access easement necessary or desirable to serve the premises or adjoining property owned in whole or in part by Lessor if such easement does not interfere with the full enjoyment of any right granted the Government under this lease.

(b) No such subordination, to either existing or future mortgages, deeds of trust or other lien or security instrument shall operate to affect adversely any right of the Government under this lease so long as the Government is not in default under this lease. Lessor will include in any future mortgage, deed of trust or other security instrument to which this lease becomes subordinate, or in a separate nondisturbance agreement, a provision to the foregoing effect. Lessor warrants that the holders of all notes or other obligations secured by existing mortgages, deeds of trust or other security instruments have consented to the provisions of this clause, and agrees to provide true copies of all such consents to the Contracting Officer promptly upon demand.

(c) In the event of any sale of the premises or any portion thereof by foreclosure of the lien of any such mortgage, deed of trust or other security instrument, or the giving of a deed in lieu of foreclosure, the Government will be deemed to have attorned to any purchaser, purchasers, transferee or transferees of the premises or any portion thereof and its or their successors and assigns, and any such purchasers and transferees will be deemed to have assumed all obligations of the Lessor under this lease, so as to establish direct privity of estate and contract between Government and such purchasers or transferees, with the same force, effect and relative priority in time and right as if the lease had initially been entered into between such purchasers or transferees and the Government; provided, further, that the Contracting Officer and such purchasers or transferees shall, with reasonable promptness following any such sale or deed delivery in lieu of foreclosure, execute all such revisions to this lease, or other writings, as shall be necessary to document the foregoing relationship.

(d) None of the foregoing provisions may be deemed or construed to imply a waiver of the Government's rights as a sovereign.

5. 552.270-24 STATEMENT OF LEASE (SEP 1999)

(a) The Contracting Officer will, within thirty (30) days next following the Contracting Officer's receipt of a joint written request from Lessor and a prospective lender or purchaser of the building, execute and deliver to Lessor a letter stating that the same is issued subject to the conditions stated in this clause and, if such is the case, that (1) the lease is in full force and effect; (2) the date to which the rent and other charges have been paid in advance, if any; and (3) whether any notice of default has been issued.

(b) Letters issued pursuant to this clause are subject to the following conditions:

(1) That they are based solely upon a reasonably diligent review of the Contracting Officer's lease file as of the date of issuance;

(2) That the Government shall not be held liable because of any defect in or condition of the premises or building;

(3) That the Contracting Officer does not warrant or represent that the premises or building comply with applicable Federal, State and local law; and

(4) That the Lessor, and each prospective lender and purchaser are deemed to have constructive notice of such facts as would be ascertainable by reasonable repurchase and precommitment inspection of the Premises and Building and by inquiry to appropriate Federal, State and local Government officials.

6. 552.270-25 SUBSTITUTION OF TENANT AGENCY (SEP 1999)

The Government may, at any time and from time to time, substitute any Government agency or agencies for the Government agency or agencies, if any, named in the lease.

7. 552.270-26 NO WAIVER (SEP1999)

No failure by either party to insist upon the strict performance of any provision of this lease or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial rent or other performance by either party during the continuance of any such breach shall constitute a waiver of any such breach of such provision.

8. 552.270-27 INTEGRATED AGREEMENT (SEP 1999)

This Lease, upon execution, contains the entire agreement of the parties and no prior written or oral agreement, express or implied, shall be admissible to contradict the provisions of the Lease.

9. 552.270-28 MUTUALITY OF OBLIGATION (SEP 1999)

The obligations and covenants of the Lessor, and the Government's obligation to pay rent and other Government obligations and covenants, arising under or related to this Lease, are interdependent. The Government may, upon issuance of and delivery to Lessor of a final decision asserting a claim against Lessor, set off such claim, in whole or in part, as against any payment or payments then or thereafter due the Lessor under this lease. No setoff pursuant to this clause shall constitute a breach by the Government of this lease.

10. 552.270-17 DELIVERY AND CONDITION (SEP 1999)

(a) Unless the Government elects to have the space occupied in increments, the space must be delivered ready for occupancy as a complete unit. The Government reserves the right to determine when the space is

substantially complete.

(b) If the premises do not in every respect comply with the provisions of this lease the Contracting Officer may, in accordance with the Failure in Performance clause of this lease, elect to reduce the rent payments.

11. 552.270-18 DEFAULT IN DELIVERY—TIME EXTENSIONS (SEP 1999) (VARIATION)

(a) With respect to Lessor's obligation to deliver the premises substantially complete by the delivery date, time is of the essence. If the Lessor fails to work diligently to ensure its substantial completion by the delivery date or fails to substantially complete the work by such date, the Government may by notice to the Lessor terminate this lease. Such termination is effective when received by Lessor. The Lessor and the Lessor's sureties, if any, are jointly and severally liable for any damages to the Government resulting from such termination, as provided in this clause. The Government shall be entitled to the following damages:

(1) The Government's aggregate rent and estimated real estate tax and operating cost adjustments for the firm term and all option terms of its replacement lease or leases, in excess of the aggregate rent and estimated real estate tax and operating cost adjustments for the term. If the Government procures replacement premises for a term (including all option terms) in excess of this term, the Lessor is not liable for excess Government rent or adjustments during such excess lease term.

(2) All administrative and other costs the Government incurs in procuring a replacement lease or leases.

(3) Other, additional relief provided for in this lease, at law, or in equity.

(b) Damages to which the Government is entitled to under this clause are due and payable ninety (90) days following the date Lessor receives notice from the Contracting Officer specifying such damages.

(c) Delivery by Lessor of less than the minimum ANSI/BOMA Office Area square footage required by this lease shall in no event be construed as substantial completion, except as the Contracting Officer permits.

(d) The Government shall not terminate this lease under this clause nor charge the Lessor with damages under this clause, if (1) the delay in substantially completing the work arises from excusable delays and (2) the Lessor within 10 days from the beginning of any such delay (unless extended in writing by the Contracting Officer) provides notice to the Contracting Officer of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of delay. If the facts warrant, the Contracting Officer shall extend the delivery date, to the extent of such delay at no additional costs to the Government. A time extension is the sole remedy of the Lessor.

12. 552.270-19 PROGRESSIVE OCCUPANCY (SEP 1999)

The Government shall have the right to elect to occupy the space in partial increments prior to the substantial completion of the entire leased premises, and the Lessor agrees to schedule its work so as to deliver the space incrementally as elected by the Government. The Government shall pay rent commencing with the first business day following substantial completion of the entire leased premise unless the Government has elected to occupy the leased premises incrementally. In case of incremental occupancy, the Government shall pay rent pro rata upon the first business day following substantial completion of each incremental unit. Rental payments shall become due on the first workday of the month following the month in which an increment of space is substantially complete, except that should an increment of space be substantially completed after the fifteenth day of the month, the payment due date will be the first workday of the second month following the month in which it was substantially complete. The commencement date of the firm lease term will be a composite determined from all rent commencement dates.

13. 552.270-21 EFFECT OF ACCEPTANCE AND OCCUPANCY (SEP 1999)

Neither the Government's acceptance of the premises for occupancy, nor the Government's occupancy thereof, shall be construed as a waiver of any requirement of or right of the Government under this Lease, or as otherwise prejudicing the Government with respect to any such requirement or right.

14. 552.270-6 MAINTENANCE OF BUILDING AND PREMISES—RIGHT OF ENTRY (SEP 1999) (VARIATION)

Except in case of damage arising out of the willful act or negligence of a Government employee, Lessor and

Government shall maintain the premises, including the building in good repair and condition, in accordance with the Special Provisions, without reasonably preventable or recurring disruption, as is required for the Government's access to, occupancy, possession, use and enjoyment of the premises as provided in this lease. For the purpose of so maintaining the premises, the Lessor may at reasonable times enter the premises with the approval of the authorized Government representative in charge.

15. 552.270-10 FAILURE IN PERFORMANCE (SEP 1999)

The covenant to pay rent and the covenant to provide any service, utility, maintenance, or repair required under this lease are interdependent. In the event of any failure by the Lessor to provide any service, utility, maintenance, repair or replacement required under this lease the Government may, by contract or otherwise, perform the requirement and deduct from any payment or payments under this lease, then or thereafter due, the resulting cost to the Government, including all administrative costs. If the Government elects to perform any such requirement, the Government and each of its contractors shall be entitled to access to any and all areas of the building, access to which is necessary to perform any such requirement, and the Lessor shall afford and facilitate such access. Alternatively, the Government may deduct from any payment under this lease, then or thereafter due, an amount which reflects the reduced value of the contract requirement not performed. No deduction from rent pursuant to this clause shall constitute a default by the Government under this lease. These remedies are not exclusive and are in addition to any other remedies which may be available under this lease or at law.

16. 552.270-22 DEFAULT BY LESSOR DURING THE TERM (SEP 1999)

(a) Each of the following shall constitute a default by Lessor under this lease:

(1) Failure to maintain, repair, operate or service the premises as and when specified in this lease, or failure to perform any other requirement of this lease as and when required provided any such failure shall remain uncured for a period of thirty (30) days next following Lessor's receipt of written notice thereof from the Contracting Officer or an authorized representative.

(2) Repeated and unexcused failure by Lessor to comply with one or more requirements of this lease shall constitute a default notwithstanding that one or all such failures shall have been timely cured pursuant to this clause.

(b) If a default occurs, the Government may, by notice to Lessor, terminate this lease for default and if so terminated, the Government shall be entitled to the damages specified in the Default in Delivery-Time Extensions clause.

17. 552.270-7 FIRE AND CASUALTY DAMAGE (SEP 1999)

If the entire premises are destroyed by fire or other casualty, this lease will immediately terminate. In case of partial destruction or damage, so as to render the premises untenable, as determined by the Government, the Government may terminate the lease by giving written notice to the Lessor within 15 calendar days of the fire or other casualty; if so terminated, no rent will accrue to the Lessor after such partial destruction or damage; and if not so terminated, the rent will be reduced proportionately by supplemental agreement hereto effective from the date of such partial destruction or damage. Nothing in this lease shall be construed as relieving Lessor from liability for damage to or destruction of property of the United States of America caused by the willful or negligent act or omission of Lessor.

18. 552.270-8 COMPLIANCE WITH APPLICABLE LAW (SEP 1999)

Lessor shall comply with all Federal, state and local laws applicable to the Lessor as owner or Lessor, or both, of the building or premises, including, without limitation, laws applicable to the construction, ownership, alteration or operation of both or either thereof, and will obtain all necessary permits, licenses and similar items at Lessor's expense. The Government will comply with all Federal, State and local laws

applicable to and enforceable against it as a tenant under this lease; provided that nothing in this lease shall be construed as a waiver of any sovereign immunity of the Government. This lease shall be governed by Federal law.

19. 552.270-12 ALTERATIONS (SEP 1999)

The Government shall have the right during the existence of this lease to make alterations, attach fixtures, and erect structures or signs in or upon the premises hereby leased, which fixtures, additions or structures so placed in, on, upon, or attached to the said premises shall be and remain the property of the Government and may be removed or otherwise disposed of by the Government. If the lease contemplates that the Government is the sole occupant of the building, for purposes of this clause, the leased premises include the land on which the building is sited, the land shown on the attached Exhibit "A" and the building itself. Otherwise, the Government shall have the right to tie into or make any physical connection with any structure located on the property as is reasonably necessary for appropriate utilization of the leased space.

20. 552.270-29 ACCEPTANCE OF SPACE (SEP 1999) (VARIATION)

(a) The space leased to the Government is delivered Substantially Complete and the Government has been occupying the leased premises under the terms of that certain "Lease for Real Property N6247403RP00E14" dated 1 June 2003.

(b) The Government accepts the space and determines that the space is substantially complete and contains the required ANSI/BOMA Office Area square footage.

21. 552.270-9 INSPECTION—RIGHT OF ENTRY (SEP 1999)

(a) At any time and from time to time after receipt of an offer (until the same has been duly withdrawn or rejected), after acceptance thereof and during the term, the agents, employees and contractors of the Government may, upon reasonable prior notice to Offeror or Lessor, enter upon the offered premises or the premises, and all other areas of the building access to which is necessary to accomplish the purposes of entry, to determine the potential or actual compliance by the Offeror or Lessor with the requirements of the solicitation or this lease, which purposes shall include, but not be limited to:

- (1) inspecting, sampling and analyzing of suspected asbestos-containing materials and air monitoring for asbestos fibers;
- (2) inspecting the heating, ventilation and air conditioning system, maintenance records, and mechanical rooms for the offered premises or the premises;
- (3) inspecting for any leaks, spills, or other potentially hazardous conditions which may involve tenant exposure to hazardous or toxic substances; and
- (4) inspecting for any current or past hazardous waste operations, to ensure that appropriate mitigative actions were taken to alleviate any environmentally unsound activities in accordance with Federal, State and local law.

(b) Nothing in this clause shall be construed to create a Government duty to inspect for toxic materials or to impose a higher standard of care on the Government than on other lessees. The purpose of this clause is to promote the ease with which the Government may inspect the building. Nothing in this clause shall act to relieve the Lessor of any duty to inspect or liability which might arise as a result of Lessor's failure to inspect for or correct a hazardous condition.

22. 52.204-7 CENTRAL CONTRACTOR REGISTRATION (OCT 2003) (VARIATION)

(a) Definitions. As used in this clause—

"Central Contractor Registration (CCR) database" means the primary Government repository for Contractor information required for the conduct of business with the Government.

"Data Universal Numbering System (DUNS) number" means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B) to identify unique business entities.

"Data Universal Numbering System +4 (DUNS+4) number" means the DUNS number assigned by D&B plus a 4-character suffix that may be assigned by a business concern. (D&B has no affiliation with this 4-character suffix.) This 4-character suffix may be assigned at the discretion of the business concern to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts for the same parent concern.

"Offeror" means the owner of the property offered, not an individual or agent representing the owner.

"Registered in the CCR database" means that—

(1) The Contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, into the CCR database; and

(2) The Government has validated all mandatory data fields and has marked the record "Active."

(b) (1) By submission of an offer, the Offeror acknowledges the requirement that a prospective awardee must be registered with D&B and in the CCR database prior to award, during performance, and through final payment of any contract resulting from this solicitation.

(2) The Offeror shall enter in the appropriate block, on the GSA Form 3518, entitled Representations and Certifications, the legal entity's name and address, followed by the DUNS or DUNS +4 number that identifies the Offeror's name and address exactly as stated in the offer. The DUNS number will be used by the Contracting Officer to verify that the Offeror is registered in the CCR database.

(c) If the Offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one.

(1) An Offeror may obtain a DUNS number—

(i) If located within the United States, by calling Dun and Bradstreet at 1-866-7055711 or via the Internet at <http://www.dnb.com>; or

(ii) If located outside the United States, by contacting the local Dun and Bradstreet office.

(2) The Offeror should be prepared to provide the following information:

(i) Company legal business.

(ii) Trade style, doing business, or other name by which your entity is commonly recognized.

(iii) Company Physical Street Address, City, State, and ZIP Code.

(iv) Company Mailing Address, City, State and ZIP Code (if separate from physical).

(v) Company Telephone Number.

(vi) Date the company was started.

(vii) Number of employees at your location.

(viii) Chief executive officer/key manager.

(ix) Line of business (industry).

(x) Company Headquarters name and address (reporting relationship within your entity).

(d) If the Offeror does not become registered in the CCR database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered Offeror.

(e) Processing time, which normally takes 48 hours, should be taken into consideration when registering. Offerors who are not registered should consider applying for registration immediately upon receipt of this solicitation.

(f) The Contractor is responsible for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(g) (1) (i) If a Contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, the Contractor shall comply with the requirements of Subpart 42.12 of the Federal Acquisition Regulations (FAR) and

provide the responsible Contracting Officer a fully revised and initialed/signed GSA Form 3518, entitled Representations and Certifications, along with written notification of its intention to (A) change the name in the CCR database; and (B) provide the Contracting Officer with sufficient documentation to verify and confirm the legally changed name or change in ownership.

(ii) If the Contractor fails to comply with the requirements of paragraph (g)(1)(i) of this clause, or fails to perform the agreement at paragraph (g)(1)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the electronic funds transfer (EFT) clause of this contract.

(2) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims. Assignees shall be separately registered in the CCR database. Information provided to the Contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information.

(h) Offerors and Contractors may obtain information on registration and annual confirmation requirements via the internet at <http://www.ccr.gov> or by calling 1-888-227-2423, or 269-961-5757.

23. 552.232-75 PROMPT PAYMENT (SEP 1999)

The Government will make payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or an electronic funds transfer is made. All days referred to in this clause are calendar days, unless otherwise specified.

(a) *Payment due date.*

(1) *Rental payments.* Rent shall be paid monthly in arrears and will be due on the first workday of each month, and only as provided for by the lease.

(i) When the date for commencement of rent falls on the 15th day of the month or earlier, the initial monthly rental payment under this contract shall become due on the first workday of the month following the month in which the commencement of the rent is effective.

(ii) When the date for commencement of rent falls after the 15th day of the month the initial monthly rental payment under this contract shall become due on the first workday of the second month following the month in which the commencement of the rent is effective.

(2) *Other payments.* The due date for making payments other than rent shall be the later of the following two events:

(i) The 30th day after the designated billing office has received a proper invoice from the Contractor.

(ii) The 30th day after Government acceptance of the work or service. However, if the designated billing office fails to annotate the invoice with the actual date of receipt, the invoice payment due date shall be deemed to be the 30th day after the Contractor's invoice is dated, provided a proper invoice is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(b) *Invoice and inspection requirements for payments other than rent.*

(1) The Contractor shall prepare and submit an invoice to the designated billing office after completion of the work. A proper invoice shall include the following items:

(i) Name and address of the Contractor.

(ii) Invoice date.

(iii) Lease number.

(iv) Government's order number or other authorization.

(v) Description, price, and quantity of work or services delivered.

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the remittance address in the lease or the order).

(vii) Name (where practicable), title, phone number, and mailing address of person to be notified in the event of a defective invoice.

(2) The Government will inspect and determine the acceptability of the work performed or services delivered

within 7 days after the receipt of a proper invoice or notification of completion of the work or services unless a different period is specified at the time the order is placed. If actual acceptance occurs later, for the purpose of determining the payment due date and calculation of interest, acceptance will be deemed to occur on the last day of the 7-day inspection period. If the work or service is rejected for failure to conform to the technical requirements of the contract, the 7 days will be counted beginning with receipt of a new invoice or notification. In either case, the Contractor is not entitled to any payment or interest unless actual acceptance by the Government occurs.

(c) Interest Penalty.

(1) An interest penalty shall be paid automatically by the Government, without request from the Contractor, if payment is not made by the due date.

(2) The interest penalty shall be at the rate established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date. This rate is referred to as the "Renegotiation Board Interest Rate," and it is published in the *Federal Register* semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the payment amount approved by the Government and be compounded in 30-day increments inclusive from the first day after the due date through the payment date.

(3) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the clause at 52.233-1, Disputes, or for more than 1 year. Interest penalties of less than \$1.00 need not be paid.

(4) Interest penalties are not required on payment delays due to disagreement between the Government and Contractor over the payment amount or other issues involving contract compliance or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the clause at 52.233-1, Disputes.

24. 552.232-76 ELECTRONIC FUNDS TRANSFER PAYMENT (MAR 2000) (VARIATION)

(a) The Government will make payments under this lease by electronic funds transfer (EFT). The Lessor must, no later than 30 days before the first payment:

(1) Designate a financial institution for receipt of EFT payments.

(2) Submit this designation to the Contracting Officer or other Government official, as directed.

(b) The Lessor must provide the following information:

(1) The American Bankers Association 9-digit identifying number for Automated Clearing House (ACH) transfers of the financing institution receiving payment if the institution has access to the Federal Reserve Communications System.

(2) Number of account to which funds are to be deposited.

(3) Type of depositor account ("C" for checking, "S" for savings).

(4) If the Lessor is a new enrollee to the EFT system, the Lessor must complete and submit Form SF 3881, ACH Vendor/Miscellaneous Payment Enrollment Form, before payment can be processed.

(c) If the Lessor, during the performance of this contract, elects to designate a different financial institution for the receipt of any payment, the appropriate Government official must receive notice of such change and the required information specified above no later than 30 days before the date such change is to become effective.

(d) The documents furnishing the information required in this clause must be dated and contain the:

(1) Signature, title, and telephone number of the Lessor or the Lessor's authorized representative.

(2) Lessor's name.

(3) Lease number.

(e) Lessor's failure to properly designate a financial institution or to provide appropriate payee bank account information may delay payments of amounts otherwise properly due.

25. 552.232-70 INVOICE REQUIREMENTS (SEP 1999) (VARIATION)

(This clause is applicable to payments other than rent.)

(a) Invoices shall be submitted in an original only, unless otherwise specified, to the designated billing office

specified in this contract or order.

(b) Invoices must include the Accounting Control Transaction (ACT) number provided below or on the order. ACT Number (to be supplied on individual orders)

(c) If information or documentation in addition to that required by the Prompt Payment clause of this contract is required in connection with an invoice for a particular order, the order will indicate what information or documentation must be submitted.

26. 52.232-23 ASSIGNMENT OF CLAIMS (JAN 1986)

(Applicable to leases over \$2,500.)

(a) The Contractor, under the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15 (hereafter referred to as "the Act"), may assign its rights to be paid amounts due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.

(b) Any assignment or reassignment authorized under the Act and this clause shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this contract.

(c) The Contractor shall not furnish or disclose to any assignee under this contract any classified document (including this contract) or information related to work under this contract until the Contracting Officer authorizes such action in writing.

27. 552.270-20 PAYMENT (SEP 1999) (VARIATION)

(a) When space is offered and accepted, the ANSI/BOMA Office Area square footage delivered will be confirmed by:

(1) the Government's measurement of plans submitted by the successful Offeror as approved by the Government, and an inspection of the space to verify that the delivered space is in conformance with such plans or

(2) a mutual on-site measurement of the space, if the Contracting Officer determines that it is necessary.

(b) Payment will not be made for space which is in excess of the amount of ANSI/BOMA Office Area square footage stated in the lease.

(c) If it is determined that the amount of ANSI/BOMA Office Area square footage actually delivered is less than the amount agreed to in the lease, the lease will be modified to reflect the amount of Usable space delivered and the annual rental will be adjusted as follows:

Usable square feet not delivered multiplied by the ANSI/BOMA Office Area square foot (USF) rate equals the reduction in annual rent. The rate per USF is determined by dividing the total annual rental by the Usable square footage set forth in the lease.

USF Not Delivered X Rate per USF = Reduction in Annual Rent.

28. 552.203-5 COVENANT AGAINST CONTINGENT FEES (FEB 1990)

(Applicable to leases over \$100,000.)

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of the contingent fee.

(b) "Bona fide agency," as used in this clause, means an established commercial or selling agency (including licensed real estate agents or brokers), maintained by a Contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence. "Bona fide employee," as used in this clause, means a person, employed by a Contractor and subject to the Contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

"Contingent fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

"Improper influence," as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

29. 52.203-7 ANTI-KICKBACK PROCEDURES (JUL 1995)

(Applicable to leases over \$100,000 average net annual rental, including option periods.)

(a) Definitions.

"Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

"Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

"Prime contract," as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

"Prime Contractor," as used in this clause, means a person who has entered into a prime contract with the United States.

"Prime Contractor employee," as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

"Subcontract," as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

"Subcontractor," as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

"Subcontractor employee," as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

(b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from—

- (1) Providing or attempting to provide or offering to provide any kickback;
- (2) Soliciting, accepting, or attempting to accept any kickback; or
- (3) Including, directly or indirectly, the amount of any kickback in the contract price.

charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

(c) (1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

(2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.

(3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

(4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor withhold from sums owed a subcontractor under the prime contract, the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.

(5) The Contractor agrees to incorporate the substance of this clause, including paragraph (c)(5) but excepting paragraph (c)(1), in all subcontracts under this contract which exceed \$100,000.

30. 52.223-6 DRUG-FREE WORKPLACE (MAY 2001)

(a) *Definitions.* As used in this clause—

"Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.

"Conviction" means a finding of guilt (including a plea of *nolo contendere*) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

"Drug-free workplace" means the site(s) for the performance of work done by the Contractor in connection with a specific contract where employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

"Employee" means an employee of a Contractor directly engaged in the performance of work under a Government contract. "Directly engaged" is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

"Individual" means an Offeror/Contractor that has no more than one employee including the Offeror/Contractor.

(b) The Contractor, if other than an individual, shall—within 30 days after award (unless a longer period is agreed to in writing for contracts of 30 days or more performance duration), or as soon as possible for contracts of less than 30 days performance duration—

(1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

- (2) Establish an ongoing drug-free awareness program to inform such employees about—
 - (i) The dangers of drug abuse in the workplace;
 - (ii) The Contractor's policy of maintaining a drug-free workplace;
 - (iii) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (3) Provide all employees engaged in performance of the contract with a copy of the statement required by paragraph (b)(1) of this clause;
- (4) Notify such employees in writing in the statement required by paragraph (b)(1) of this clause that, as a condition of continued employment on this contract, the employee will—
 - (i) Abide by the terms of the statement; and
 - (ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction;
- (5) Notify the Contracting Officer in writing within 10 days after receiving notice under subdivision (b)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;
- (6) Within 30 days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:
 - (i) Taking appropriate personnel action against such employee, up to and including termination; or
 - (ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and
- (7) Make a good faith effort to maintain a drug-free workplace through implementation of paragraphs (b)(1) through (b)(6) of this clause.
- (c) The Contractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.
- (d) In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraph (b) or (c) of this clause may, pursuant to FAR 23.506, render the Contractor subject to suspension of contract payments, termination of the contract or default, and suspension or debarment.

31. 552.203-70 PRICE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (SEP 1999)

(Applicable to leases over \$100,000.)

- (a) If the head of the contracting activity (HCA) or his or her designee determines that there was a violation of subsection 27(a) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in the Federal Acquisition Regulation, the Government, at its election, may—
 - (1) Reduce the monthly rental under this lease by 5 percent of the amount of the rental for each month of the remaining term of the lease, including any option periods, and recover 5 percent of the rental already paid;
 - (2) Reduce payments for alterations not included in monthly rental payments by 5 percent of the amount of the alterations agreement; or
 - (3) Reduce the payments for violations by a Lessor's subcontractor by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was placed.
- (b) Prior to making a determination as set forth above, the HCA or designee shall provide to the Lessor a written notice of the action being considered and the basis therefore. The Lessor shall have a period determined by the agency head or designee, but not less than 30 calendar days after receipt of such notice, to submit in person, in writing, or through a representative, information and argument in opposition to the proposed reduction. The agency head or designee may, upon good cause shown, determine to deduct less than the above amounts from payments.
- (c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this lease.

32. 52.215-10 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (OCT 1997)

(Applicable when cost or pricing data are required for work or services over \$500,000.)

(a) If any price, including profit or fee, negotiated in connection with this contract, or any cost reimbursable under this contract, was increased by any significant amount because—

(1) The Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data;

(2) A subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data; or

(3) Any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.

(b) Any reduction in the contract price under paragraph (a) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which—

(1) The actual subcontract or

(2) The actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; *provided*, that the actual subcontract price was not itself affected by defective cost or pricing data.

(c) (1) If the Contracting Officer determines under paragraph (a) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.

(ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2) (i) Except as prohibited by subdivision (c)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if—

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.

(ii) An offset shall not be allowed if—

(A) The understated data were known by the Contractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.

(d) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid—

(1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost

or pricing data that were incomplete, inaccurate, or noncurrent.

33. 552.270-13 PROPOSALS FOR ADJUSTMENT (SEP 1999)

(a) The Contracting Officer may, from time to time during the term of this lease, require changes to be made in the work or services to be performed and in the terms or conditions of this lease. Such changes will be required under the Changes clause.

(b) If the Contracting Officer makes a change within the general scope of the lease, the Lessor shall submit, in a timely manner, an itemized cost proposal for the work to be accomplished or services to be performed when the cost exceeds \$100,000. The proposal, including all subcontractor work, will contain at least the following detail—

(1) Material quantities and unit costs;

(2) Labor costs (identified with specific item or material to be placed or operation to be performed;

(3) Equipment costs;

(4) Worker's compensation and public liability insurance;

(5) Overhead;

(6) Profit; and

(7) Employment taxes under FICA and FUTA.

(c) The following Federal Acquisition Regulation (FAR) provisions also apply to all proposals exceeding \$500,000 in cost—

(1) The Lessor shall provide cost or pricing data including subcontractor cost or pricing data (48 CFR 15.403-4) and

(2) The Lessor's representative, all Contractors, and subcontractors whose portion of the work exceeds \$500,000 must sign and return the "Certificate of Current Cost or Pricing Data" (48 CFR 15.406-2).

(d) Lessors shall also refer to 48 CFR Part 31, Contract Cost Principles, for information on which costs are allowable, reasonable, and allocable in Government work.

34. 552.270-14 CHANGES (SEP 1999) (VARIATION)

(a) The Contracting Officer may at any time, by written order, make changes within the general scope of this lease in any one or more of the following:

(1) Specifications (including drawings and designs);

(2) Work or services;

(3) Facilities or space layout; or

(4) Amount of space, provided the Lessor consents to the change.

(b) If any such change causes an increase or decrease in Lessor's cost of or the time required for performance under this lease, whether or not changed by the order, the Contracting Officer shall modify this lease to provide for one or more of the following:

(1) A modification of the delivery date;

(2) An equitable adjustment in the rental rate;

(3) A lump sum equitable adjustment; or

(4) An equitable adjustment of the annual operating costs per ANSI/BOMA Office Area square foot specified in this lease.

(c) The Lessor shall assert its right to an adjustment under this clause within 30 days from the date of receipt of the change order and shall submit a proposal for adjustment. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Lessor from proceeding with the change as directed.

(d) Absent such written change order, the Government shall not be liable to Lessor under this clause.

35. 552.215-70 EXAMINATION OF RECORDS BY GSA (FEB 1996)

The Contractor agrees that the Administrator of General Services or any duly authorized representative shall, until the expiration of 3 years after final payment under this contract, or of the time periods for the particular records specified in Subpart 4.7 of the Federal Acquisition Regulation (48 CFR 4.7), whichever expires earlier, have access to and the right to examine any books, documents, papers, and records of the Contractor involving transactions related to this contract or compliance with any clauses thereunder. The Contractor further agrees to include in all its subcontracts hereunder a provision to the effect that the subcontractor agrees that the Administrator of General Services or any duly authorized representatives shall, until the expiration of 3 years after final payment under the subcontract, or of the time periods for the particular records specified in Subpart 4.7 of the Federal Acquisition Regulation (48 CFR 4.7), whichever expires earlier, have access to and the right to examine any books, documents, papers, and records of such subcontractor involving transactions related to the subcontract or compliance with any clauses thereunder. The term "subcontract" as used in this clause excludes (a) purchase orders not exceeding \$100,000 and (b) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

36. 52.215-2 AUDIT AND RECORDS—NEGOTIATION (JUN 1999)

(a) As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

(b) *Examination of costs.* If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable contract, or any combination of these, the Contractor shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.

(c) *Cost or pricing data.* If the Contractor has been required to submit cost or pricing data in connection with any pricing action relating to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to—

- (1) The proposal for the contract, subcontract, or modification;
- (2) The discussions conducted on the proposal(s), including those related to negotiating;
- (3) Pricing of the contract, subcontract, or modification; or
- (4) Performance of the contract, subcontract or modification.

(d) *Comptroller General.*

(1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder.

(2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) *Reports.* If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating—

(1) The effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports; and

(2) The data reported.

(f) *Availability.* The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in Subpart

4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition—

(1) If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and

(2) The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

(g) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract that exceed the simplified acquisition threshold, and—

(1) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable type or any combination of these;

(2) For which cost or pricing data are required; or

(3) That require the subcontractor to furnish reports as discussed in paragraph (e) of this clause. The clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

37. 52.233-1 DISPUTES (JUL 2002)

(a) This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d) (1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2) (i) The Contractor shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding \$100,000.

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor."

(3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of

the Contractor's specific reasons for rejecting the offer.

(h) The Government shall pay interest on the amount found due and unpaid from (1) the date that the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in FAR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. 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 Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

38. 52.222-26 EQUAL OPPORTUNITY (APR 2002)

(Applicable to leases over \$10,000.)

(a) *Definition.* "United States," as used in this clause, means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(b) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with paragraphs (b)(1) through (b)(11) of this clause, except for work performed outside the United States by employees who were not recruited within the United States. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to—

- (i) Employment;
- (ii) Upgrading;
- (iii) Demotion;
- (iv) Transfer;
- (v) Recruitment or recruitment advertising;
- (vi) Layoff or termination;
- (vii) Rates of pay or other forms of compensation; and
- (viii) Selection for training, including apprenticeship.

(3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100, (EEO-1), or any successor form, as prescribed in 41 CFR part 60-1. Unless the Contractor

has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.

(8) The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.

(9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.

(10) The Contractor shall include the terms and conditions of paragraphs (b)(1) through

(11) of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(11) The Contractor shall take such action with respect to any subcontract or purchase order as the Contracting Officer may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance, provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(c) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

39. 52.222-24 PREAWARD ON-SITE EQUAL OPPORTUNITY COMPLIANCE EVALUATION (FEB 1999)

(Applicable to leases over \$10,000,000.)

If a contract in the amount of \$10 million or more will result from this solicitation, the prospective Contractor and its known first-tier subcontractors with anticipated subcontracts of \$10 million or more shall be subject to a preaward compliance evaluation by the Office of Federal Contract Compliance Programs (OFCCP), unless, within the preceding 24 months, OFCCP has conducted an evaluation and found the prospective Contractor and subcontractors to be in compliance with Executive Order 11246.

40. 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)

(Applicable to leases over \$10,000.)

(a) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

(b) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.

(c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal

Opportunity clause of this contract.

41. 52.222-35 EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (DEC 2001)

(Applicable to leases over \$25,000.)

(a) *Definitions.* As used in this clause—

"All employment openings" means all positions except executive and top management, those positions that will be filled from within the Contractor's organization, and positions lasting 3 days or less. This term includes full-time employment, temporary employment of more than 3 days duration, and part-time employment.

"Executive and top management" means any employee—

- (1) Whose primary duty consists of the management of the enterprise in which the individual is employed or of a customarily recognized department or subdivision thereof;
- (2) Who customarily and regularly directs the work of two or more other employees;
- (3) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight;
- (4) Who customarily and regularly exercises discretionary powers; and
- (5) Who does not devote more than 20 percent or, in the case of an employee of a retail or service establishment, who does not devote more than 40 percent of total hours of work in the work week to activities that are not directly and closely related to the performance of the work described in paragraphs (1) through (4) of this definition. This paragraph (5) does not apply in the case of an employee who is in sole charge of an establishment or a physically separated branch establishment, or who owns at least a 20 percent interest in the enterprise in which the individual is employed. "Other eligible veteran" means any other veteran who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized.

"Positions that will be filled from within the Contractor's organization" means employment openings for which the Contractor will give no consideration to persons outside the Contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings the Contractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

"Qualified special disabled veteran" means a special disabled veteran who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such veteran holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.

"Special disabled veteran" means—

- (1) A veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Department of Veterans Affairs for a disability—
 - (i) Rated at 30 percent or more; or
 - (ii) Rated at 10 or 20 percent in the case of a veteran who has been determined under 38 U.S.C. 3106 to have a serious employment handicap (i.e., a significant impairment of the veteran's ability to prepare for, obtain, or retain employment consistent with the veteran's abilities, aptitudes, and interests); or
- (2) A person who was discharged or released from active duty because of a service-connected disability.

"Veteran of the Vietnam era" means a person who—

- (1) Served on active duty for a period of more than 180 days and was discharged or released from active duty with other than a dishonorable discharge, if any part of such active duty occurred—

- (i) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or
- (ii) Between August 5, 1964, and May 7, 1975, in all other cases; or
- (2) Was discharged or released from active duty for a service-connected disability if any part of the active duty was performed—
- (i) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or
- (ii) Between August 5, 1964, and May 7, 1975, in all other cases.

(b) *General.*

- (1) The Contractor shall not discriminate against the individual because the individual is a special disabled veteran, a veteran of the Vietnam era, or other eligible veteran, regarding any position for which the employee or applicant for employment is qualified. The Contractor shall take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans without discrimination based upon their disability or veterans' status in all employment practices such as—

- (i) Recruitment, advertising, and job application procedures;
- (ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
- (iii) Rate of pay or any other form of compensation and changes in compensation;
- (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
- (v) Leaves of absence, sick leave, or any other leave;
- (vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;
- (vii) Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C. 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
- (viii) Activities sponsored by the Contractor including social or recreational programs; and
- (ix) Any other term, condition, or privilege of employment.

- (2) The Contractor shall comply with the rules, regulations, and relevant orders of the Secretary of Labor issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended (38 U.S.C. 4211 and 4212).

(c) *Listing openings.*

- (1) The Contractor shall immediately list all employment openings that exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract, and including those occurring at an establishment of the Contractor other than the one where the contract is being performed, but excluding those of independently operated corporate affiliates, at an appropriate local public employment service office of the State wherein the opening occurs. Listing employment openings with the U.S. Department of Labor's America's Job Bank shall satisfy the requirement to list jobs with the local employment service office.

- (2) The Contractor shall make the listing of employment openings with the local employment service office at least concurrently with using any other recruitment source or effort and shall involve the normal obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing of employment openings does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.

- (3) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the

State public employment agency in each State where it has establishments of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State agency, it need not advise the State agency of subsequent contracts. The Contractor may advise the State agency when it is no longer bound by this contract clause.

(d) *Applicability.* This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands of the United States, and Wake Island.

(e) *Postings.*

(1) The Contractor shall post employment notices in conspicuous places that are available to employees and applicants for employment.

(2) The employment notices shall—

(i) State the rights of applicants and employees as well as the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are special disabled veterans, veterans of the Vietnam era, and other eligible veterans; and

(ii) Be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary of Labor), and provided by or through the Contracting Officer.

(3) The Contractor shall ensure that applicants or employees who are special disabled veterans are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled veteran, or may lower the posted notice so that it can be read by a person in a wheelchair).

(4) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement, or other contract understanding, that the Contractor is bound by the terms of the Act and is committed to take affirmative action to employ, and advance in employment, qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans.

(f) *Noncompliance.* If the Contractor does not comply with the requirements of this clause, the Government may take appropriate actions under the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

(g) *Subcontracts.* The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of \$25,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Deputy Assistant Secretary of Labor to enforce the terms, including action for noncompliance.

42. 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)

(Applicable to leases over \$10,000.)

(a) *General.*

(1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental disability. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as—

(i) Recruitment, advertising, and job application procedures;

(ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(iii) Rates of pay or any other form of compensation and changes in compensation;

(iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(v) Leaves of absence, sick leave, or any other leave;

(vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;

(vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(viii) Activities sponsored by the Contractor, including social or recreational programs; and

(ix) Any other term, condition, or privilege of employment.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor

(Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

(b) *Postings.*

(1) The Contractor agrees to post employment notices stating—

(i) the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities and

(ii) the rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Contractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.

(c) *Noncompliance.* If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(d) *Subcontracts.* The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$10,000 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

43. 52.222-37 EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (DEC 2001)

(Applicable to leases over \$25,000.)

- (a) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on—
- (1) The number of special disabled veterans, the number of veterans of the Vietnam era, and other eligible veterans in the workforce of the Contractor by job category and hiring location; and
 - (2) The total number of new employees hired during the period covered by the report, and of the total, the number of special disabled veterans, the number of veterans of the Vietnam era, and the number of other eligible veterans; and
 - (3) The maximum number and the minimum number of employees of the Contractor during the period covered by the report.
- (b) The Contractor shall report the above items by completing the Form VETS-100, entitled "Federal Contractor Veterans' Employment Report (VETS-100 Report)."
- (c) The Contractor shall submit VETS-100 Reports no later than September 30 of each year beginning September 30, 1988.
- (d) The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. Contractors may select an ending date—
- (1) As of the end of any pay period between July 1 and August 31 of the year the report is due; or
 - (2) As of December 31, if the Contractor has prior written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).
- (e) The Contractor shall base the count of veterans reported according to paragraph (a) of this clause on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all special disabled veterans, veterans of the Vietnam era, and other eligible veterans who wish to benefit under the affirmative action program at 38 U.S.C. 4212 to identify themselves to the Contractor. The invitation shall state that—
- (1) The information is voluntarily provided;
 - (2) The information will be kept confidential;
 - (3) Disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and
 - (4) The information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.
- (f) The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of \$25,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

44. 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (JAN 2005)

(Applicable to leases over \$25,000.)

- (a) The Government suspends or debar Contractors to protect the Government's interests. The Contractor shall not enter into any subcontract in excess of \$25,000 with a Contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.
- (b) The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed \$25,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government
- (c) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the Excluded Parties List System). The notice must include the following:
- (1) The name of the subcontractor.

- (2) The Contractor's knowledge of the reasons for the subcontractor being in the Excluded Parties List System.
- (3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion in the Excluded Parties List System.
- (4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

45. 52.215-12 SUBCONTRACTOR COST OR PRICING DATA (OCT 1997)

(Applicable when the clause at FAR 52.215-10 is applicable.)

- (a) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.403-1 applies.
- (b) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (a) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.
- (c) In each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.403-4, when entered into, the Contractor shall insert either—
 - (1) The substance of this clause, including this paragraph (c), if paragraph (a) of this clause requires submission of cost or pricing data for the subcontract; or
 - (2) The substance of the clause at FAR 52.215-13, Subcontractor Cost or Pricing Data— Modifications.

46. 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (MAY 2004)

(Applicable to leases over \$100,000 average net annual rental, including option periods.)

- (a) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUB Zone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUB Zone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.
- (b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.
- (c) *Definitions.* As used in this contract— "HUB Zone small business concern" means a small business concern that appears on the List of Qualified HUB Zone Small Business Concerns maintained by the Small Business Administration.

"Service-disabled veteran-owned small business concern"—

- (1) Means a small business concern—
 - (i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and
 - (ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or

permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

"Small business concern" means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

"Small disadvantaged business concern" means a small business concern that represents, as part of its offer that—

- (1) It has received certification as a small disadvantaged business concern consistent with 13 CFR part 124, Subpart B;
- (2) No material change in disadvantaged ownership and control has occurred since its certification;
- (3) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and
- (4) It is identified, on the date of its representation, as a certified small disadvantaged business in the database maintained by the Small Business Administration (PRO-Net).

"Veteran-owned small business concern" means a small business concern—

- (1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and
- (2) The management and daily business operations of which are controlled by one or more veterans.

"Women-owned small business concern" means a small business concern—

- (1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and
- (2) Whose management and daily business operations are controlled by one or more women. (d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a HUB Zone small business concern, a small disadvantaged business concern, or a women-owned small business concern.

47. 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (JUL 2005)

(Applicable to leases over \$500,000.)

- (a) This clause does not apply to small business concerns.
- (b) *Definitions.* As used in this clause—

"Commercial item" means a product or service that satisfies the definition of commercial item in section 2.101 of the Federal Acquisition Regulation.

"Commercial plan" means a subcontracting plan (including goals) that covers the Offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line).

"Individual contract plan" means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the Offeror's planned subcontracting in support of the specific contract, except that indirect costs incurred for

common or joint purposes may be allocated on a prorated basis to the contract.

"Master plan" means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

"Subcontract" means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(c) The Offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUB Zone small business concerns, small disadvantaged business, and women-owned small business concerns. If the Offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUB Zone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the Offeror ineligible for award of a contract.

(d) The Offeror's subcontracting plan shall include the following:

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUB Zone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The Offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.

(2) A statement of—

(i) Total dollars planned to be subcontracted for an individual contract plan; or the Offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;

(ii) Total dollars planned to be subcontracted to small business concerns;

(iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;

(iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business;

(v) Total dollars planned to be subcontracted to HUB Zone small business concerns;

(vi) Total dollars planned to be subcontracted to small disadvantaged business concerns; and

(vii) Total dollars planned to be subcontracted to women-owned small business concerns.

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to—

(i) Small business concerns;

(ii) Veteran-owned small business concerns;

(iii) Service-disabled veteran-owned small business concerns;

(iv) HUB Zone small business concerns;

(v) Small disadvantaged business concerns; and

(vi) Women-owned small business concerns.

(4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

(5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Procurement Marketing and Access Network (PRO-Net) of the Small Business Administration (SBA), veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUB Zone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in PRO-Net as an accurate representation of a concern's size and

ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUB Zone small, small disadvantaged, and women-owned small business source list. Use of PRO-Net as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the Offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with—

- (i) Small business concerns;
- (ii) Veteran-owned small business concerns;
- (iii) Service-disabled veteran-owned small business concerns;
- (iv) HUBZone small business concerns;
- (v) Small disadvantaged business concerns; and
- (vi) Women-owned small business concerns.

(7) The name of the individual employed by the Offeror who will administer the Offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the Offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUB Zone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the Offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the Offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$500,000 (\$1,000,000 for construction of any public facility) to adopt a subcontracting plan that complies with the requirements of this clause.

(10) Assurances that the Offeror will—

- (i) Cooperate in any studies or surveys as may be required;
- (ii) Submit periodic reports so that the Government can determine the extent of compliance by the Offeror with the subcontracting plan;
- (iii) Submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, in accordance with paragraph (j) of this clause. The reports shall provide information on subcontract awards to small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUB Zone small business concerns, small disadvantaged business concerns, women-owned small business concerns, and Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with the instructions on the forms or as provided in agency regulations.
- (iv) Ensure that its subcontractors agree to submit SF 294 and SF 295.

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the Offeror's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUB Zone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

- (i) Source lists (e.g., PRO-Net), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUB Zone small business, small disadvantaged business, and women-owned small business concerns.
- (ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUB Zone small business, small disadvantaged business, or women-owned small business concerns.
- (iii) Records on each subcontract solicitation resulting in an award of more than \$100,000, indicating—

- (A) Whether small business concerns were solicited and, if not, why not;
- (B) Whether veteran-owned small business concerns were solicited and, if not, why not;
- (C) Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;
- (D) Whether HUB Zone small business concerns were solicited and, if not, why not;
- (E) Whether small disadvantaged business concerns were solicited and, if not, why not;

- (F) Whether women-owned small business concerns were solicited and, if not, why not; and
- (G) If applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact—

- (A) Trade associations;
- (B) Business development organizations;
- (C) Conferences and trade fairs to locate small, HUB Zone small, small disadvantaged, and women-owned small business sources; and
- (D) Veterans service organizations.

(v) Records of internal guidance and encouragement provided to buyers through—

- (A) Workshops, seminars, training, etc.; and
- (B) Monitoring performance to evaluate compliance with the program's requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the Offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

(1) Assist small business, veteran-owned small business, service-disabled veteran-owned small business, HUB Zone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUB Zone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small business, veteran-owned small business, service-disabled veteran-owned small business, HUB Zone small business, small disadvantaged business, and women-owned small business concerns in all "make-or-buy" decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small business, veteran-owned small business, service-disabled veteran-owned small business, HUB Zone small business, small disadvantaged business, and women-owned small business firms.

(4) Confirm that a subcontractor representing itself as a HUB Zone small business concern is identified as a certified HUB Zone small business concern by accessing the Central Contractor Registration (CCR) database or by contacting SBA.

(5) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUB Zone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.

(f) A master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the Offeror by this clause; provided—

(1) The master plan has been approved;

(2) The Offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer; and

(3) Goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the Offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Commercial plans are also preferred for subcontractors that provide commercial items under a prime contract, whether or not the prime contractor is supplying a commercial item.

- (h) Prior compliance of the Offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the Offeror for award of the contract.
- (i) The failure of the Contractor or subcontractor to comply in good faith with—
- (1) The clause of this contract entitled "Utilization Of Small Business Concerns"; or
 - (2) An approved plan required by this clause, shall be a material breach of the contract.
- (j) The Contractor shall submit the following reports:
- (1) *Standard Form 294, Subcontracting Report for Individual Contracts*. This report shall be submitted to the Contracting Officer semiannually and at contract completion. The report covers subcontract award data related to this contract. This report is not required for commercial plans.
 - (2) *Standard Form 295, Summary Subcontract Report*. This report encompasses all of the contracts with the awarding agency. It must be submitted semi-annually for contracts with the Department of Defense and annually for contracts with civilian agencies. If the reporting activity is covered by a commercial plan, the reporting activity must report annually all subcontract awards under that plan. All reports submitted at the close of each fiscal year (both individual and commercial plans) shall include a breakout, in the Contractor's format, of subcontract awards, in whole dollars, to small disadvantaged business concerns by North American Industry Classification System (NAICS) Industry Subsector. For a commercial plan, the Contractor may obtain from each of its subcontractors a predominant NAICS Industry Subsector and report all awards to that subcontractor under its predominant NAICS Industry Subsector.

48. 52.219-16 LIQUIDATED DAMAGES—SUBCONTRACTING PLAN (JAN 1999)

(Applicable to leases over \$500,000.)

- (a) *Failure to make a good faith effort to comply with the subcontracting plan*, as used in this clause, means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under the clause in this contract entitled "Small Business Subcontracting Plan," or willful or intentional action to frustrate the plan.
- (b) Performance shall be measured by applying the percentage goals to the total actual subcontracting dollars or, if a commercial plan is involved, to the pro rata share of actual subcontracting dollars attributable to Government contracts covered by the commercial plan. If, at contract completion or, in the case of a commercial plan, at the close of the fiscal year for which the plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this clause that the Contractor failed to make a good faith effort to comply with its subcontracting plan, established in accordance with the clause in this contract entitled "Small Business Subcontracting Plan," the Contractor shall pay the Government liquidated damages in an amount stated. The amount of probable damages attributable to the Contractor's failure to comply shall be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal.
- (c) Before the Contracting Officer makes a final decision that the Contractor has failed to make such good faith effort, the Contracting Officer shall give the Contractor written notice specifying the failure and permitting the Contractor to demonstrate what good faith efforts have been made and to discuss the matter. Failure to respond to the notice may be taken as an admission that no valid explanation exists. If, after consideration of all the pertinent data, the Contracting Officer finds that the Contractor failed to make a good faith effort to comply with the subcontracting plan, the Contracting Officer shall issue a final decision to that effect and require that the Contractor pay the Government liquidated damages as provided in paragraph (b) of this clause.
- (d) With respect to commercial plans, the Contracting Officer who approved the plan will perform the functions of the Contracting Officer under this clause on behalf of all agencies with contracts covered by the commercial plan.
- (e) The Contractor shall have the right of appeal, under the clause in this contract entitled, Disputes, from any final decision of the Contracting Officer.
- (f) Liquidated damages shall be in addition to any other remedies that the Government may have.

SPECIAL PROVISIONS

1. SPECIAL PROVISIONS AND GENERAL CLAUSES

The Lease expressly and specifically incorporates by reference the General Clauses and Special Provisions. In event, and to the extent, of an inconsistency between the provisions of the General Clauses and these Special Provisions, the Lease will be interpreted so as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful.

2. APPROVAL OF THE FAA

All terms and conditions of the aviation-related Lease are subject to review by and approval of the Federal Aviation Administration (FAA).

3. AVIGATION EASEMENT

The leased premises shall be subject to an easement and right of way for the unobstructed passage of aircraft in the airspace above the leased premises, which is reserved by Lessor for the benefit of itself and all members of the general public operating aircraft which land at or take off from the Airport. Concomitant and coextensive with said easement and right of way, Lessor and general public shall have the further right to cause in all airspace above the surface of the leased premises such noise, vibrations, fumes, dust, fuel particles, and other effects that may be caused by the operation of aircraft landing at or taking off from or otherwise operating at the Airport. In connection with this easement and right of way, Government agrees not to cause or permit any structure, natural growth, or other object on the leased premises which extends into the airspace over the leased premises more than 210 feet above mean sea level, and not to use or permit the use of the leased premises in such a manner as to create electrical interference with radio communications between aircraft and the Airport, to make it difficult for flyers to distinguish between airport lights and other lights, to impair visibility in the vicinity of the Airport, or to otherwise endanger aircraft landing at or taking off from the Airport. Government further agrees that in the event it causes or permits any structure, natural growth, or other object on the leased premises which extends into the airspace over the leased premises more than 210 feet above mean sea level, or otherwise causes or permits any condition on the leased premises which endangers aircraft landing at or taking off from the Airport, then Lessor shall have the right to enter upon the leased premises and to remove such structure, natural growth, object or condition endangering aircraft landing at or taking off from the Airport, all at Government's sole cost and expense.

4. UTILITY RESERVATION

Lessor reserves the right to install, lay, construct, maintain, repair and operate such sanitary sewers, drains, storm water sewers, pipelines, manholes, and connections; water, oil and gas pipelines, telephone, telegraph and electrical power lines; and the appliances and appurtenances necessary or convenient in connection therewith, in, over, upon, through, across and along any and all portions of the leased premises. No right reserved by the Lessor in this clause shall be so exercised as to interfere unreasonably with Government's operations.

5. SUBORDINATE TO AGREEMENTS WITH FEDERAL GOVERNMENT – APPLICABILITY OF RELEVANT PROVISIONS OF QUITCLAIM DEED

The Lease shall be subordinate to the provisions and requirements of any existing or future agreement between the Lessor and the United States government or any department thereof relative to the development, operation or maintenance of the Airport. Government acknowledges it has been given a copy and an opportunity to review the Quitclaim Deed of conveyance for the leased premises from the U.S. Army to the Lessor including the notices, reservations, restrictions, conditions and covenants therein and agrees to comply with all requirements pertinent to Government's activities contained in that document. Government understands and agrees its aeronautical and airport-related use of the leased premises shall not be an exclusive right to that of any other person or firm to operate the same or a similar business at the Marina Municipal Airport and to lease premises at the Airport from the Lessor for such purposes, within the meaning of §308A of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1349a). Lessor reserves the right, at its sole discretion, to grant others certain rights and privileges upon the Airport which are identical in part or in whole to those granted to Government by the Lease.

6. WAR OR NATIONAL EMERGENCY

The Lease and all provisions thereof shall be subject to whatever right the United States government has affecting the control, operation, regulation and taking over of the Airport or the exclusive or non-exclusive use of the Airport by the United States during a time of war or national emergency.

7. CONFORMANCE WITH FAA REGULATIONS

Government agrees that its use of the leased premises, including all future construction, modification or alteration thereon, shall comply with all applicable Federal Aviation Administration regulations now in force or that may be hereafter adopted by Federal authority. Government shall also comply with applicable law as set forth in Section 18 of the General Clauses, which shall include payment of prevailing wages when contracting for construction, modification or alteration of the leased premises.

The Government will furnish services on a reasonable and not unjustly discriminatory basis to all users, and charge reasonable and not unjustly discriminatory prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

The Government will confirm to airport and Federal Aviation Administration safety and security rules and regulations regarding use of the airport operations area including runways, taxiways, aircraft aprons by vehicles, employees, customers, visitors, etc., in order to prevent security breaches and avoid aircraft incursions and vehicle/pedestrian deviations; will complete and pass airfield safe driving instruction program when offered or required by the airport; and will be subject to penalties as prescribed by the airport for violations of the airport safety and security requirements.

8. ACCEPTANCE OF LEASED PREMISES

Government understands that the leased premises were formerly used by the federal government as part

of an Army air base, that surrounding lands which were also part of such Army air base have, in the past been found to contain concentrations of volatile organic chemicals which exceed standards prescribed by the environmental agencies and the state and federal governments. Pursuant to California Health & Safety Code §25359.7(a) Government is provided this notice that the structure may contain asbestos materials and lead-based paints. The Lessor has provided to the Government an asbestos survey report prepared by the U.S. Army Corps of Engineers for Building 507, which is attached to the Lease as Exhibit C. Government acknowledges that Lessor has granted to Government the right to review all maps and records of the old Army air base presently on file in the office of the Lessor's Planning Department as well as the right to inspect the leased premises and perform any tests of the soils and improvements thereon or the groundwater thereunder, all in order to afford Government a full and complete opportunity to investigate and determine whether the leased premises can be used for the purposes for which it is being leased.

9. NO WARRANTY

Government further understands and agrees that no representation, statement, or warranty, express or implied, has been made by or on behalf of the Lessor as to the condition of the leased premises or the suitability of the premises for its intended use, save and except for the representation and warranty that no officer, employee, or agent of Lessor has caused any condition of pollution or contamination which may now exist on the leased premises. Such representation and warranty, however, shall not extend to any condition of pollution or contamination caused by the federal government or any other tenant of Lessor. Government agrees to accept the leased premises in its present condition and "AS IS", with respect to all conditions which may now exist on or under the leased premises save and except for any condition of pollution or contamination caused by an officer, employee, or agent of Lessor. Government is not responsible for the cost of environmental abatement, remediation or cleanup of pollution or contamination which is unrelated to the activities of the Government, or its officers, employees, agents, contractors or invitees, on the premises.

10. AMERICANS WITH DISABILITIES ACT

Government is solely responsible for determining whether or not Government's intended use of Building 507 will be or is in compliance with the ADA. Government acknowledges that certain portions of Building 507 remain inaccessible for some disabled individuals. By entering into this Lease, unless otherwise agreed between the parties in a writing signed by the authorized representative of each party, Government agrees to be responsible for all compliance with the ADA, if applicable to the Government or the Lessor.

11. IMPROVEMENTS TO LEASED PREMISES

During the initial or any extended term of this Lease, Government shall not make any additions or alterations to the improvements on the leased Premises without the prior written consent of the Lessor, such consent not to be unreasonably delayed or withheld. Moreover, upon receiving consent to make an addition or alteration to the improvements on the leased Premises, Government shall not commence work on the construction or installation of such added or altered improvements until plans and specifications for same have been submitted to and approved by the Lessor's review processes and a building permit

issued.

12. TITLE TO IMPROVEMENTS

Upon termination of this Lease or any renewal period thereof, all additions or alterations to the improvements on the leased premises or the Airport made by Government shall become the property of the Lessor without payment of any compensation therefor; provided, however, that upon termination of this Lease, with the exception of prior authorized alterations, additions and repairs which had Lessor's prior written approval, Lessor shall have the option to require Government to remove any or all added improvements or restore any altered improvement to the same condition as it was at the commencement of the term of this Lease, all at Government's sole cost and expense.

13. REIMBURSEMENT TO GOVERNMENT FOR COST OF IMPROVEMENTS

(A) The authorized representatives of Lessor and the Government, designated herein, agree to meet and confer periodically during the initial and any renewed term of the Lease concerning improvements to the premises' interior systems, for which the Government is responsible for maintenance and repair in accordance with Section 14 herein. During the initial term of the Lease, improvements will include the installation of entry doors necessary to make the path of travel to the interior of Hangar 507 ADA-compliant. Their authorized representatives shall negotiate and agree in a writing signed by both parties concerning a maximum amount to be expended by the Government for approved improvements, the actual payment for which will be reimbursed by the Lessor to the Government through reduced rental payments (i.e., rental credits) during which months such reimbursement is due, to the Government in an amount not to exceed Five Thousand Dollars (\$5,000.00) during any month until the Government is reimbursed in full.

(B) Lessor designates as its Authorized Representative the City Manager who shall have the authority to act for the Lessor. The Authorized Representative shall represent the Lessor in matters pertaining to improvements to the premises' interior systems. Government designates as its Authorized Representative the Real Estate Contracting Officer who shall have the authority to act for the Government. The Authorized Representatives shall represent the Government in matters pertaining to improvements to the premises' interior systems,

14. MAINTENANCE & REPAIR RESPONSIBILITIES OF THE GOVERNMENT

Government shall be responsible for the following maintenance and repair of the leased premises within Building 507 for the initial and any renewed term of the Lease:

(a) Maintenance including painting, repair or replacement of interior systems and components for the electrical, plumbing, ventilation, and mechanical systems including the overhead crane. Government understands the heating boiler for Hangar 507 is currently inoperable and need not be repaired at this time, however, if the need arises to have it repaired, the Government will notify the Lessor and obtain Lessor's prior written consent or approval before proceeding with any work to be done.

(b) Interior and exterior glass, glazing, windows or doors.

(c) The hangar doors.

(d) All interior walls, ceiling, floors, bathrooms, drains and other structures or components. Lessor shall ensure floor drains in the second floor bathrooms are functional and sanitary.

(e) All communication systems and components.

(f) The deluge fire suppression system. Lessor tested the deluge fire suppression system on or about March 9, 2011 and made repair or adjustment necessary to its full functionality. Thereafter testing and maintenance of the deluge fire suppression system will be a Government responsibility, subject to the Lessor's Fire and Building Department requirements for its periodic testing no less frequently than every five (5) years by a state licensed C-16 contractor.

(g) All security alarm systems and components.

(h) Maintenance, sweeping and keeping clear of refuse, regular trash and waste removal, repair or replacement of sidewalks, driveways and asphalt parking areas as well as any damage to the building structure or components or paved surfaces caused by Government or its invitees.

(i) General maintenance and upkeep of the trash enclosure.

15. MAINTENANCE AND REPAIR RESPONSIBILITIES OF THE LESSOR

Lessor shall be responsible for the following maintenance and repair of Building 507 for the initial and any renewed term of this Lease:

a) Maintaining and repairing, with the exception of painting, all structural elements of the building's exterior walls, surfaces and foundations.

b) Maintaining the watertight integrity of the building's exterior walls.

c) Maintain, repair, or replace as required roof coverings, gutters and exterior drains.

d) Maintain and repair all underground and exterior plumbing, drains and utility connections.

e) Maintaining in compliance with applicable law, regulations and codes, the interior fire alarm system. Any damage to the interior fire alarm system resulting from tenant misuse or negligence shall be repaired or replaced by the Government.

16. SURRENDER OF THE PREMISES

On the last day of the Lease, Government shall surrender the leased premises to the Lessor in the same condition as when received, broom clean, ordinary wear and tear excepted. Government shall repair any damage to the leased premises occasioned by the removal of Government's trade fixtures, furnishings and equipment which repair shall include the patching and filling of holes and repair of structural damage.

17. UTILITIES

Government shall have the right to use the utility service facilities serving the premises at the commencement of the term of the Lease. The Lessor will use its best efforts to continue all utility services as they presently exist, but it cannot and does not guarantee that there will be no interruptions of service

To the extent it has knowledge the Lessor will provide notice of any work scheduled which may interrupt the utility service to the leased Premises. If Lessor is unable to provide utility service facilities due to the imposition of any limit on consumption or on the construction of additional utility facilities, or the allocation or curtailment of utility facilities or services by law or regulation, it shall have no obligation hereunder.

18. PAYMENT FOR UTILITIES

Government agrees upon entering into occupancy of the premises to pay directly to the utility providers for all utility services provided under the terms of any contract between the Government and the utility provider and to the Lessor for all utility services provided under the terms of any contract between the Lessor and a utility provider serving the premises through existing lines and connections. Government shall be responsible to provide and pay for all new connection equipment and any fees required.

19. PAYMENT FOR COMMUNICATIONS CONNECTIVITY

Government shall be responsible for providing and paying directly to the provider for telephone, internet and electronic data transmission connection to the premises.

20. PAYMENT FOR TRASH REMOVAL

Government agrees upon entering into occupancy of the leased premises to pay for garbage and trash collection and removal services. Government shall arrange and pay for the disposal of all hazardous waste in accordance with all applicable local, state and federal laws and regulations.

21. DAMAGES

If the death or injury to any person, or the loss or damage to any property is caused by the Government, or a duly authorized representative or contractor of the Government, in the course of its use of the premises, the liability, if any, of the Government therefore shall be determined in accordance with the applicable provisions of the Federal Tort Claims Act (62 Stat. 869, 982, 28 U.S.C. 2671-2680). The Government is self-insured. The Government agrees to consider and adjudicate any claim for damage or injury sustained by Government personnel, including its duly authorized representatives or contractors, in the performance of their official duties while on the Lessor's premises. Such adjudication will be made pursuant to the Federal Employees Compensation Act, 5 U.S.C. 8101 *et seq.* or such legal authority as may be pertinent.

22. NON DISCRIMINATION / AFFIRMATIVE ACTION

The Government for itself, its heirs, personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree "as a covenant running with the land" that in the event facilities are constructed, maintained, or otherwise operated on the said premises described in the Lease, for a purpose for which a Department of Transportation (DOT) program or activity is extended or for another purpose involving the provision of similar services or benefits, the Government shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, DOT, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

Government does hereby covenant and agree "as a covenant running with the land" that no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the leased premises; that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, religion, sex or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination. That in the event of breach of any of the above non-discrimination covenants, Lessor shall have the right to terminate this Lease and to reenter and repossess said land and the facilities thereon, and hold the same as if the Lease had never been made or issued. This provision does not become effective until the procedures of 49 CFR Part 21 are followed and completed including expiration of appeal rights. Non-compliance with any of these non-discrimination covenants above shall constitute a material breach thereof and in the event of such non-compliance the Lessor shall have the right to terminate the Lease and the estate hereby created without liability therefore or at the election of the Lessor or the United States either or both of said governments shall have the right to judicially enforce provisions.

Government agrees that it shall insert this and the above provisions in any sublease agreement by which the Government grants a right or privilege to any person, firm or corporation to render accommodations or services to the public on the Premises herein leased.

Government agrees that, should tenant at any time have fifty or more employees, it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to ensure that no person shall, on the grounds of race, creed, color, national origin, or sex, be excluded from participating in any employment, contracting, or leasing activities covered by 14 CFR Part 152, Subpart E. Government assures that no person shall be excluded on these grounds, from participating in or receiving the services or benefits of any program or activity covered by Subpart E. Government assures that it will require its covered organizations to provide assurance to the Government that they similarly will undertake affirmative action programs and that they will require assurances from their sub organizations, as required by 14 CFR Part 152, Subpart E, to the same effect. Government agrees to comply with any affirmative action plan or steps for equal employment opportunity required by 14 CFR, Part 152, Subpart E, or by any federal, state, or local agency or court, including those resulting from a conciliation agreement, a consent decree, a court order or similar mechanism. Government agrees that a state or local affirmative action plan will be used in lieu of any affirmative action plan or steps required by 14 CFR 152, Subpart E, only when it fully meets the standards set forth in 14 CFR 152.409. Government agrees to obtain a similar assurance from its suborganizations, as required by 14 CFR 152, Subpart E.

23. FIRE INSURANCE

Lessor shall obtain and maintain continuously in effect at all times during the term of the Lease, fire and extended coverage insurance (excluding smoke pollution, or damage occasioned by earthquake or flood) on the structure and permanent fixed improvements located on the premises; with deductibles to be paid by the Lessor for insured losses, in an amount to be determined by the Lessor in its sole discretion during the term of the Lease. The proceeds of any such insurance may be used for rebuilding or repairing the structure or permanent fixed improvements.

24. LESSOR'S SPECIAL EVENTS

Government understands and acknowledges that the Lessor will, from time to time, conduct special events at the Airport (e.g., the Marina Aire Faire). Government agrees to cooperate with the Lessor

concerning these events (e.g. allowing the Lessor to use the premises parking area or providing access to the air operations area of the Airport). Lessor shall provide not less than 14-days prior written notice to Government of any special event which is expected to have an impact on Government's operations or use of the property.

25. FORCE MAJEURE

Neither Lessor nor Government shall be in default under the Lease in the event that the activities of either or both are temporarily interrupted for any of the following reasons: riots; war or national emergency declared by the President or Congress and affecting the City of Marina; sabotage; civil disturbance; insurrection; explosion; natural disasters such as floods, earthquakes, landslides and fires; strikes, lockouts and other labor disturbances; or other catastrophic events which are beyond the reasonable control of the parties.

26. SEVERABILITY

If any of the provisions of the Lease are determined to be invalid or unenforceable, those provisions shall be deemed severable from the remainder of the Lease and shall not cause the invalidity or unenforceability of the remainder of the Lease, unless the Lease without the severed provisions would frustrate a material purpose of either party in entering into the Lease.



EXHIBIT A.

Pg.1 of 1

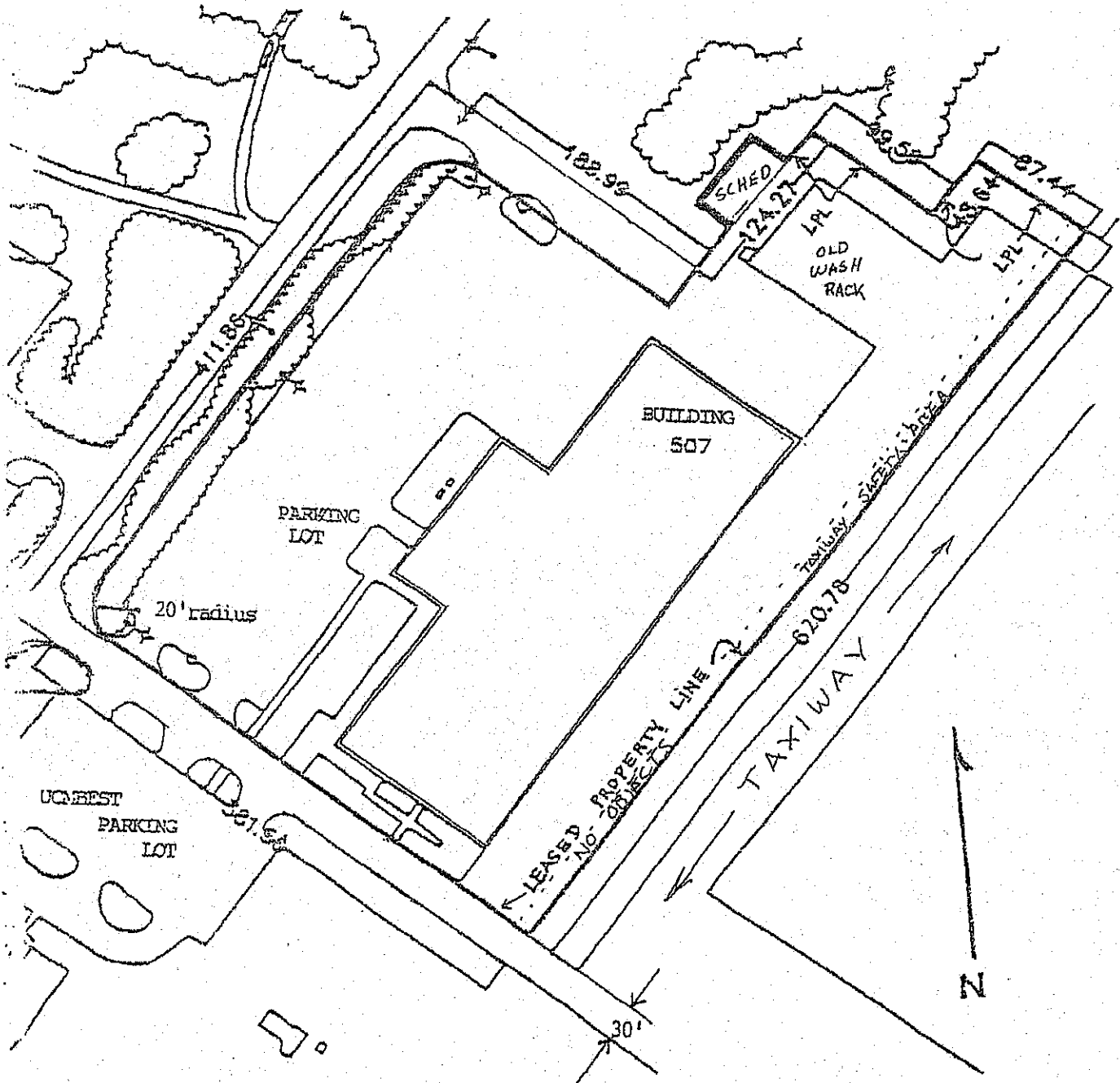
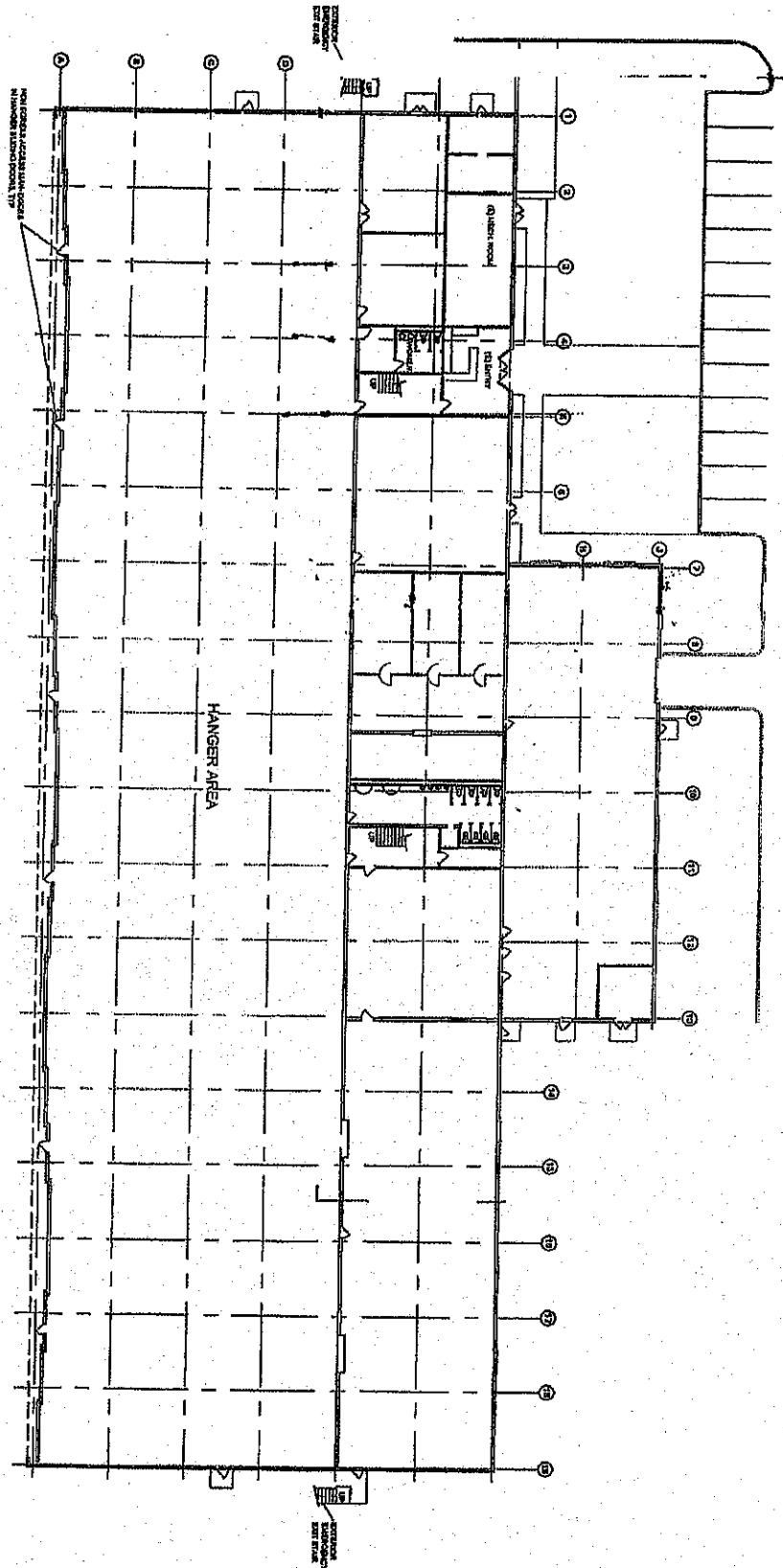


EXHIBIT B

Pg.1 of 2

FIRST FLOOR PLAN



PROJECT:

CALTECH / CIRPAS

3200 MAIN PKWY, HANGER 607
MARINA, CA 93933

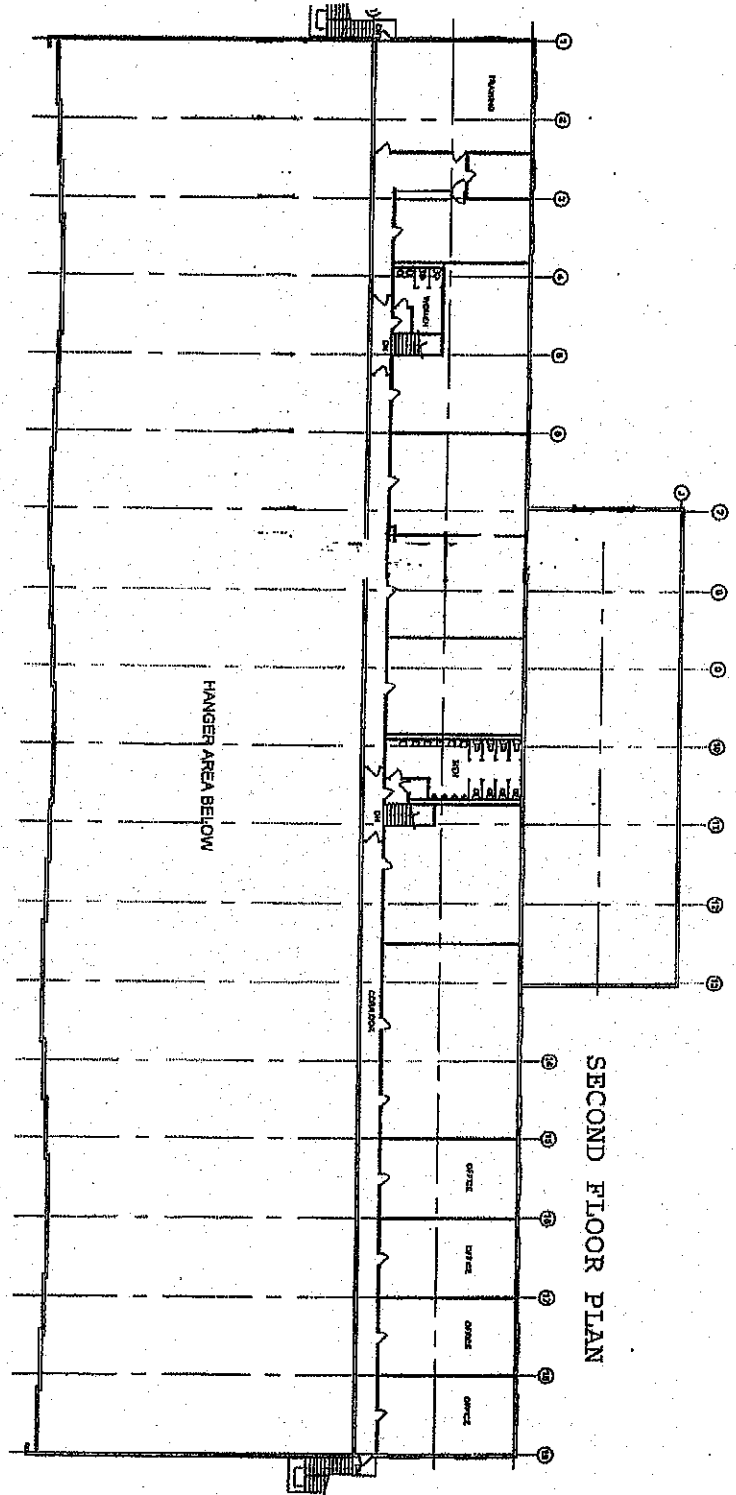
SHEET TITLE: EXISTING FIRST FLOOR PLAN

DATE: 7.24.2007

PROJECT NUMBER: 07159



EXHIBIT B
Pg.2 of 2



PROJECT: CALTECH / CIRPAS
3200 MAIN PKWY, HANGER 607
MARINA, CA 93933

SHEET TITLE: EXISTING SECOND FLOOR PLAN

DATE: 7.19.2007

PROJECT NUMBER: 07159

**ASBESTOS SURVEY REPORT
CORPS OF ENGINEERS - FORT ORD INSTALLATION
BUILDING P00507**

EXHIBIT C
Pg.1 (of 16)

BUILDING SUMMARY

BUILDING P00507

Date(s) of Survey	12/23/91
Estimated Date of Construction	1978
Building Usage	Maintenance Hangar
Total Gross Square Footage	64,920 Sq. Ft.
Building Type	Concrete Block/Metal
Number of Levels	1
Estimated Cost of Recommended Work Items for Asbestos-Containing Materials (CWE)	\$0
Total Estimated Cost Including Additive Items (CWE)	\$309,053
• Cost per Square Foot Including Additive Items (CWE)	\$4.76
Friable Asbestos-Containing Materials	None
Nonfriable Asbestos-Containing Materials	Baseboard Mastic, Resilient Floor Tile, Floor Tile Mastic, Duct Tape, Roof Penetration Mastic

WORK ITEM INVENTORY

BLDG./ WORK SM	DE RATING	CONSTR. YEAR	TYPE OF MATERIAL	ESTIMATED QUANTITY	DESCRIPTION LOCATION	FRIABILITY	ACTION	CONTRACTOR COST
P00507 1	13	N/A	Resilient Floor Tile and Mastic	15,480 SF	1st Flr/Mezz Various Locations	Nonfriable	O&M	\$0

FINDINGS: Nonfriable asbestos-containing 12" x 12" blue, 12" x 12" gray, 12" x 12" light green and 12" x 12" cream with brown resilient floor tile and associated floor tile mastic in the first floor mail room, office adjacent to the armories, south restroom and office adjacent to this restroom and throughout the mezzanine were in good condition. The floor tile, which protects the mastic in all locations, is accessible to building users. These materials do not pose a risk of contamination as long as they do not become damaged or deteriorated in such a way that they could release asbestos fibers into the air. [Bulk Sample(s) 1, 2, 7, 8, 13, 14, 15, 16, 23, 24, 27]

RECOMMENDATIONS: Inspect these materials biannually as part of the O&M. Prohibit any disturbance to these materials including sanding, chipping or the use of corrosive cleaning chemicals which may cause the generation of airborne asbestos fibers. Should these materials be removed, delete this work item from the O&M. Any replacement should be performed with asbestos-free materials.

Additive cost for optional removal and replacement of this material is \$215,946.

**ASBESTOS SURVEY REPORT
CORPS OF ENGINEERS - FORT ORD INSTALLATION
BUILDING P00507**

EXHIBIT C
Pg2

WORK ITEM INVENTORY

WORK ITEM	DEI RATING	CONSTR. YEAR	TYPE OF MATERIAL	ESTIMATED QUANTITY	DESCRIPTION LOCATION	FRIABILITY	ACTION	CONTRACTOR COST
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P00507	13	N/A	Baseboard Mastic	2,100 LF	1st Flr/Mezz Various Locations	Nonfriable	O&M	\$0
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FINDINGS: Nonfriable asbestos-containing baseboard mastic in the first floor office adjacent to the armories, the first floor office adjacent to the south restroom and throughout the mezzanine was in good condition. The mastic is protected by baseboard, except in some areas in the mezzanine north offices where it is painted. The baseboard mastic does not pose a risk of contamination as long as it does not become damaged or deteriorated in such a way that it could release asbestos fibers into the air. [Bulk Sample(s) 10]

RECOMMENDATIONS: Inspect biannually as part of O&M. Prohibit disturbance including sanding, chipping or use of corrosive cleaning chemicals which may cause generation of airborne asbestos fibers. For all removal, repair and O&M activities, materials associated with the baseboard mastic must be considered asbestos-contaminated. Should this material be removed, delete this work item from the O&M. Use asbestos-free materials for any replacement.

Additive cost for optional removal and replacement of this material is \$18,900.

P00507	13	N/A	Roof Penetration Mastic	12 E	Upper and Lower Roof	Nonfriable	O&M	\$0
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FINDINGS: Nonfriable asbestos-containing roof penetration mastic located on the roofs in association with vents was in good condition. This material is accessible to maintenance personnel but does not pose a risk of contamination as long as it does not become damaged or deteriorated in such a way that it could release asbestos fibers into the air. [Bulk Sample(s) 32, 33]

RECOMMENDATIONS: Inspect this material biannually as part of the O&M. Prohibit any disturbance to this material which may cause the generation of airborne asbestos fibers. For any repair, removal or O&M activities, materials associated with the roof penetration mastic must be considered asbestos-contaminated. Should this material be removed, delete this work item from the O&M. Any replacement should be performed with asbestos-free materials.

Additive cost for optional removal and replacement of this material is \$825.

**ASBESTOS SURVEY REPORT
CORPS OF ENGINEERS - FORT ORD INSTALLATION
BUILDING P00507**

EXHIBIT C
Pg3

					WORK ITEM INVENTORY			
#LDG./ WORK ITEM	DEI RATING	CONSTR. YEAR	TYPE OF MATERIAL	ESTIMATED QUANTITY	DESCRIPTION LOCATION	FRIABILITY	ACTION	CONTRACTOR COST

P00507	13	N/A	Duct Tape	50 LF	1st Fir Boiler Room	Nonfriable	O&M	\$0
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FINDINGS: Nonfriable asbestos-containing duct tape on the flue breech ducting pipes in the boiler room was in good condition. This material is accessible to maintenance personnel but does not pose a risk of contamination as long as it does not become damaged or deteriorated in such a way that it could release asbestos fibers into the air. [Bulk Sample(s) 36, 37]

RECOMMENDATIONS: Inspect this material biannually as part of the O&M. Prohibit disturbance which may cause the generation of airborne asbestos fibers. Should this material be removed, delete this work item from the O&M. Use asbestos-free materials for any replacement.

Additive cost for optional removal and replacement of this material is \$825.

**ASBESTOS SURVEY REPORT
CORPS OF ENGINEERS - FORT ORD INSTALLATION
BUILDING P00507**

EXHIBIT C
Pg4

WORK ITEM INVENTORY

WORK ITEM	DEI RATING	CONSTR. YEAR	TYPE OF MATERIAL	ESTIMATED QUANTITY	DESCRIPTION LOCATION	FRIABILITY	ACTION	CONTRACTOR COST
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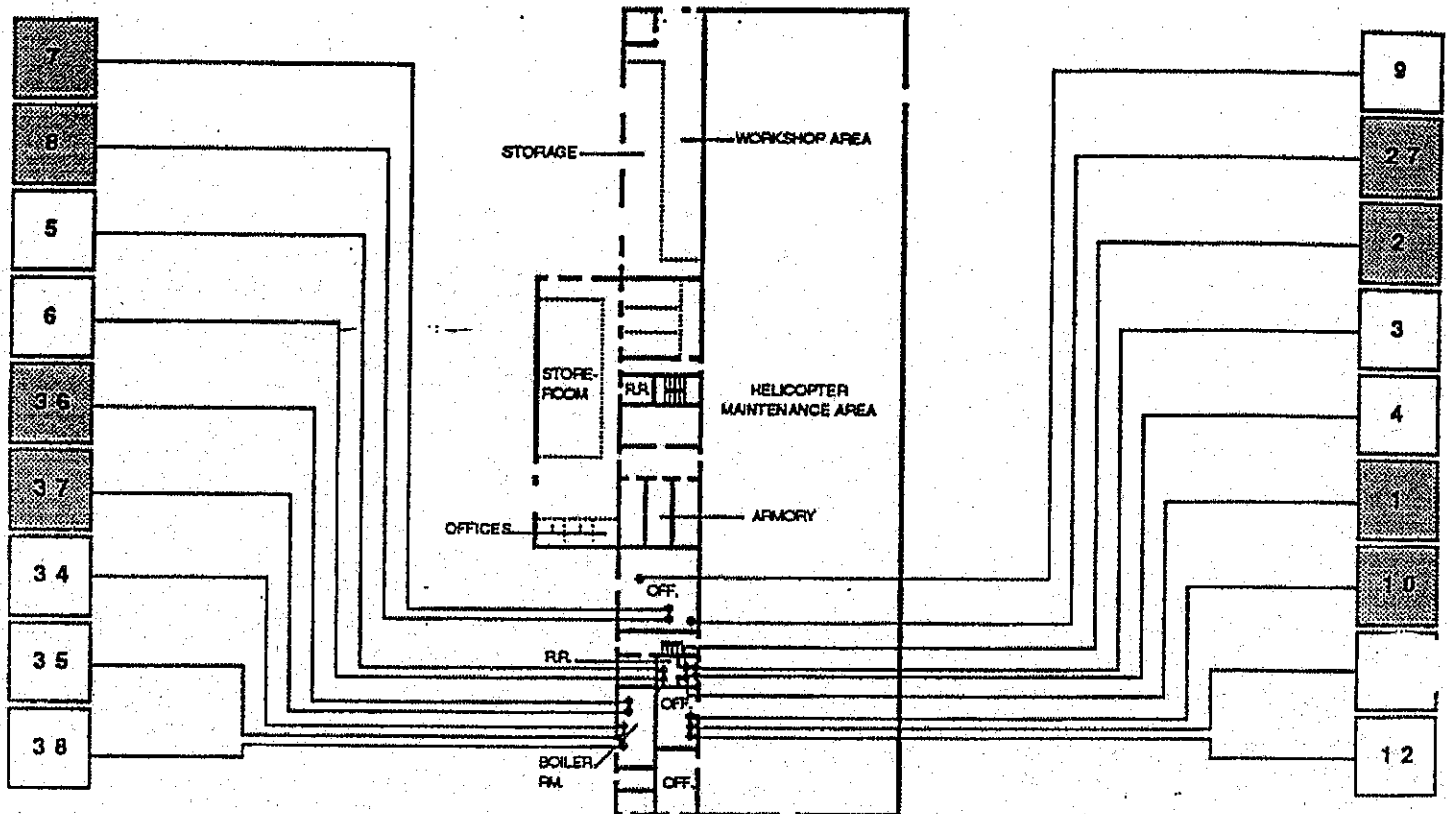
**WORK ITEM SUMMARY
BUILDING P00507**

The work items are listed below in numerical (and DEI Rating) order, and their estimated costs have been totaled.

P00507 1	13	N/A	Resilient Floor Tile and Mastic	15,480 SF	1st Flr/Mezz Various Locations	Nonfriable	O&M	\$0
P00507 2	13	N/A	Baseboard Mastic	2,100 LF	1st Flr/Mezz Various Locations	Nonfriable	O&M	\$0
P00507 3	13	N/A	Roof Penetration Mastic	12 E	Upper and Lower Roof	Nonfriable	O&M	\$0
P00507 4	13	N/A	Duct Tape	50 LF	1st Flr Boiler Room	Nonfriable	O&M	\$0
								\$0

**ASBESTOS SURVEY REPORT
CORPS OF ENGINEERS - FORT ORD INSTALLATION**

EXHIBIT C
Pg5



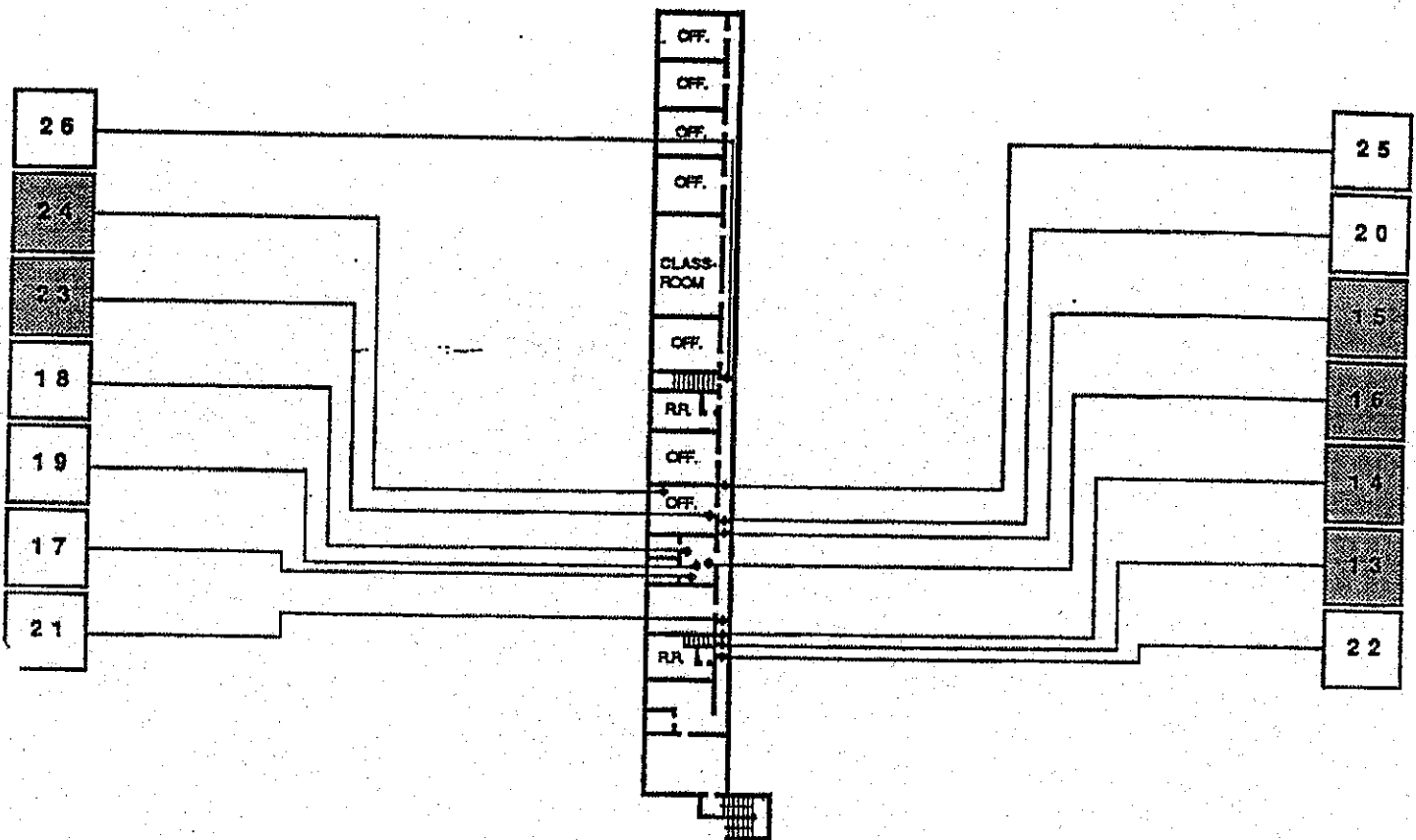
**BUILDING P00507
FIRST FLOOR PLAN
NOT TO SCALE**



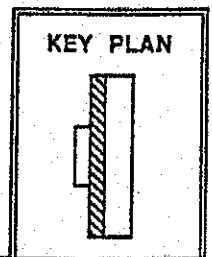
BULK SAMPLE ASBESTOS CONTENT = >0.1% = NONE DETECTED

DIAGNOSTIC ENGINEERING INC.

PROJECT NO. 1A2141AE



BUILDING P00507
MEZZANINE FLOOR PLAN
NOT TO SCALE



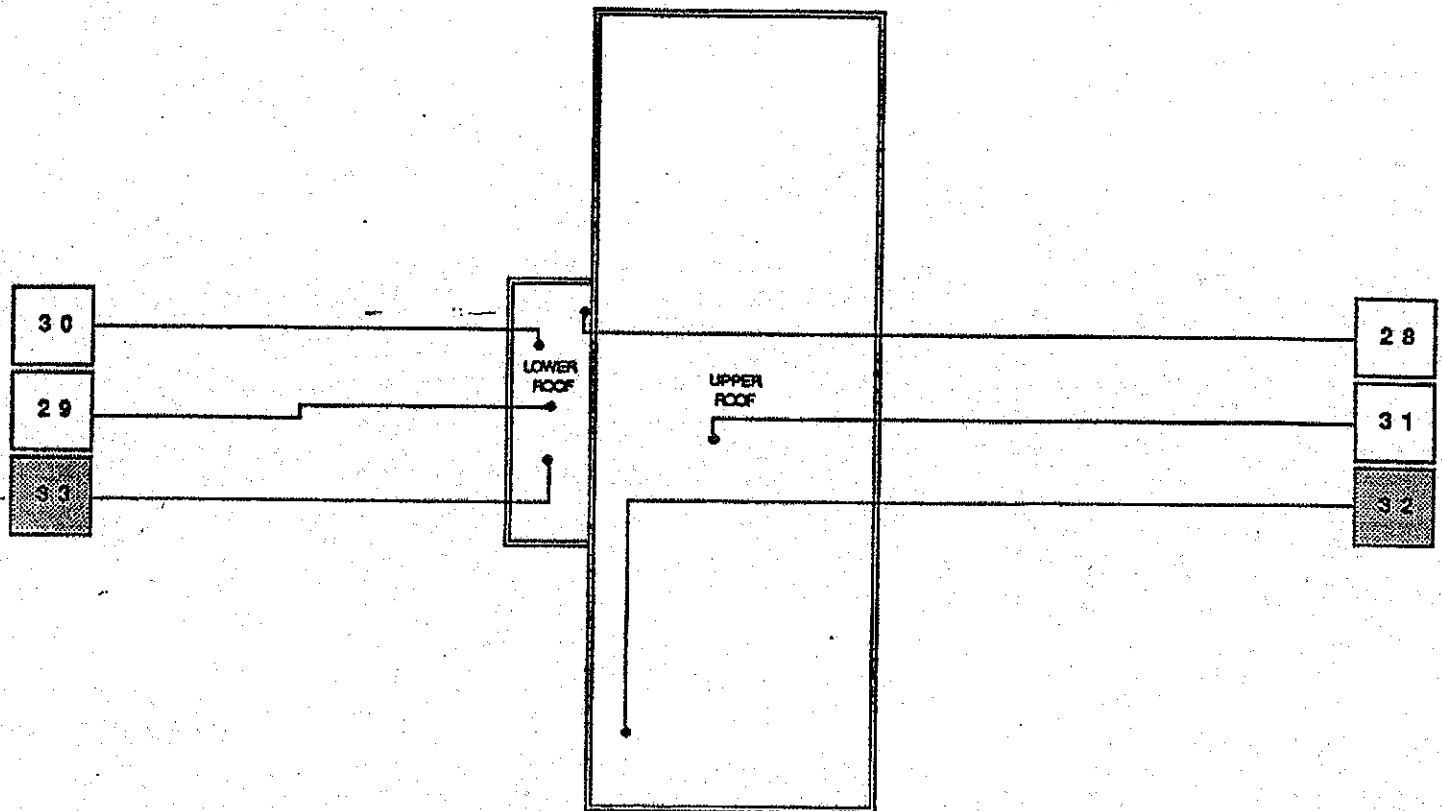
BULK SAMPLE ASBESTOS CONTENT ■ = >0.1% □ = NONE DETECTED

GNOSTIC ENGINEERING INC.

PROJECT NO. 1A2141AB001

ASBESTOS SURVEY REPORT
CORPS OF ENGINEERS - FORT ORD INSTALLATION

EXHIBIT C
Pg7



BUILDING P00507
ROOF PLAN
NOT TO SCALE



BULK SAMPLE ASBESTOS CONTENT  = >0.1%  = NONE DETECTED

AGNOSTIC ENGINEERING INC.

PROJECT NO. 1A2141AB00'

**ASBESTOS SURVEY REPORT
CORPS OF ENGINEERS - FORT ORD INSTALLATION
BUILDING P00507**

EXHIBIT C
Pg8

BULK SAMPLE LOG

BUILDING NO.	SAMPLE NO.	TYPE OF MATERIAL	ESTIMATED QUANTITY	FLOOR/ LEVEL	SAMPLE LOCATION	POS./ NEG.	ASBESTOS TYPE	%	FRIABILITY	DAMAGE
P00507	1	Resilient Floor Tile (12" x 12") Blue	5,580 SF	1	Locker Room	P	Chrysotile	3	Nonfriable	None
P00507	2	Floor Tile Mastic Black	15,480 SF	1	Locker Room	P	Chrysotile	5	Nonfriable	None
P00507	3	Wallboard	14,740 SF	1	Locker Room	N		N/D		
P00507	4	Joint Compound	14,740 SF	1	Locker Room	N		N/D		
P00507	5	HVAC Duct Tape	400 LF	1	Ceiling Cavity	N		N/D		
P00507	6	HVAC Duct Tape	(R5)	1	Ceiling Cavity	N		N/D		
P00507	7	Resilient Floor Tile (12" x 12") Gray	2,100 SF	1	Office	P	Chrysotile	2	Nonfriable	None
P00507	8	Floor Tile Mastic Black	(R2)	1	Office	P	Chrysotile	10	Nonfriable	None
P00507	9	Acoustic Panel (2' x 4') White	15,480 SF	1	Office	N		N/D		
P00507	10	Baseboard Mastic Brown	2,100 LF	1	Office	P	Chrysotile	2	Nonfriable	None
P00507	11	Wallboard	(R3)	1	Office	N		N/D		
P00507	12	Joint Compound	(R4)	1	Office	N		N/D		
P00507	13	Resilient Floor Tile (12" x 12") Light Green	3,640 SF	Mezz	Corridor	P	Chrysotile	3	Nonfriable	None

(R#) denotes that the estimated material quantity for the area has been included in referenced sample number.

ASBESTOS SURVEY REPORT
CORPS OF ENGINEERS FORT ORD INSTALLATION
BUILDING P00507

EXHIBIT C
Pg9

BULK SAMPLE LOG

BUILDING NO.	SAMPLE NO.	TYPE OF MATERIAL	ESTIMATED QUANTITY	FLOOR/ LEVEL	SAMPLE LOCATION	POS./ NEG.	ASBESTOS TYPE	%	FRIABILITY	DAMAGE
P00507	14	Floor Tile Mastic Black	(R2)	Mezz Corridor		P	Chrysotile	10	Nonfriable	None
P00507	15	Resilient Floor Tile (12" x 12") Light Green	(R13)	Mezz Corridor		P	Chrysotile	2	Nonfriable	None
P00507	16	Resilient Floor Tile (12" x 12") Blue	(R1)	Mezz Office		P	Chrysotile	3	Nonfriable	None
P00507	17	Joint Compound	(R4)	Mezz Office		N		N/D		
P00507	18	Wallboard	(R3)	Mezz Office		N		N/D		
P00507	19	Acoustic Panel (2' x 4') White	(R9)	Mezz Office		N		N/D		
P00507	20	Acoustic Panel (2' x 4') White	(R9)	Mezz Corridor		N		N/D		
P00507	21	Acoustic Tile (12" x 12") White	700 SF	Mezz Corridor		N		N/D		
P00507	22	Acoustic Tile (12" x 12") White	(R21)	Mezz Corridor		N		N/D		
P00507	23	Resilient Floor Tile (12" x 12") Cream With Brown	4,160 SF	Mezz Office		P	Chrysotile	2	Nonfriable	None
P00507	24	Resilient Floor Tile (12" x 12") Cream With Brown	(R23)	Mezz Office		P	Chrysotile	3	Nonfriable	None
P00507	25	Baseboard Mastic	(R10)	Mezz Corridor		N		N/D		
P00507	26	Acoustic Tile (12" x 12") White	(R21)	Mezz Corridor		N		N/D		

(R#) denotes that the estimated material quantity for the area has been included in referenced sample number.

**ASBESTOS SURVEY REPORT
CORPS OF ENGINEERS - FORT ORD INSTALLATION
BUILDING P00507**

EXHIBIT C
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BULK SAMPLE LOG

BUILDING NO.	SAMPLE NO.	TYPE OF MATERIAL	ESTIMATED QUANTITY	FLOOR/ LEVEL	SAMPLE LOCATION	POS./ NEG.	ASBESTOS TYPE	%	FRIABILITY	DAMAGE
P00507	27	Resilient Floor Tile (12" x 12") Gray	(R7)	1	Office	P	Chrysotile	3	Nonfriable	None
P00507	28	Roof Flashing Brown	130 SF	Roof	Lower Roof	N		N/D		
P00507	29	Roof Flashing Brown	(R28)	Roof	Lower Roof	N		N/D		
P00507	30	Roofing Composite	48,000 SF	Roof	Lower Roof	N		N/D		
P00507	31	Roofing Composite	(R30)	Roof	Upper Roof	N		N/D		
P00507	32	Roof Penetration Mastic	12 E	Roof	Upper Roof	P	Chrysotile	10	Nonfriable	None
P00507	33	Roof Penetration Mastic	(R32)	Roof	Lower Roof	P	Chrysotile	15	Nonfriable	None
P00507	34	Spray-Applied Fireproofing	300 SF	1	Boiler Room	N		N/D		
P00507	35	Spray-Applied Fireproofing	(R34)	1	Boiler Room	N		N/D		
P00507	36	Duct Tape	50 LF	1	Boiler Room	P	Chrysotile	20	Nonfriable	None
P00507	37	Duct Tape	(R36)	1	Boiler Room	P	Chrysotile	20	Nonfriable	None
P00507	38	Spray-Applied Fireproofing	(R34)	1	Boiler Room	N		N/D		

(R#) denotes that the estimated material quantity for the area has been included in referenced sample number.

**ASBESTOS SURVEY REPORT
CORPS OF ENGINEERS - FORT ORD INSTALLATION
BUILDING P00507**

EXHIBIT C
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CURRENT WORKING ESTIMATE (CWE)

UNIT COST ESTIMATE SUMMARY

DATE PREPARED: 4/28/92

SHEET 1 OF 2

PROJECT: FORT ORD INSTALLATION BUILDING - P 00507
ASBESTOS MATERIAL ABATEMENT/REPLACEMENT
LOCATION: FORT ORD, CALIFORNIA
ARCHITECT/
ENGINEER: DIAGNOSTIC ENGINEERING INC.

BASIS FOR ESTIMATE

☒ CODE A (NO DESIGN)
☐ CODE B (PRELIMINARY DESIGN)
☐ CODE C (FINAL DESIGN)
☐ OTHER (SPECIFY):

REPORT NO. 1A2141AB001

ESTIMATOR: M. EISSINGER

CHECKED BY: L. WERNER

ITEM NO.	DESCRIPTION	RECOMMENDED ACTION	ESTIMATED QUANTITY	UNIT	COST BREAKDOWN	UNIT COST (\$)	DIRECT COST (\$)
W.I. 1	Resilient Floor Tile and Mastic	O&M	15,480	SF	ABATEMENT	0.00	0
					REPLACEMENT	0.00	0
					ADDITIVE REMOVAL	5.80	89,784
					ADDITIVE REPLACEMENT	3.50	54,180
W.I. 2	Baseboard Mastic	O&M	2,100	LF	ABATEMENT	0.00	0
					REPLACEMENT	0.00	0
					ADDITIVE REMOVAL	3.50	7,35
					ADDITIVE REPLACEMENT	2.50	5,250
W.I. 3	Roof Penetration Mastic	O&M	12	E	ABATEMENT	0.00	0
					REPLACEMENT	0.00	0
					ADDITIVE REMOVAL	20.83	250
					ADDITIVE REPLACEMENT	25.00	300
W.I. 4	Duct Tape	O&M	50	LF	ABATEMENT	0.00	0
					REPLACEMENT	0.00	0
					ADDITIVE REMOVAL	5.00	250
					ADDITIVE REPLACEMENT	6.00	300

**ASBESTOS SURVEY REPORT
CORPS OF ENGINEERS - FORT ORD INSTALLATION
BUILDING P00507**

EXHIBIT C
Pg12

CURRENT WORKING ESTIMATE (CWE)

UNIT COST ESTIMATE SUMMARY

DATE PREPARED: 4/28/92

SHEET 2 OF 2

PROJECT: FORT ORD INSTALLATION BUILDING - P 00507
ASBESTOS MATERIAL ABATEMENT/REPLACEMENT
LOCATION: FORT ORD, CALIFORNIA
ARCHITECT/
ENGINEER: DIAGNOSTIC ENGINEERING INC.

BASIS FOR ESTIMATE

☒ CODE A (NO DESIGN)
☐ CODE B (PRELIMINARY DESIGN)
☐ CODE C (FINAL DESIGN)
☐ OTHER (SPECIFY):

REPORT NO. 1A2141AB001

ESTIMATOR: M. EISSINGER

CHECKED BY: L. WERNER

COSTS FOR BUILDING P00507 : DIRECT COST		CONTRACTORS' 50% MARKUP (OVERHEAD, PROFIT, BONDS)	CONTRACTOR COST	
ABATEMENT	\$0	\$0	\$0	
REPLACEMENT	\$0	\$0	\$0	\$0
ADDITIVE REMOVAL	\$97,634	\$48,817	\$146,451	
ADDITIVE REPLACEMENT	\$60,030	\$30,015	\$90,045	\$236,496

RECOMMENDED ITEMS:

Building P00507 Contractor Cost		\$0
INDEPENDENT MONITORING (CONTRACT)	10%	\$0
SITE & UTILITIES		\$0
Total Contract Cost		\$0
Contingencies During Construction	10%	\$0
Subtotal		\$0
Supervision & Administration	8%	\$0
Total Construction		\$0
SUB-ALLOTMENT		\$0
Total CWE Without Additives		\$0

ADDITIVE ITEMS:

Building P00507 Additive Contractor Cost		\$236,496
INDEPENDENT MONITORING (CONTRACT)	10%	\$23,650
Total Additive Contractor Cost		\$260,146
Contingencies During Construction	10%	\$26,015
Subtotal		\$286,160
Supervision & Administration	8%	\$22,893
Total Additives CWE		\$309,053
Total CWE Including All Additives		\$309,053

**ASBESTOS SURVEY REPORT
CORPS OF ENGINEERS - FORT ORD INSTALLATION
BUILDING P00507**

EXHIBIT C
Pg13

UNIT COST ESTIMATE

DATE PREPARED: 4/28/92

SHEET 1 OF 1

PROJECT: FORT ORD INSTALLATION BUILDING - P 00507
ASBESTOS MATERIAL ABATEMENT

LOCATION: FORT ORD, CALIFORNIA

ARCHITECT/
ENGINEER: DIAGNOSTIC ENGINEERING INC.

BASIS FOR ESTIMATE

☒ CODE A (NO DESIGN)
☐ CODE B (PRELIMINARY DESIGN)
☐ CODE C (FINAL DESIGN)
☐ OTHER (SPECIFY): _____

REPORT NO. 1A2141AB001

ESTIMATOR: M. EISSINGER

CHECKED BY: L. WERNER

ITEM NO.	DESCRIPTION	ACTION	ESTIMATED QUANTITY	UNIT	UNIT COST (\$)	DIRECT COST (\$)
W.I. 1	Resilient Floor Tile and Mastic	O&M	15,480	SF	0.00	0
W.I. 2	Baseboard Mastic	O&M	2,100	LF	0.00	0
V.I. 3	Roof Penetration Mastic	O&M	12	E	0.00	0
W.I. 4	Duct Tape	O&M	50	LF	0.00	0

DIRECT COST	\$0
CONTRACTORS' 50% MARKUP (OVERHEAD, PROFIT, BONDS)	\$0
CONTRACTOR COST - ABATEMENT	\$0

**ASBESTOS SURVEY REPORT
CORPS OF ENGINEERS - FORT ORD INSTALLATION
BUILDING P00507**

EXHIBIT C
Pg14

UNIT COST ESTIMATE

DATE PREPARED: 4/28/92

SHEET 1 OF 1

PROJECT: FORT ORD INSTALLATION BUILDING - P 00507
ABATED MATERIAL REPLACEMENT

LOCATION: FORT ORD, CALIFORNIA

ARCHITECT/

ENGINEER: DIAGNOSTIC ENGINEERING INC.

BASIS FOR ESTIMATE

☒ CODE A (NO DESIGN)
☐ CODE B (PRELIMINARY DESIGN)
☐ CODE C (FINAL DESIGN)
☐ OTHER (SPECIFY):

REPORT NO. 1A2141AB001

ESTIMATOR: M. EISSINGER

CHECKED BY: L. WERNER

ITEM NO.	DESCRIPTION	ACTION	ESTIMATED QUANTITY	UNIT	UNIT COST (\$)	DIRECT COST (\$)
W.L. 1	Resilient Floor Tile and Mastic	Replacement	15,480	SF	0.00	0
W.L. 2	Baseboard Mastic	Replacement	2,100	LF	0.00	0
3	Roof Penetration Mastic	Replacement	12	E	0.00	0
W.L. 4	Duct Tape	Replacement	50	LF	0.00	0

DIRECT COST

\$0

CONTRACTORS' 50% MARKUP (OVERHEAD, PROFIT, BONDS)

\$0

CONTRACTOR COST - REPLACEMENT

\$0

**ASBESTOS SURVEY REPORT
CORPS OF ENGINEERS - FORT ORD INSTALLATION
BUILDING P00507**

UNIT COST ESTIMATE

DATE PREPARED: 4/28/92

SHEET 1 OF 1

PROJECT: FORT ORD INSTALLATION BUILDING - P 00507
ADDITIVE ASBESTOS MATERIAL REMOVAL
LOCATION: FORT ORD, CALIFORNIA
ARCHITECT/
ENGINEER: DIAGNOSTIC ENGINEERING INC.

BASIS FOR ESTIMATE

☒ CODE A (NO DESIGN)
☐ CODE B (PRELIMINARY DESIGN)
☐ CODE C (FINAL DESIGN)
☐ OTHER (SPECIFY): _____

REPORT NO. 1A2141AB001

ESTIMATOR: M. EISSINGER

CHECKED BY: L. WERNER

ITEM NO.	DESCRIPTION	ACTION	ESTIMATED QUANTITY	UNIT	UNIT COST (\$)	DIRECT COST (\$)
W.I. 1	Resilient Floor Tile and Mastic	Additive Removal	15,480	SF	5.80	89,784
W.I. 2	Baseboard Mastic	Additive Removal	2,100	LF	3.50	7,350
V.I. 3	Roof Penetration Mastic	Additive Removal	12	E	20.83	250
W.I. 4	Duct Tape	Additive Removal	50	LF	5.00	250

DIRECT COST	\$97,634
CONTRACTORS' 50% MARKUP (OVERHEAD, PROFIT, BONDS)	\$48,817
CONTRACTOR COST - ADDITIVE REMOVAL	\$146,451

**ASBESTOS SURVEY REPORT
CORPS OF ENGINEERS - FORT ORD INSTALLATION
BUILDING P00507**

EXHIBIT C
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UNIT COST ESTIMATE

DATE PREPARED: 4/28/92

SHEET 1 OF 1

PROJECT: FORT ORD INSTALLATION BUILDING - P 00507
ADDITIVE ABATED MATERIAL REPLACEMENT
LOCATION: FORT ORD, CALIFORNIA
ARCHITECT/
ENGINEER: DIAGNOSTIC ENGINEERING INC.

BASIS FOR ESTIMATE

☒ CODE A (NO DESIGN)
☐ CODE B (PRELIMINARY DESIGN)
☐ CODE C (FINAL DESIGN)
☐ OTHER (SPECIFY): _____

REPORT NO. 1A2141AB001

ESTIMATOR: M. EISSINGER

CHECKED BY: L. WERNER

ITEM NO.	DESCRIPTION	ACTION	ESTIMATED QUANTITY	UNIT	UNIT COST (\$)	DIRECT COST (\$)
W.I. 1	Resilient Floor Tile and Mastic	Additive Replacement	15,480	SF	3.50	54,180
W.I. 2	Baseboard Mastic	Additive Replacement	2,100	LF	2.50	5,250
1. 3	Roof Penetration Mastic	Additive Replacement	12	E	25.00	300
W.I. 4	Duct Tape	Additive Replacement	50	LF	6.00	300

DIRECT COST	\$60,030
CONTRACTORS' 50% MARKUP (OVERHEAD, PROFIT, BONDS)	\$30,015
CONTRACTOR COST - ADDITIVE REPLACEMENT	\$90,045

CIRPAS RENT PAYMENT SCHEDULE

OPTION YEAR ONE:

01OCT11 TO 30SEP12: \$218,131.20 at rate of \$18,177.60 per month

OPTION YEAR TWO:

01OCT12 TO 30SEP13: \$225,921.60 at rate of \$18,826.80 per month

OPTION YEAR THREE:

01OCT13 TO 30SEP14: \$233,712.00 at rate of \$19,476.00 per month

OPTION YEAR FOUR:

01OCT14 TO 30SEP15: \$241,502.40 at rate of \$20,125.20 per month

OPTION YEAR FIVE:

01OCT15 TO 30SEP16: \$249,292.80 at rate of \$20,774.40 per month

OPTION YEAR SIX:

01OCT16 TO 30SEP17: \$257,083.20 at rate of \$21,423.60 per month

OPTION YEAR SEVEN:

01OCT17 TO 30SEP18: \$264,873.60 at rate of \$22,072.80 per month

OPTION YEAR EIGHT:

01OCT18 TO 30SEP19: \$272,664.00 at rate of \$22,722.00 per month

OPTION YEAR NINE:

01OCT19 TO 30SEP20 \$280,454.40 at rate of \$23,371.20 per month

August 17, 2018

Item No: **11a**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of August 21, 2018

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2018-,
APPROVING LEASE AMENDMENT BETWEEN THE CITY OF
MARINA AND THE UNITED STATES OF AMERICA FOR LEASE NO.
6247311PIP00174 FOR A PORTION OF BUILDING 507 LOCATED AT
3200 IMJIN ROAD AT THE MARINA MUNICIPAL AIRPORT,
AUTHORIZING FINANCE DIRECTOR TO MAKE NECESSARY
ACCOUNTING AND BUDGETARY ENTRIES, AND AUTHORIZING
CITY MANAGER TO EXECUTE LEASE AGREEMENT ON BEHALF OF
THE CITY, SUBJECT TO FINAL REVIEW AND APPROVAL BY CITY
ATTORNEY**

REQUEST:

It is requested that the City Council consider:

1. Adopting Resolution No. 2018- , approving Lease Amendment between City of Marina and the United States of America (CIRPAS) for the building located at 3200 Imjin Road (Building 507) at the Marina Municipal Airport; and
2. Authorizing Finance Director to make necessary accounting and budgetary entries; and
3. Authorizing City Manager to execute Lease Amendment on behalf of the City, subject to final review and approval by City Attorney.

BACKGROUND:

The United States of America (CIRPAS) currently leases all of Building 507, a total of approximately 64,920 square feet. The CIRPAS does not use all of the building now and would like to reduce the square footage they lease from 64,920 to 30,460 square feet.

ANALYSIS:

CIRPAS notified the City a year ago of their desire to reduce the amount of space they currently lease in Building 507. Concurrently, Joby Aero Inc. would like to move some of its operations to the Marina Municipal Airport. With the amendment of this lease, Joby Aero Inc. will enter into a new lease with the City leasing the remaining space at the same cost of \$0.33 per square foot that CIRPAS pays with their lease. Both of these uses will co-exist in the same building, will share their proportionate share of utilities and maintenance costs.

Staff and City Attorney's office are finalizing with the United States of America the lease amendment and it will be provided to the City Council prior to the City Council meeting on August 21, 2018. All terms and conditions of the existing lease will remain in place other than a reduction in square footage leased.

FISCAL IMPACT:

There will be not fiscal impact with the t lease amendment since Joby Aero Inc. will be immediately entering into a new agreement to lease the currently vacated space at the same rate of \$0.33 per square foot.

The Marina Municipal Airport currently receives about \$257,083 lease revenue annually from building 507.

CONCLUSION:

This request is submitted for the City Council consideration and approval

Respectfully submitted,

Jeff Crechriou
Airport Services Manager
City of Marina

REVIEWED/CONCUR:

Layne Long
City Manager
City of Marina