

RESOLUTION NO. 14-034

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED "LEASE AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE CITY OF KEY WEST" (CONTRACT NO. N69450-12-RP-00166) BETWEEN THE UNITED STATES OF AMERICA, ACTING BY AND THROUGH THE DEPARTMENT OF THE NAVY, NAVAL FACILITIES ENGINEERING COMMAND SOUTHEAST, AND THE CITY OF KEY WEST, REGARDING A PORTION OF THE OUTER MOLE PIER AT TRUMAN ANNEX; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, on January 9, 2014, the City received a letter from Mr. Robert W. McDowell, II, indicating that the attached proposed lease is the Best and Final Offer from the Department of the Navy; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That the attached "Lease Agreement Between the United States of America and the City of Key West" (Contract No. N69450-12-RP-00166), between the United States of America, Acting By and Through the Department of the Navy, Naval Facilities Engineering Command Southeast, and the City of Key West) is hereby approved.


Section 2: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the Presiding Officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 29th day of January, 2014.


Authenticated by the Presiding Officer and Clerk of the Commission on 30th day of January, 2014.

Filed with the Clerk on January 30, 2014.

Mayor Craig Cates	<u>Yes</u>
Vice Mayor Mark Rossi	<u>Yes</u>
Commissioner Teri Johnston	<u>Yes</u>
Commissioner Clayton Lopez	<u>Yes</u>
Commissioner Billy Wardlow	<u>No</u>
Commissioner Jimmy Weekley	<u>Yes</u>
Commissioner Tony Yaniz	<u>Yes</u>

  
CRAIG CATES, MAYOR

ATTEST:

  
CHERYL SMITH, CITY CLERK

All correspondence in connection with this contract should include reference to Contract No. N69450-12-RP-00166  
Installation Name: Naval Air Station,  
Key West, Florida, UIC: N00213

**LEASE AGREEMENT  
BETWEEN  
THE UNITED STATES OF AMERICA  
AND  
THE CITY OF KEY WEST**

THIS LEASE AGREEMENT ("Lease") is executed this 19<sup>th</sup> day of May 2014, by and between THE UNITED STATES OF AMERICA, acting by and through the Department of the Navy, Naval Facilities Engineering Command Southeast, hereinafter referred to as the "GOVERNMENT," and the City of Key West, hereinafter referred to as "LESSEE." GOVERNMENT and LESSEE may sometimes jointly be referred to as the "PARTIES."

**WITNESSETH:**

**WHEREAS**, the Leased Premises, as defined below, covered by this Lease are under the control of the Secretary of the Navy (the "Navy"); and

**WHEREAS**, the Leased Premises are not excess property as defined in section 3 of the Federal Property and Administrative Services Act of 1949, as amended, (40 U.S.C. § 102); and

**WHEREAS**, 10 U.S.C. § 2667(h)(2) authorizes a non-competitive lease when the Secretary of the Navy determines that a public interest will be served as a result of the lease; and the use of competitive procedures for the selection of certain lessees is unobtainable or not compatible with the public benefit to be served; and

**WHEREAS**, the City of Key West has committed to using the proceeds of this Lease for the development and maintenance of a waterfront park along Truman Harbor, Key West, specifically for the development and sustainment of an athletic field, walkways, jogging trails, interactive water feature, public utilities to serve the park, public restrooms, park furniture, park lighting, landscaping, and green open space for public recreational purposes; and

**WHEREAS**, the City of Key West has committed to establishing a special account, in accordance with the City of Key West Code of Ordinances on Budget Administration, to ensure Lease proceeds are allocated for the development and sustainment of such non-revenue generating public amenities at the Truman Harbor waterfront park; and

**WHEREAS**, in reliance on the commitments of the City of Key West described above, the Secretary of the Navy has determined that non-competitive award of this Lease pursuant to 10 U.S.C. § 2667 and subject to the terms and conditions below, will serve a public interest; and that the use of competitive procedures is not compatible with the public benefit to be served.

**NOW THEREFORE**, in consideration of the terms, covenants, and conditions in this Lease, GOVERNMENT and LESSEE hereby agree as follows:

1. **LEASED PREMISES.** GOVERNMENT does hereby lease, rent, and demise to LESSEE, and LESSEE does hereby hire and rent from the GOVERNMENT, the Leased Premises, consisting of 800 linear feet of the outer portion of the Mole Pier and egress/ingress route at Naval Air Station (“NAS”) Key West, Florida, as more particularly described in **Attachment A** (the “Leased Premises”), attached hereto and made a part hereof, and with all rights of access to the Leased Premises for ingress, egress, parking, and utilities.

2. **TERM.**

2.1. The initial term of this Lease shall be for a period of five (5) years beginning on February 1, 2014 and ending on January 31, 2019, unless sooner terminated in accordance with the provisions of Paragraph 15.

2.2. Subject to GOVERNMENT approval, LESSEE shall have three (3) consecutive options to renew the term of this Lease for renewal terms of five (5) years each; provided, however, that the total term of the Lease, inclusive of the initial term and all renewal terms, cannot exceed twenty (20) years. LESSEE shall deliver to the Real Estate Contracting Officer (“RECO”) written notice of its request to exercise a renewal option no later than ninety (90) days prior to the expiration of the current term.

2.3. The RECO will notify LESSEE within thirty (30) days of receipt of the written request whether the GOVERNMENT approves the renewal. The terms and conditions as contained herein will remain in full force and effect during any renewal term with the exception of the amount of rent that LESSEE will pay during any renewal term, which amount will be determined in accordance with Paragraph 3 below.

2.4. If the GOVERNMENT and LESSEE do not elect to execute a renewal option in accordance with Paragraphs 2.2 and 2.3, this Lease will expire in accordance with Paragraph 2.1, and the LESSEE shall surrender and vacate the Leased Premises in accordance with Paragraph 36. LESSEE has no right to occupy or use the Leased Premises after the initial term or any approved renewal term.

3. **CONSIDERATION.**

3.1. **Rent.** For each year of this Lease, LESSEE shall pay GOVERNMENT rental consideration that is equal to the greater of:

- (a) \$225,000.00; *or*
- (b) \$3.75 per passenger for each of the first 200,000 passengers plus \$3.50 for each passenger thereafter.

The parties stipulate that the number of passengers in any given year will be calculated with reference to the U.S. Customs and Border Protection, Vessel Entrance or Clearance Statement (CBP Form 1300) filed per ship, per port call (with port call hereby defined as a single berthing not to exceed twenty-four (24) hours). LESSEE must pay rent in the form of cash or in-kind consideration, at GOVERNMENT'S direction. For any renewal term, the amount of rent for that renewal term will be determined by the GOVERNMENT prior to renewal and will not be less than the appraised fair market rental value of the Leased Premises for the upcoming renewal term.

3.1.1. LESSEE shall provide to the GOVERNMENT a written monthly accounting of monies received from LESSEE's use of the Leased Premises in a form which comports with Generally Accepted Accounting Practices (GAAP) or the Government Accounting Standards Board (GASB).

3.1.2 Account Records. Lessee will keep complete and accurate books and records of all income and expenses related to this Lease and the Leased Premises, including without limitations, copies of checks, bills, receipts, estimates, invoices, statements, stubs, audits, ledgers, reports, transaction registers, schedules, correspondences and all related supporting documentation (collectively referred to hereinafter as the "Account Records"). Without limiting the generality of the foregoing, the PARTIES agree that Account Records specifically includes, but is not limited to, records of (a) all income earned as a result of cruise ship berthing at the Leased Premises; (b) all expenses associated with the LESSEE'S operation, maintenance, repair, construction or alteration of the Leased Premises; (c) all rental payments to the GOVERNMENT, whether by cash or in-kind consideration; and (d) with respect to rent paid in the form of in-kind consideration, a complete record of all transactions affecting the deposit account established pursuant to Paragraph 3.3.1 of this Lease. LESSEE shall provide GOVERNMENT with a complete copy of the Account Records no later than seven (7) calendar days following receipt of the GOVERNMENT's written request for same.

3.1.3. Annual Accounting. No later than the last day of January of every year, LESSEE will provide the GOVERNMENT with an audited financial statement of the Account Records for the twelve (12) month period that ended on September 30<sup>th</sup> of the previous year (with respect to the first year of the first term of this Lease, the audited financial statement will be due no later than January 31, 2015, and will audit the period beginning on October 1, 2013 and ending on September 30, 2014). The financial statement shall be audited by an independent and disinterested certified public accounting firm. The financial statement and accompanying independent auditor's report will be addressed to and for the benefit of the GOVERNMENT and shall be prepared in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in Government Auditing Standards issued by the Comptroller General of the United States. Additionally, the financial statement shall account for the following: (a) all income earned as a result of cruise ship berthing at the Leased Premises; (b) all expenses associated with the LESSEE's operation, maintenance, repair, construction or alteration of the Leased Premises; (c) all rental payments to the GOVERNMENT, whether by cash or in-kind consideration; and (d) with respect to rent paid in the form of in-kind consideration, a complete itemized record of all transactions affecting the deposit account established pursuant to Paragraph 3.3.1 of this Lease.

3.2. Cash. Cash rent is payable in arrears on a monthly basis and is due on or before the first day of each month. LESSEE shall pay cash rent by valid check or money order made payable to "U.S. Treasury," citing the Lease Contract Number tendered to:

Commanding Officer  
Naval Facilities Engineering Command Southeast  
Attn: Real Estate Contracting Officer  
P.O. Box 30, Building 903, Yorktown Drive  
Jacksonville, FL 32212-0030

3.3 In-Kind. At the GOVERNMENT's direction, in lieu of paying rent either totally or partially in cash, LESSEE shall pay rent to the GOVERNMENT in-kind. Pursuant to 10 U.S.C § 2667, acceptable types of in-kind consideration include: (1) the alteration, repair, or improvement of the Leased Premises as part or all of the payment of the consideration for the Lease, hereinafter referred to as "In Kind consideration (2) maintenance, protection, repair, alteration, improvement, or restoration (including environmental restoration) of facilities under the control of the Commander, Navy Region Southeast; (3) construction of new facilities; (4) providing facilities; (5) provision or payment of utility services; (6) provision of real property maintenance services; and (6) providing other services relating to activities that will occur on the Leased Premises that the Assistant Secretary of the Navy (Energy, Installations and Environment) (ASN) (EI&E) considers appropriate. In-kind consideration shall in no event include any item of protection, maintenance, improvement or repair which is solely incidental to LESSEE's use of the Leased Premises hereunder and which LESSEE is obligated to perform by Paragraph 13, PROTECTION AND MAINTENANCE OF LEASED PREMISES, or other provisions of this Lease, such as, but not limited to, security, garbage and trash collection and disposal, or clean-up work. At the GOVERNMENT's direction, in-kind consideration shall be performed within Monroe County, Florida.

3.3.1. LESSEE will establish a separate, single-purpose, LESSEE-controlled, interest-bearing deposit account at an insured depository institution. At the GOVERNMENT's direction, LESSEE will deposit rental proceeds to be used for in-kind consideration into said deposit account. All interest accrued to this deposit account shall belong to the GOVERNMENT. At the end of each year that this Lease is in effect, LESSEE shall submit to the RECO a check made payable to the United States Treasury for the total amount of interest accrued to the deposit account for that year. LESSEE shall use deposit account funds to pay approved costs for in-kind projects and services.

3.3.2. GOVERNMENT and LESSEE shall meet, telephonically or in-person, on an as-needed basis, but not less than quarterly from the date of inception of this Lease to review and amend, if necessary, the established list of specific in-kind projects or services that will be performed. These meetings shall occur in October, January, April, and July of each year. Disagreements between the RECO and LESSEE regarding in-kind projects or services shall be elevated to the Commanding Officer, NAVFAC Southeast and a City official of equivalent authority for resolution.

3.3.3. For each in-kind project or service proposed, an estimated cost to perform the work must be included with the project or service description, which cost will be drawn from an estimate submitted by either Party. The estimated cost shall be broken down by material, subcontract

cost, labor, equipment, overhead, and general and administrative expense. Projects or services shall be selected by GOVERNMENT and scheduled so that the value of the work to be performed is not less than the rent obligations of LESSEE accrued or the Net Present Value (NPV) of FMV future rents from the current lease term. Authorization to proceed will occur only through written approval from the GOVERNMENT, in the form of a written letter by the RECO. A "not to exceed cost ceiling" (amount authorized) will be established by the approval letter. The RECO may, upon request, with supporting rationale from LESSEE, increase the "not to exceed cost ceiling." That request must be submitted prior to LESSEE incurring any cost in excess of the established "not to exceed cost ceiling" and sufficiently in advance to allow for RECO review of the requirement, and in any event, not less than ten (10) days prior to the date authorization is required. LESSEE shall not be obligated to incur costs in excess of the "not to exceed cost ceiling."

3.3.4. The incurred cost of performing a project or service will be subject to GOVERNMENT audit. Should the audited cost be less than the "not to exceed cost ceiling," LESSEE's rent obligation will be credited only for the audited cost and LESSEE shall be authorized to pay only the audited cost from the deposit account. In the event that the audited, allowable incurred cost of a project or service exceeds the amount authorized, such excess cost shall be subject to the approval of the RECO. Subsequent to RECO approval, excess cost shall be deemed to be additional cost of performing the work and will be credited to accrued rent reduction. Should the excess cost not be approved by the RECO, then the amount not so approved shall not be credited to the LESSEE as a credit against accrued rent or be paid from the deposit account.

3.3.5. Nothing in this Lease shall preclude LESSEE from contracting with a third party for performance of in-kind work. LESSEE shall require any contractor to procure a penal bond in an amount not less than the estimated cost of the work contracted for. Prior to commencing the proposed work, LESSEE shall be solely responsible for obtaining any environmental permits required, independent of any existing permits. Copies of all required construction permits shall be delivered to the GOVERNMENT.

3.3.6. GOVERNMENT retains the right of technical review of any proposed work to be performed or personal property to be delivered. A GOVERNMENT representative may oversee the work solely for the benefit of GOVERNMENT and confirm satisfactory completion to the Commanding Officer, NAVFAC Southeast. The RECO must provide a written final acceptance of the work performed in order for LESSEE to receive rent reduction credit for the work performance and/or pay the project cost from the deposit account. Title to any improvements constructed or personal property furnished shall vest in GOVERNMENT upon the RECO's acceptance. Any bills of sale, purchase receipts, written warranties, and other indicia or documents of ownership shall be delivered to the GOVERNMENT upon its acceptance of the improvement or personal property. Written warranties shall include, but not be limited to, a warranty that work performed conforms to the contract requirements and is free of any defect in equipment, material, or design or workmanship, and that LESSEE or LESSEE's contractor will remedy any failure to conform or any defect promptly and at its sole expense. Additionally, any warranty must agree that LESSEE or LESSEE's contractor shall remedy any damage to GOVERNMENT owned or controlled real or personal property when that damage results from either contractor failure to conform to contract requirements or any defect of equipment, material, workmanship, or design. All warranties shall name the United States of America,

acting by and through the Department of the Navy, NAVFAC Southeast, as an additional beneficiary. LESSEE shall enforce all warranties for the benefit of GOVERNMENT if directed by GOVERNMENT. Upon completion of any in-kind project or service and acceptance by the GOVERNMENT, the GOVERNMENT shall issue a modification to this Lease approving the final amount of in-kind credit.

3.3.7. Each month, LESSEE will provide GOVERNMENT with the documents identified on the Schedule of Monthly Deliverable Documents attached hereto as ATTACHMENT E, as may be modified by GOVERNMENT from time-to-time.

3.3.8. Upon termination of this Lease for any reason, LESSEE shall not be entitled to a refund of its costs paid for a project the performance of which has not been approved by the RECO or the Commanding Officer, NAVFAC Southeast, and a final accounting will be performed and the balance of any rent accrued and still payable to GOVERNMENT, along with the balance in the in-kind deposit account, will be due on demand by valid check or money order. Notwithstanding termination, GOVERNMENT reserves the right to have a final accounting performed at any time during the course of the Lease term and request that the value of any rent accrued up to that date and not already contractually obligated to any specific project or service to be performed, be paid by valid check or money order to the United States Treasury on demand. Upon termination, at GOVERNMENT's option, LESSEE shall complete any work or service already contracted for, in which event GOVERNMENT will issue a temporary license to LESSEE to remain on the Leased Premises, or if otherwise directed by GOVERNMENT, LESSEE shall terminate any contract and pay all accrued rent in by valid check or money order.

3.3.9. "Actual Costs" as used herein, shall mean the sum of: (a) direct labor costs, and (b) direct material costs, when LESSEE has incurred such costs directly in the performance of any approved or directed by the Naval Air Station Key West Public Works Officer (PWO) (hereinafter referred to as the "Local GOVERNMENT Representative"). When LESSEE contracts with the third parties for performance of any item of In Kind Consideration, "Actual Cost," as used herein, shall mean the amount of such contracts as shall have been approved in advance by the Local GOVERNMENT Representative.

3.4. The amount of consideration shall be re-negotiable prior to the renewal of this Lease.

3.5. In accordance with the GOVERNMENT's approval for this non-competitive public benefit Lease, LESSEE shall invest its revenue from this Lease directly into the development and sustainment of a waterfront park along Truman Harbor, specifically for non-revenue generating public park amenities including an athletic field, walkways, jogging trails, interactive water features, public restrooms, park furniture, park lighting, landscaping, and green open space for public recreational purposes. LESSEE shall establish a special account, in accordance with the City of Key West Code of Ordinances on Budget Administration, to ensure that LESSEE's proceeds from this Lease are used for the development and sustainment of said public park. LESSEE's special account shall provide transparency and accountability to the GOVERNMENT and the public. LESSEE shall submit to the GOVERNMENT an annual accounting of its Lease revenue demonstrating LESSEE's allocation of its Lease revenue to the public park as described above. Failure by the LESSEE to annually demonstrate



proper allocation of its Lease proceeds shall constitute a material breach of this Lease and may result in termination of this Lease by the GOVERNMENT.

3.6. During the term of this Lease, LESSEE will use its best efforts to work with the GOVERNMENT in maximizing the potential revenues from the Mole Pier for the LESSEE and for the GOVERNMENT.

4. **PERFORMANCE BOND OR SECURITY.** To secure the faithful performance of its rent and other obligations hereunder, LESSEE shall provide the GOVERNMENT with a security deposit in the fixed amount of \$200,000 renewable annually in the form of Standby Letter of Credit satisfactory of the GOVERNMENT in all respects. If the GOVERNMENT shall at any time determine that an increase in the amount of security is necessary to make same commensurate with LESSEE's obligation hereunder, LESSEE shall furnish such additional security promptly upon request. If the GOVERNMENT is required at any time to use the LESSEE's Standby Letter of Credit to secure the performance of work or provide for payment on work completed as in-kind consideration, this will be considered a material breach of the LEASE, and LESSEE shall not take possession of the Leased Premises until an acceptable security instrument is received by the Real Estate Contracting Officer.

5. **USE OF LEASED PREMISES.**

5.1. In the absence of prior written approval by the Government for any other use, the Leased Premises will be used solely for berthing of cruise ships and passenger disembarkation and embarkation. LESSEE will ensure that all shuttle passengers are notified that littering on Government property is not allowed; at the end of each day of cruise ship use of the Leased Premises, LESSEE will remove litter on the shuttle route and Leased Premises and dispose of off Government property.

5.2. LESSEE understands and acknowledges the GOVERNMENT's retained right of access and use of the Premises for berthing of GOVERNMENT vessels and GOVERNMENT-sponsored vessels in accordance with the agreed procedures set forth in **Attachment D**, attached hereto and made a part hereof.

5.3. LESSEE may request issuance of a license for use of the Leased Premises in conjunction with one annual sailboat race and one annual powerboat race provided such use is approved at least ninety (90) days in advance by the GOVERNMENT and does not interfere with GOVERNMENT training or operations at Truman Annex.

5.4. LESSEE shall not undertake any activity that may affect a historic or archeological property, including excavation, construction, alteration, or repairs of the Leased Premises, without the prior approval of GOVERNMENT and compliance with section 106 of the National Historic Preservation Act (16 U.S.C. § 470), and the Archeological Resources Protection Act of 1979 (16 U.S.C. § 470aa). Buried cultural materials may be present on the Leased Premises. If those materials are encountered, LESSEE shall stop work immediately and notify GOVERNMENT. GOVERNMENT has no knowledge of any historical or archeological property on the Leased Premises; in the event that it becomes aware of any, GOVERNMENT will immediately notify LESSEE.

6. **ASSIGNMENT AND SUBLEASING.** LESSEE shall neither transfer, assign, nor sublet this Lease or any interest in it, or any property on the Leased Premises, or grant any interest, privilege, or license whatsoever in connection with this Lease. The GOVERNMENT may assign or otherwise transfer its interest in this LEASE without LESSEE's prior consent.

7. **JOINT INSPECTION AND INVENTORY REPORT (NON-ENVIRONMENTAL).**

7.1. Prior to use and occupancy of the Leased Premises by LESSEE, a Joint Inspection and Inventory Report (JIIR) will be conducted by representatives of GOVERNMENT and LESSEE and a complete inventory of GOVERNMENT real and personal property shall be made. The JIIR shall describe the condition of the Leased Premises and will note any deficiencies found to exist. Prior to execution, the report shall be attached to and made a part of the Lease as **Attachment B**. Additionally, GOVERNMENT and LESSEE shall complete a JIIR prior to any licensed use of the Leased Premises granted by LESSEE and immediately after such use.

7.2. Each building or facility contained in the JIIR shall be identified by building number or facility number and signed and dated by GOVERNMENT and LESSEE. All personal property in a building, unless specifically exempted by the terms and conditions of this Lease, shall remain with the building and remain the property of the GOVERNMENT.

7.3. The Leased Premises shall be delivered to LESSEE on an "As Is, Where Is" basis, and, as such, GOVERNMENT makes no warranty to its usability generally or its fitness for any particular purpose. Any safety and/or health hazards identified and listed in the JIIR shall be corrected at LESSEE's expense prior to use and occupancy of the related portion of the Leased Premises. The safety and/or health hazards to be corrected by LESSEE shall be limited to those identified in the JIIR.

8. **ENVIRONMENTAL CONDITION OF PROPERTY.** An Environmental Condition of Property ("ECP") is attached hereto and made a part of this Lease as **Attachment C** either at the time this Lease is executed, or within a reasonable time after the term begins, depending on the time needed by GOVERNMENT to complete the report, and in the latter event, the report will speak from the date the term of this Lease begins. The ECP sets forth the existing environmental conditions of the Leased Premises as represented by a survey conducted by GOVERNMENT and sets forth the basis for the GOVERNMENT's determination that the Leased Premises are suitable for leasing. Prior to termination of this Lease either party as provided by this Lease, the GOVERNMENT may, at its sole discretion, may require that the LESSEE fund an ECP to be conducted by the GOVERNMENT to measure any suspected changes in the environmental condition of the Leased Premises subsequent to the date of Lease execution, and caused by the actions of the LESSEE. LESSEE understands that upon expiration of this Lease, GOVERNMENT will conduct an inspection of the Leased Premises to determine if any material deviation from the initial environmental condition has occurred, and if a material deviation has occurred, LESSEE will remain liable for resulting loss or damage, notwithstanding the ending of this Lease. LESSEE is made aware of the notifications contained in the ECP and shall comply with all restrictions in it as well as the following:

8.1. UXO. Unexploded Ordnance and other Munitions and Explosives of Concern ("UXO") may be present at this site. Unless otherwise explicitly stated in this paragraph, LESSEE will not

conduct any subsurface excavation, digging, drilling or other disturbance of the surface at any time without the prior written approval of the GOVERNMENT. Any excavation, digging, drilling, or other disturbance of the surface shall be done in compliance with all applicable Federal, state, and local laws and regulations and with Department of Defense and Department of the Navy safety policies, including those pertaining to explosives safety. LESSEE acknowledges that land underlying and adjacent to the Leased Premises may contain UXO. If, after receipt of written approval by GOVERNMENT, LESSEE undertakes any subsurface excavation, digging, drilling, or other disturbance of the surface, it shall immediately halt work and notify GOVERNMENT of any buried debris, or foreign, potentially hazardous material encountered during this work.

## **9. IMPROVEMENTS AND RESTORATION.**

9.1. LESSEE will not construct or make any substantial construction, alterations, additions, modifications, excavations, betterments, or improvements to, installations upon, or otherwise modify or alter the Leased Premises in any way (collectively, the "Improvements"), including those that may adversely affect human health or the environment, without the prior written consent of GOVERNMENT. That consent shall not be unreasonably withheld or delayed. Further, that consent may involve a requirement to furnish GOVERNMENT with a payment and performance bond satisfactory to it in all respects and other requirements deemed necessary to protect the interests of GOVERNMENT. For any Improvements in the proximity of any known Navy Environmental Restoration Program ("ERP") site, that consent may also include a requirement for the written approval of GOVERNMENT's Remedial Project Manager in addition to approval by the RECO. The Improvements shall be done in a workmanlike manner and be subject to the requirements of all state and local building codes, as applicable. LESSEE will give GOVERNMENT prior written notification and a full plan and description of the proposed Improvements, including any other information on the proposed work requested by GOVERNMENT. Except as otherwise stated in this Lease or in GOVERNMENT's written approval, upon expiration or earlier termination of this Lease, GOVERNMENT shall have the option to cause title to all Improvements to be vested in the United States, or to require LESSEE to remove the Improvements and restore the Leased Premises to the condition that existed when the term of this Lease began, or to a condition that is acceptable to GOVERNMENT. If requested by GOVERNMENT, LESSEE agrees to deliver a quitclaim deed to evidence or perfect the transfer of title to the Improvements to the United States for nominal consideration. Upon termination of the LEASE to the extent directed by the GOVERNMENT, LESSEE will either:

9.1.1. At the sole discretion of the GOVERNMENT, the GOVERNMENT may direct the LESSEE to promptly remove any and all alterations, additions, betterments, and improvements made or installed with or without the consent of the GOVERNMENT or which were previously noted by the GOVERNMENT to be removed, and restore the Leased Premises, to the same or as good condition as existed on the date of entry under this Lease as shown in ATTACHMENT B hereof; subject to reasonable wear and tear and loss or damages for which the LESSEE is not responsible hereunder; or

9.1.2. Abandon such work in place, at which time title to said work shall vest in GOVERNMENT; Provided, in either event all personal property and trade fixtures of LESSEE or any

third party may be removed and LESSEE or such third party shall repair any damages to the Leased Premises resulting from such removal.

9.1.3. Before the expiration or prior termination of this LEASE, LESSEE will restore the Leased Premises and each item thereof to the condition which it was first received and used by LESSEE, or to such improved conditions as may have resulted from any improvement made therein by the GOVERNMENT or by LESSEE, subject, however, to Acts of God, Force Majeure, ordinary wear and tear and loss or damage for which LESSEE is not liable hereunder; provided, in the event the GOVERNMENT shall terminate this Lease upon less than thirty (30) days notice, LESSEE will have thirty (30) days from receipt of notice of termination to accomplish such restoration.

9.2. All Alterations shall be done in a workmanlike manner and be subject to the requirements of all federal, state, and local building codes to include, but not limited to, the Unified Facilities Criteria (UFC), US Army Corps of Engineers guidelines, and other Federal guidelines as directed by the GOVERNMENT. Except, as provided herein or provided in the GOVERNMENT'S written approval, all such approval work affixed to the Leased Premises shall, upon expiration or termination of the Lease, become Government Property.

10. **ACCESS BY GOVERNMENT.** In addition to access required under Paragraph 14, at all reasonable times throughout the term of this Lease, GOVERNMENT shall be allowed access to the Leased Premises for any purpose. LESSEE will have no claim on account of such entries against GOVERNMENT or any Government officer, agent, employee or contractor, provided, however, that nothing in this Lease shall be deemed to prejudice the rights of LESSEE under any contract, other agreement or law including, but not limited to the Federal Tort Claims Act.

11. **UTILITIES AND SERVICES.** Upon approval from GOVERNMENT, LESSEE will be responsible for obtaining utilities and services for the Leased Premises such as gas, water, steam, sewer, telephone, trash removal, security, janitorial, etc. In the event that LESSEE shall request and GOVERNMENT shall furnish LESSEE with any utilities and services maintained by GOVERNMENT, LESSEE will reimburse GOVERNMENT the actual charges as additional rent under this Lease. Those charges and the method of payment shall be determined by GOVERNMENT or the appropriate supplier of the service, in accordance with applicable laws and regulations, on the basis that GOVERNMENT or the appropriate supplier may establish, and may include a requirement for the installation of adequate connecting and metering equipment at the sole cost and expense of LESSEE. It is expressly agreed and understood that GOVERNMENT in no way warrants the continued maintenance or adequacy of any utilities or services furnished by it to the Leased Premises. LESSEE will have the right, subject to Paragraph 9, to make improvements to existing utilities on the Leased Premises, including but without limitation, the installation of emergency power generators that may be necessary for the operation of LESSEE's equipment. LESSEE will be solely responsible for all costs associated with utility connections to utility mains. Plans and specifications for this will be approved by the Public Works Officer (PWO) located at the Installation. All utilities must be metered. The LESSEE will reimburse the installation periodically when a bill is presented by the installation to the LESSEE for utility consumption. The LESSEE will be responsible for all costs associated with connecting to and installing meters for all utilities.

**12. NON INTERFERENCE WITH GOVERNMENT OPERATIONS.** LESSEE will not conduct operations or activities, or make any alterations, that would interfere with or otherwise restrict GOVERNMENT operations, environmental clean-up, or restoration actions by GOVERNMENT, U. S. Environmental Protection Agency ("EPA"), state environmental regulators, or their contractors. Cleanup, restoration, or testing activities for environmental purposes by those entities shall take priority over LESSEE's use of the Leased Premises in the event of any conflict. The LESSEE will have no claim under this lease against the GOVERNMENT, its officers, agents, employees, or contractors, related to any such conflict. However, GOVERNMENT will take reasonable steps to prevent interference with LESSEE's use of the Leased Premises.

**13. PROTECTION AND MAINTENANCE OF LEASED PREMISES.**

13.1. Standard of Maintenance. LESSEE will, at its own expense, protect, preserve, maintain, and repair the Leased Premises in at least as good condition as when LESSEE received it as reflected in the JIR, normal wear and tear, and Events of Force Majeure excepted. As used herein, "Events of Force Majeure" shall mean: (a) governmental control of the Leased Premises; (b) failure of power, water, fuel, electricity, or other utilities; (c) riots, insurrection, civil commotion, enemy or terrorist action, war, acts of God, fire and other casualty; or (d) any other matter of a similar nature. LESSEE's responsibilities will include, but not be limited to, removal of hazards or obstructions from the Leased Premises that are generated by the activities of LESSEE, its agents, contractors, or employees. LESSEE will ensure that the Leased Premises are maintained free of any noxious or nuisance-causing condition. LESSEE is responsible for the maintenance and repair of all buildings or structures built or placed on the Leased Premises by LESSEE.

13.1.1. Refuse Removal. LESSEE will ensure that debris, trash, litter, broken glass, and other waste materials are promptly removed from the Leased Premises, and the Leased Premises will be kept reasonably clean and free of undesirable materials at all times. LESSEE will inspect and ensure the condition of the Leased Premises meets this standard during and immediately after any cruise ship port call. At completion of the Lease term, LESSEE will remove all containers, equipment not belonging to GOVERNMENT, and other undesirable materials, and leave the Lease Premises in an acceptably clean condition substantially similar to the condition reflected in the JIR, normal wear and tear excepted.

13.2. Maintenance and Repair. The LESSEE will furnish all labor, supervision, materials, supplies, and equipment necessary to perform the repair and maintenance of all improvements to the Leased Premises which LESSEE is authorized to make pursuant to this Lease, and which solely support LESSEE's use of the Premises, at no expense to the GOVERNMENT. The GOVERNMENT shall provide repair and maintenance service to GOVERNMENT owned improvements on the Leased Premises, unless otherwise mutually agreed between the Parties that LESSEE will perform repair and maintenance services on GOVERNMENT owned improvements as in-kind consideration pursuant to Paragraph 3.3 herein. The degree of maintenance and repair services to be furnished by LESSEE hereunder will be that which is sufficient to ensure weather tightness, structural stability (excluding any seismic retrofit and/or modifications to foundations resulting from extraordinary natural occurrences such as earthquakes and landslides), protection from fire hazards or erosion, and elimination of safety

and health hazards, which arise during the term of this Lease which are not caused by the actions of the GOVERNMENT or its employees, contractors, or agents. The GOVERNMENT, upon due notice, may inspect the Leased Premises to insure performance of these maintenance and repair requirements.

13.2.1. If necessary for the performance of any construction, repair, and maintenance work by the GOVERNMENT, GOVERNMENT may temporarily suspend LESSEE's right to use the Leased Premises. GOVERNMENT will coordinate scheduled work with LESSEE to minimize disruption of LESSEE's use. The LESSEE will have no claim on account of any lost profits, lost opportunities, wages, or operating expenses or any other costs incurred as a result of LESSEE's operation being disrupted by the performance of such work.

13.2.2. Exterior Utility Systems. LESSEE is responsible for the repair and maintenance of all exterior utility distribution lines, connections, and equipment that solely support LESSEE's facilities. This responsibility extends from the facilities leased to the point of connection with the utility system that serves users other than LESSEE. These systems include but are not limited to heating plants, steam lines, traps, high voltage transformers, substations, power distribution lines (overhead and underground), poles, towers, gas mains, water and sewage mains, water tanks, fire protection systems, hydrants, lift stations, manholes, isolation valves, meters, storm water systems, catch basins, and similar items.

13.2.3. Maintenance Plan. No later than thirty (30) days after the Effective Date of this Lease, the LESSEE will submit a proposed Maintenance Plan for routine maintenance, including a fire protection plan, to the Real Estate Contracting Officer for review and approval. Routine maintenance does not as such constitute in-kind consideration for purposes of payment of Rent.

13.2.3.1. In the event that the Real Estate Contracting Officer and the LESSEE are unable to agree upon the Maintenance Plan within thirty (30) days after its submission, the Real Estate Contracting Officer may direct the LESSEE to perform such routine maintenance as the Real Estate Contracting Officer deems appropriate; provided that the Real Estate Contracting Officer shall only be permitted to direct the LESSEE to perform those tasks required to keep the Leased Premises in a condition substantially similar to that reflected in the JIR and which allows the Leased Premises to be continuously utilized for berthing ships and related purposes pursuant to the designed capacity and efficiency of the Leased Premises.

13.2.3.2. The GOVERNMENT may conduct periodic reviews of the Maintenance Plan and specify such revisions for incorporation by the LESSEE as may be required to keep the Leased Premises in a condition substantially similar to that reflected in the JIR and which allows the Leased Premises to be continuously utilized for berthing ships and related purposes pursuant to the designed capacity and efficiency of the Leased Premises.

13.2.3.3. The GOVERNMENT may conduct periodic inspections to ensure that the LESSEE is performing in accordance with the Maintenance Plan or with the Real Estate Contracting Officer's direction described in subparagraph 13.2.3.1. In the event of any failure by the LESSEE to provide routine maintenance in accordance with the Maintenance Plan, the GOVERNMENT may, by contract or otherwise, perform the routine maintenance and the LESSEE will be responsible for the resulting cost, including all administrative costs, reasonably incurred by the

GOVERNMENT. This remedy is not exclusive and is an addition to any other remedy which may be available under this Lease or at law.

13.2.3.4. In performing fire protection services as part of the Maintenance Plan, the LESSEE will comply with the National Fire Protection Association's (NFPA's) National Fire Code, as well as all applicable federal, state, and local statutes, regulations, and instructions regarding fire protection. Notwithstanding the Real Estate Contracting Officer's authority to approve the LESSEE's plan for routine maintenance, the Area Fire Marshall for Commander, Navy Installations Command may approve or reject the LESSEE's proposal for fire protection services, set forth as the Fire Protection Plan in such Maintenance Plan; in the event that the Area Fire Marshall rejects the LESSEE's Fire Protection Plan, the LESSEE and the Real Estate Contracting Officer shall negotiate changes to the Fire Protection Plan. The Area Fire Marshall also shall take any steps that it deems necessary to ensure that the LESSEE performs fire protection services in accordance with the Maintenance Plan, and with applicable federal, state, and local statutes, regulations, and instructions. Such steps may include, but are not limited to, inspections of the Leased Premises and directives specifying actions that the LESSEE must undertake to provide fire protection. Notwithstanding anything to the contrary contained in this Lease or in the Maintenance Plan, the GOVERNMENT acknowledges and agrees that LESSEE shall not be required to maintain a fire department in connection with its provision of fire protection services hereunder, unless otherwise required by applicable law or to comply with NFPA Code.

13.3. Security Protection. LESSEE will keep the Leased Premises secure and safe. Any crimes or other offenses, including traffic offenses and crimes and offenses involving damage to or theft of GOVERNMENT property, shall be reported to the appropriate state or local municipal authorities for investigation and disposition (in non-exclusive legislative jurisdiction areas) and to GOVERNMENT as property owner.

13.3.1. The LESSEE will comply with (i) the Federal Information Processing Standards Publication (FIPS PUB) Number 201-1, "Personal Identity Verification of Federal Employees and Contractors"; and (ii) Office of Management and Budget (OMB) Guidance M-05-24, dated August 5, 2005, "Implementation of Homeland Security Presidential Directive (HSPD) 12—Policy for a Common Identification Standard for Federal Employees and Contractors"; and (ii) any revisions to said publications.

13.3.2. LESSEE will ensure that all of its employees and/or representatives with access to the Leased Premises are United States citizens or have appropriate Federal work permits. The LESSEE will be responsible for furnishing each employee performing under the terms of this Lease, and for requiring each employee to display, identification as approved and directed by the Installation Commanding Officer. Upon the release of any employee, all prescribed identification will immediately be surrendered to the LESSEE for cancellation. When required by the Real Estate Contracting Officer or the Installation, the LESSEE will obtain and submit fingerprints of all employees performing under the terms of this Lease. GOVERNMENT reserves the right to inspect LESSEE's employee records for compliance with these security requirements.

13.3.3. The LESSEE agrees to insert terms that conform substantially to the provisions of this Paragraph 13.3, in all government prime contracts and subcontracts that the LESSEE enters into to perform its activities and satisfy its obligations under this Lease.

13.4. LESSEE will ensure that only trained, experienced, and qualified persons perform the maintenance and protection services specified in this Paragraph.

#### **14. ENVIRONMENTAL PROTECTION PROVISIONS.**

14.1. Compliance with Law. LESSEE will comply, at its sole cost and expense, with the Federal, state, and local laws, regulations, and standards that are or may become applicable to LESSEE's activities on the Leased Premises.

14.2. Permits. LESSEE will be solely responsible for obtaining at its cost and expense any environmental permits required for its operations under this Lease, independent of any existing permits. Copies of all permits obtained shall be promptly provided to the GOVERNMENT.

14.3. Indemnification. **LESSEE WILL, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, INDEMNIFY AND HOLD HARMLESS GOVERNMENT FROM, AND DEFEND GOVERNMENT AGAINST, ANY DAMAGES, COSTS, EXPENSES, LIABILITIES, FINES, OR PENALTIES RESULTING FROM RELEASES, DISCHARGES, EMISSIONS, SPILLS, STORAGE, TREATMENT, DISPOSAL, OR ANY OTHER ACTS OR OMISSIONS BY LESSEE, ITS OFFICERS, AGENTS, EMPLOYEES, OR CONTRACTORS, OR LICENSEES, OR THE INVITEES OF ANY OF THEM, GIVING RISE TO GOVERNMENT LIABILITY, CIVIL OR CRIMINAL, OR RESPONSIBILITY UNDER FEDERAL, STATE, OR LOCAL ENVIRONMENTAL LAWS.** This paragraph shall survive the termination of this Lease, and LESSEE's obligations under this paragraph shall apply whenever GOVERNMENT incurs costs or liabilities for LESSEE's actions of the types described in this paragraph .

14.4. Inspection. GOVERNMENT's rights under this Lease specifically include the right for GOVERNMENT officials to inspect upon reasonable notice the Leased Premises for compliance with environmental, safety, and occupational health laws and regulations, whether or not GOVERNMENT is responsible for enforcing them. Those inspections may be made without prejudice to the right of duly constituted enforcement officials to make them. GOVERNMENT normally will give LESSEE twenty-four (24) hours prior notice of its intention to enter the Leased Premises unless it determines the entry is required for safety, environmental, operations, or security purposes. LESSEE will have no claim on account of any entries against The United States or any related officer, agent, employee, or contractor.

14.5. Asbestos. Except as provided in Paragraph 14.6, GOVERNMENT is not responsible for any abatement, removal, or containment of asbestos. If LESSEE intends to make any Improvements that require the abatement, removal, or containment of asbestos, an appropriate asbestos management plan must be incorporated in the alterations plan to be submitted to the Commanding Officer, NAVFAC Southeast, under Paragraph 3. The asbestos management plan will identify the proposed disposal site for the asbestos.



14.6. Abatement of Asbestos. GOVERNMENT shall be responsible for the removal or containment of asbestos or asbestos-containing material (collectively, "ACM") existing in the Leased Premises on the term beginning date as identified in the ECP attached to this Lease when that ACM is damaged or deteriorated to the extent that, through normal use, it is a source of airborne fibers in quantities that pose a threat to human health ("damaged or deteriorated ACM"). GOVERNMENT agrees to abate all that existing damaged or deteriorated ACM as stated in this Paragraph 14.6. GOVERNMENT may choose the most economical means of abating damaged or deteriorated ACM, which may include removal or containment, or a combination of removal and containment. The foregoing GOVERNMENT obligation does not apply to ACM that is not damaged or deteriorated at the time LESSEE takes possession of the Leased Premises and that may become damaged or deteriorated by LESSEE's activities. If ACM during the period of this Lease becomes damaged or deteriorated through the passage of time, or as a consequence of LESSEE's activities under this Lease, including but not limited to any emergency, such ACM shall be abated by LESSEE at its sole cost and expense. Notwithstanding Paragraph 14.5, in an emergency, LESSEE will notify GOVERNMENT as soon as practicable of its emergency ACM responses. LESSEE will be responsible for monitoring the condition of existing ACM on the Leased Premises for deterioration or damage and accomplishing repairs pursuant to this Lease.

14.7. Environmental Liability of Lessee. Notwithstanding any other provision of this Lease, LESSEE does not assume any liability or responsibility for environmental impacts and damage caused by GOVERNMENT's use of toxic or hazardous wastes, substances, or materials on any portion of the installation, including the Leased Premises. LESSEE has no obligation under this Lease to undertake the defense of any claim or action, whether in existence now or brought in the future, solely arising out of the use or release of any toxic or hazardous wastes, substances, or materials on or from any part of the installation, including the Leased Premises, which occurred prior to the first day of LESSEE's occupation or use of each portion of, or any building, facility, or other improvement on, the Leased Premises under any instrument entered into between the Parties, or the term beginning date, whichever is earlier. Further, LESSEE has no obligation under this Lease to undertake environmental response, remediation, or cleanup relating to that use or release.

14.7.1. For the purposes of this Paragraph, "defense" or "environmental response, remediation, or cleanup" include liability and responsibility for the costs of damage, penalties, legal, and investigative services relating to such use or release. "Occupation or use" shall mean any activity or presence (including preparation and construction) in or upon such portion of, or such building, facility, or other improvement on, the Leased Premises.

14.7.2. This Paragraph 14.7 does not relieve LESSEE of any obligation or liability it might have or acquire with regard to third parties or regulatory authorities by operation of law.

14.7.3. This Paragraph 14.7 shall survive the expiration or termination of this Lease.

14.8. No Liability for Interference. LESSEE expressly acknowledges that it fully understands that some or all of the response actions to be undertaken with regard to the Federal Facilities Agreement ("FFA"), if applicable, or the ERP, may impact LESSEE's quiet use and enjoyment of the Leased Premises. LESSEE agrees that notwithstanding any other provision of this Lease,

GOVERNMENT assumes no liability to LESSEE should implementation of the FFA, if applicable, or the ERP, or other hazardous waste cleanup requirements, whether imposed by law, regulatory agencies, or the Navy or the Department of Defense, interfere with LESSEE's use of the Leased Premises. LESSEE will have no claim against The United States or any of its officers, agents, employees, or contractors on account of any interference, whether due to entry, performance of remedial or removal actions, or exercise of any right with regard to the FFA, if applicable, or the ERP, or under this Lease or otherwise.

14.9. Response or Remedial Actions. LESSEE agrees to comply with the provisions of any health or safety plan in effect under the ERP or any hazardous substance remediation or response agreement with environmental regulatory authorities during the course of any of the above described response or remedial actions. Any inspection, survey, investigation, or other response or remedial action will, to the extent practicable, be coordinated with representatives designated by LESSEE. LESSEE and any licensees, or invitees of it, shall have no claim on account of entries against the United States of America or any of its officers, agents, employees, contractors, or subcontractors.

14.10. Storage of Hazardous Materials and Wastes. LESSEE must comply with all applicable Federal, state, and local laws, regulations, and other requirements relating to occupational safety and health, the handling and storage of hazardous materials, and the proper generation, handling, accumulation, treatment, storage, disposal, and transportation of hazardous wastes. LESSEE will not treat, store, transport, or dispose of hazardous waste unless LESSEE is in possession of any required permit issued to it under the Resource Conservation and Recovery Act, as amended ("RCRA"). LESSEE will provide a copy of any such RCRA permit to the RECO. LESSEE shall not treat, store, transport, or dispose of any hazardous waste under, pursuant to, or in reliance upon any permit issued to GOVERNMENT.

14.11. Environmental Records. LESSEE must maintain and make available to GOVERNMENT all records, inspection logs, and manifests that track the generation, handling, storage, treatment, and disposal of hazardous waste, as well as all other records pertaining to the Leased Premises required by applicable laws and requirements. GOVERNMENT reserves the right to inspect the Leased Premises and LESSEE's records for compliance with Federal, state, local laws, regulations, and other requirements relating to the generation, handling, storage, treatment, and disposal of hazardous waste, as well as to the discharge or release of hazardous substances. Violations will be reported by GOVERNMENT to appropriate regulatory agencies, as required by applicable law. LESSEE will be liable for the payment of any fines and penalties that may accrue as a result of the actions of LESSEE.

14.12. Spill Plans. If hazardous waste, fuel, chemicals, or other regulated hazardous substances will be present on the Leased Premises, LESSEE will prepare a completed and approved plan prior to commencement of operations on the Leased Premises for responding to hazardous waste, fuel, and other chemical spills. The plan will comply with all applicable requirements and shall be updated from time to time as may be required to comply with changes in site conditions or applicable requirements, and where required, will be approved by all agencies having regulatory jurisdiction over the plan. The plan will be independent of Navy spill prevention and response plans. LESSEE will not rely on use of the Installation's personnel or equipment in execution of its plan. LESSEE will file a

copy of the approved plan and approved amendments thereto with the Commanding Officer of NAVFAC Southeast within fifteen (15) days of approval. Notwithstanding the foregoing, should GOVERNMENT provide any personnel or equipment, whether for initial fire response or spill containment or otherwise on request of LESSEE, or because LESSEE was not, in the sole opinion of GOVERNMENT, conducting timely cleanup actions, LESSEE agrees to reimburse GOVERNMENT for its costs in accordance with all applicable laws and regulations.

14.13. RCRA Compliance. LESSEE will comply with the hazardous waste permit requirements under the RCRA or its state equivalent and any other applicable laws, rules, and regulations. LESSEE must provide at its own expense hazardous waste storage facilities that comply with all laws and regulations that it may need for storage. GOVERNMENT hazardous waste storage facilities will not be available to LESSEE. Any violation of the requirements of this paragraph shall be deemed a material breach of this Lease.

14.14. Accumulation Points. Navy accumulation points for hazardous and other wastes shall not be used by LESSEE, and LESSEE will not permit its hazardous waste to be commingled with hazardous waste of the Navy.

14.15. Discharge of Fill. LESSEE will not discharge, or allow the discharge of; any dredged or fill material into any waters or wetlands on the Leased Premises except as environmentally permitted for an approved in-kind project or in compliance with the express written consent of the Commanding Officer of NAVFAC Southeast.

14.16. Pesticides. Prior to the storage, mixing, or application of any pesticide, as that term is defined under the Federal Insecticide, Fungicide, and Rodenticide Act, LESSEE will prepare a plan for storage, mixing, and application of pesticides (Pesticide Management Plan). The Pesticide Management Plan will be sufficient to meet all applicable Federal, state, and local pesticide requirements. LESSEE will store, mix, and apply all pesticides within the Leased Premises only in strict compliance with the Pesticide Management Plan. The pesticides will only be applied by a licensed applicator. LESSEE will maintain detailed records of each pesticide application made on the Leased Premises and provide an annual report of such applications to the Commanding Officer, NAVFAC Southeast.

14.17. National Pollutant Discharge Elimination System ("NPDES") Permit. LESSEE will comply with all requirements of the Federal Water Pollution Control Act, as amended, the NPDES, and any applicable State or local requirements. If LESSEE discharges wastewater to a publicly owned treatment works, LESSEE must submit an application for its discharge prior to the start of this Lease. LESSEE will be responsible for meeting all applicable wastewater discharge permit standards. LESSEE will not discharge wastewater under the authority of any NPDES permit, pretreatment permit, or any other permit issued to the installation. LESSEE will make no use of any septic tank installed on the installation without the prior written consent of GOVERNMENT.

14.18. Radioactive Materials. LESSEE will not possess, store, or use any licensed or licensable source or byproduct materials, as those terms are defined under the Atomic Energy Act, as amended, and its implementing regulations on the Leased Premises without GOVERNMENT's prior,

written approval. LESSEE will provide an advance, written request to possess, use, or store radium; and of LESSEE's intent to possess or use any equipment producing ionizing radiation and subject to specific licensing requirements or other individual regulations, at least sixty (60) days prior to the proposed entry of such materials or equipment upon the Installation. Upon such request, GOVERNMENT may impose requirements, including prohibition of possession, use, or storage, that are deemed necessary to adequately protect health and the human environment. Thereafter, LESSEE must notify GOVERNMENT of the presence of all licensed or licensable source or byproduct materials, of the presence of all radium, and of the presence of all equipment producing ionizing radiation and subject to specific licensing requirements or other individual regulation; provided, however, that LESSEE need not make either of the above notifications to GOVERNMENT with regard to source and byproduct material that is exempt from regulation under the Atomic Energy Act. LESSEE shall not, under any circumstances, use, own, possess, or allow the presence of special nuclear material on the Leased Premises.

14.19. Improvements and Environmental Cleanup. LESSEE further agrees that it will give GOVERNMENT prior written notice accompanied by a detailed written description of all proposals for any Improvements that may impede or impair any activities under the ERP, or the FFA if applicable, or that will be undertaken in certain areas of the Leased Premises identified as "Areas of Special Notice" on Attachment \_\_\_ [If applicable] this Lease. These Areas of Special Notice consist of either "Operable Units" (as defined in the National Contingency Plan) or other areas of concern because of the potential for environmental contamination and include buffer areas as shown on Attachment \_\_\_ [If applicable]. The notice and accompanying written description of those proposals shall be delivered to GOVERNMENT sixty (60) days in advance of the commencement of any Improvements. In addition, Improvements will not commence until LESSEE has complied with the provisions of Paragraph 3. The detailed written description must include the effect that planned Improvements may have on site soil and groundwater conditions and the cleanup efforts contemplated under the ERP and the FFA, if applicable. Notwithstanding the preceding three sentences, LESSEE will be under no obligation to give advance written notice of any Improvements that will be undertaken totally within any structure located on the Leased Premises, provided that the work will not impede or impair any activities under the ERP or the FFA, if applicable. However, any work below the floor of any structure within any Area of Special Notice that will involve excavating in and/or disturbing concrete flooring, soil and/or groundwater, or will impede or impair any activities under the ERP or the FFA, if applicable, will be subject to the sixty (60) day notice requirement imposed by this Paragraph 14.19.

14.20. FFA [IF APPLICABLE]. GOVERNMENT acknowledges that the installation has been identified as a National Priorities List Site under Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"). LESSEE acknowledges that GOVERNMENT has delivered to it a copy of the FFA entered into by EPA, the state, and the Navy, and will deliver to LESSEE a copy of any amendments to it. LESSEE agrees that should any conflict arise between the terms of such agreement as it presently exists or may be amended ("FFA," "Interagency Agreement" or "IAG") and the provisions of this Lease, the terms of the FFA will take precedence. LESSEE further agrees that notwithstanding any other provision of this Lease, GOVERNMENT assumes no liability to LESSEE should implementation of the FFA interfere with LESSEE's use of the Leased Premises. LESSEE shall have no claim on account of any interference against The United States or any of its officers, agent, employees, or contractors, other than for abatement of rent.

14.21. Environmental Access. GOVERNMENT, EPA, and the State and their respective officers, agents, employees, contractors, and subcontractors have the right, upon reasonable notice to LESSEE to enter upon the Leased Premises for the purposes enumerated in this subparagraph, and for other purposes consistent with any provision of the FFA, if applicable:

14.21.1. To conduct investigations and surveys, including, where necessary, drilling, soil and water sampling, test pitting, testing soil borings, and other activities related to the ERP or the FFA, if applicable;

14.21.2. To inspect field activities of GOVERNMENT and its contractors and subcontractors in implementing the ERP or the FFA, if applicable;

14.21.3. To conduct any test or survey required by the EPA or the state relating to the implementation of the FFA, if applicable, or environmental conditions at the Leased Premises or to verify any data submitted to the EPA or state by GOVERNMENT relating to those conditions;

14.21.4. To conduct, operate, maintain, or undertake any other response or remedial action as required or necessary under the ERP or the FFA, if applicable, including, but not limited to, monitoring wells, pumping wells, and treatment facilities.

14.21.5. To monitor any environmental restrictive use covenants and the effectiveness of any other land use or institutional control established by the Navy on the Leased Premises, either by itself, by its contractor, by any public entity, including the state, or by a private entity registered in the state to monitor environmental covenants.

## 15. TERMINATION.

15.1. Termination by Government. GOVERNMENT shall have the right to terminate this Lease in whole or in part, without liability, and regardless of any lack of breach by LESSEE of any of the terms and conditions of this Lease upon ninety (90) days notice to LESSEE. LESSEE shall complete any work or service already contracted for or if otherwise directed by GOVERNMENT, terminate any contract and pay all accrued rent in cash.

15.2. National Emergency. In the event of a national emergency declared by the President of the United States or the Congress, GOVERNMENT may terminate this Lease immediately, without notice to LESSEE.

15.3. Breach of Terms By Lessee. In the event of breach by LESSEE of any of the terms, conditions, or obligations of this Lease, GOVERNMENT shall have the right to terminate for breach or offer a period for cure. Unless GOVERNMENT determines that immediate notice of termination, or a shorter period of time for cure, is required for safety, environmental, operational, or security purposes, LESSEE shall be afforded thirty (30) calendar days from the receipt of GOVERNMENT's notice of intent to terminate to complete the performance of the obligation or otherwise cure the breach and avoid notice of termination of this Lease. GOVERNMENT may grant a reasonable extension of time

to complete the cure. In the event that GOVERNMENT shall elect to terminate this Lease on account of the breach by LESSEE of any of the terms and conditions herein, GOVERNMENT will issue a notice of termination, and GOVERNMENT shall be entitled to recover, and LESSEE will pay to GOVERNMENT:

15.3.1. The reasonable costs incurred in resuming possession of the Leased Premises;

15.3.2. The reasonable costs incurred in performing any outstanding obligation on the part of LESSEE existing prior to or upon termination;

15.3.3. An amount equal to the aggregate of any maintenance obligations, and charges assumed under this Lease and not paid or satisfied, with amounts being due and payable at the time when those obligations and charges would have accrued or become due and payable if this Lease had not been terminated, provided, however, that charges denominated as "rent" under Paragraph 3 shall not accrue beyond sixty (60) days after the later of (a) the date the Leased Premises are vacated by LESSEE and restored to their original condition, or (b) the date of issuance of notice of termination.

15.3.4. In the event that a notice of termination for breach is disputed and it is later determined that LESSEE was not in breach or that the breach was excusable, the notice of termination shall be effective as a notice of termination under Paragraph 15.1 and the rights and obligations of the parties shall be the same as if the termination had been issued upon any required notice in accordance with Paragraph 15.1.

15.4. Sale or Transfer of the Property. If GOVERNMENT elects to sell or transfer title to the Leased Premises during the term of this Lease, GOVERNMENT may terminate this Lease upon ninety (90) days' written notice to LESSEE. The LESSEE understands and acknowledges that this Lease is not and does not constitute a commitment by GOVERNMENT with regard to the disposal of the Premises, in whole or in part, to LESSEE or any agency or instrumentality thereof. Notwithstanding, pursuant to Section (b) (2) of 10 USC 2667, LESSEE will have the first right to buy the Premises if the Lease is revoked to allow the GOVERNMENT to sell the Premises under any other provision of law.

15.5. Federal Requirement. In the event all or any part of the Leased Premises is required for Federal use, or if LESSEE's use of it is not consistent with Federal program purposes, GOVERNMENT may terminate the Lease, or any needed part of the Leased Premises, if it is practical to terminate a part, upon ninety (90) days' written notice to LESSEE.

15.6. Termination by Lessee. LESSEE may terminate this Lease at any time upon ninety (90) days written notice to the RECO. LESSEE must pay all accrued rent in cash upon termination.

## 16. INDEMNIFICATION.

16.1. LESSEE will indemnify and save GOVERNMENT harmless from, and will defend GOVERNMENT against, and shall pay all costs (including the costs of experts and investigators), expenses, and reasonable attorney's fees for all trial and appellate levels and post-judgment proceedings in connection with any fines, suits, actions, damages, liability, and causes of action of every nature arising or growing out of, or in any manner connected with, the

occupation or use of the Leased Premises by LESSEE, its employees, servants, agents, guests, invitees, and contractors. This includes, but is not limited to, any fines, claims, demands, and causes of action of every nature that may be made upon, sustained, or incurred by GOVERNMENT by reason of any breach, violation, omission, or non-performance of any term, covenant, or condition of this Lease on the part of LESSEE, its employees, servants, agents, guests, invitees, or contractors. This indemnification also applies to claims arising out of the furnishing of any utilities or services by GOVERNMENT or any interruption or failure occasioned by the negligence or lack of diligence of LESSEE or its respective officers, agents, servants, or employees. However, this indemnity shall not extend to damages due to the sole fault of GOVERNMENT or its employees, agents, servants, guests, invitees or contractors. This covenant shall survive the termination of this Lease.

16.2. LESSEE releases the GOVERNMENT and its employees from death or injury to persons caused by water, ice, snow, sleet, frost, steam, hail, wind, cold, dampness, electricity, rust, falling plaster or other materials, fire, explosion, sewer or sewage, gas, vapors, odors, aircraft noise, toxic or hazardous wastes, substances, or materials, the bursting or leaking of pipes or plumbing, or faulty wiring, or by any equipment or fixtures, or any act of God, or objects of any nature moved or propelled by water, ice, snow, sleet, steam, hail, or wind, at the Leased Premises, unless caused by the willful act or gross negligence of the GOVERNMENT.

## 17. INSURANCE.

17.1. LESSEE will, without prejudice to any other rights of GOVERNMENT, bear all risk of loss or damage or destruction to the Leased Premises, including any buildings, improvements, fixtures, or other property on it, arising from any causes whatsoever, with or without fault by GOVERNMENT. During the entire period this Lease shall be in effect, LESSEE, at no expense to GOVERNMENT, agrees to carry and maintain in effect at all times during the term of this Lease the following insurance coverages:

17.1.1. Property insurance coverage against loss or damage by perils covered by Insurance Services Office ("ISO") special cause of loss form or its equivalent in an amount not less than One Hundred Percent (100%) of the full replacement cost of the buildings, building improvements, improvements to the land, fixtures, and personal property on the Leased Premises. The policies of insurance carried in accordance with this condition shall contain a "Replacement Cost Endorsement." The full replacement cost shall be determined every five years, except in the event of substantial changes or alterations to the Leased Premises undertaken by LESSEE as permitted under the provisions of this Lease

17.1.2. If the Leased Premises are located in a state, or an area of a state, which is prone to suffer property loss and damage from earthquake, flood, windstorm, or rainstorm, and if required by GOVERNMENT, a special risks or perils endorsement from a commercial insurer or from a state or Federal program, in amounts and with limitations and deductibles satisfactory to GOVERNMENT.

17.1.3. Commercial general liability insurance using the most recent occurrence form or its equivalent, covering bodily injury, premises, operations, products, completed operations, and

independent contractors and for the contractual liability assumed by LESSEE under Paragraph 16, and shall afford immediate protection at the time that the term of this Lease begins, and at all times during the term of this Lease, with single limit bodily injury coverage of \$5,000,000 each occurrence, with single-limit property damage in the amount of \$5,000,000 each occurrence, and with single-limit fire/legal liability coverage in the amount of \$5,000,000 million each occurrence. The value of any structures for fire coverage will be determined every five (5) years.

17.1.4. If LESSEE owns or leases business vehicles that will be operating on, to, or from the Leased Premises or Installation, those vehicles must be registered and insured in accordance with Installation requirements.

17.1.5. If and to the extent required by law, workers' compensation and employer's liability or similar insurance in form and amounts required by law.

17.2. During the entire period this Lease shall be in effect, LESSEE will either carry and maintain the insurance required below at its expense, or require any contractor performing work on the Leased Premises to carry and maintain the following at no expense to GOVERNMENT:

17.2.1. The property insurance coverage required under subparagraph 17.1 above, which shall include the general property form that provides coverage in connection with any construction or work permitted under this Lease.

17.2.2. Fire and any other applicable insurance provided for in this Paragraph 17, which, if not then covered under the provisions of existing policies, shall be covered by special endorsement related to any Improvements (as defined in Paragraph 9), including all materials and equipment incorporated in, on, or about the Leased Premises (including excavations, foundations, and footings) under an ISO special cause-of-loss, completed value, builder's risk form or its equivalent; and

17.2.3. Workers' compensation for LESSEE and any contractor of LESSEE.

17.3. All policies of insurance that this Lease requires LESSEE or any other contractor to purchase and maintain, or cause to be purchased and maintained under this paragraph, will be underwritten by insurers authorized to underwrite insurance in the state where the Leased Premises are located, and that have a rating of at least B+ by the most recent edition of *Best's Key Rating Guide*. **IN ALL POLICIES**, GOVERNMENT shall be named as additional insured and loss payee for its interest in, but not limited to, the Leased Premises and any personal property included with the Leased Premises (under ISO forms CG 2011 and CG 2028 or their equivalents). GOVERNMENT shall appear in all policies as "The United States of America, acting by and through the Department of the Navy, c/o Commanding Officer, Naval Facilities Engineering Command Southeast, Attn: Real Estate Contracting Officer, Box 30A, Bldg 903, Room 260, Jacksonville, Florida, 322120030-Lease Contract No: N69450-12-RP-00166 and payments for losses shall be made to "United States Treasury." All policies shall state (a) that no cancellation, reduction in amount, or material change in coverage shall be effective until at least sixty (60) days after receipt by GOVERNMENT of written notice; (b) that the insurer shall have no right of subrogation against GOVERNMENT; and (c) shall be reasonably satisfactory to GOVERNMENT in all other respects, including, without limitation, the amounts of



coverages and deductibles from time to time. In no circumstances will LESSEE be entitled to assign to any third party rights of action that LESSEE may have against GOVERNMENT. Notwithstanding the foregoing, any cancellation of insurance coverage based on nonpayment of the premium shall be effective only upon thirty (30) days' written notice to GOVERNMENT. LESSEE understands and agrees that cancellation of any insurance coverage required to be carried and maintained by it or contractor under this Paragraph 17 will constitute a failure to comply with the terms of this Lease, and GOVERNMENT shall have the right to terminate this Lease upon receipt of any cancellation notice, but only if LESSEE fails to cure noncompliance to the extent allowed under Paragraph 15.

17.4. LESSEE will deliver, or cause to be delivered upon execution of this Lease and PRIOR TO ENTRY on or occupancy of the Leased Premises or the commencement of any Improvements (and thereafter not less than thirty (30) days prior to the expiration date of each policy furnished under this Paragraph 17), to GOVERNMENT a certificate or certificates of insurance evidencing the coverages and deductibles required by this Paragraph 17.

17.5. In the event that any item or part of the Leased Premises shall be damaged or destroyed, the risk of which is assumed by LESSEE under Paragraph 17.1, LESSEE will promptly give notice to GOVERNMENT. LESSEE will, as soon as practicable after the casualty; restore damaged or destroyed property as nearly as possible to the condition that existed immediately prior to the loss or damage, subject to Paragraphs 9 and 35. All repair and restoration work under this Paragraph will comply with the provisions of this Lease, including any notice and approval requirements.

17.6. Notwithstanding any other provision of this Lease, LESSEE may, with the prior consent of the RECO, self-insure any risk for which insurance coverage is required under this Lease; provided, however, that if LESSEE's statutory limits of liability or other impediments to the assumption of liability are less than the limits of insurance required in this Lease, LESSEE will obtain commercial coverage that is sufficient in amount and nature to satisfy the insurance requirements of this Lease when added to any self-insurance. In order to obtain the consent of GOVERNMENT to self-insure, LESSEE will deliver to GOVERNMENT a writing setting forth the limitations and impediments, if any, to which LESSEE's self-insurance is subject, LESSEE's source of funds to pay any claim from any risk for which insurance is required under this Lease (including its most recent audited financial statement), and any other information that GOVERNMENT may require to assess LESSEE's request. If commercial insurance is required for any purpose, the provisions of Paragraph 17.1.3 shall apply; however, the total amount of commercial insurance and self-insurance shall meet the dollar limitations contained in this Paragraph 17.

**17.7. If GOVERNMENT at any time believes that the limits or extent of coverage or deductibles for any of the insurance required in this Lease are insufficient, it may determine the proper and reasonable limits and extent of coverage and deductibles and deliver notice of that coverage or deductibles to LESSEE. LESSEE will thereafter carry insurance with the limits and extent of coverage and deductibles as determined by GOVERNMENT until further change.**

## **18. LABOR PROVISIONS.**

18.1. Equal Opportunity. During the term of this Lease, LESSEE agrees as follows with regard to all employees located at, or involved with, the Leased Premises:

18.1.1. LESSEE will not discriminate against any employee or applicant for employment because of race, color, age, marital status, handicap, religion, sex, or national origin. LESSEE will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, age, marital status, handicap, religion, sex, or national origin. That action will include, but not be limited to, employment, upgrading, demotion, or transfer, retention or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, selection for training, including apprenticeship. LESSEE agrees to post in conspicuous places available to employees and applicants for employment notices furnished by GOVERNMENT containing the provisions of this nondiscrimination clause.

18.1.2. LESSEE will, in all solicitations or advertisements for employees placed at the Leased Premises by or on behalf of LESSEE, state that all qualified applicants will receive consideration for employment without regard to age, marital status, handicap, race, color, religion, sex, or national origin.

18.1.3. LESSEE will send to each labor union or representative of workers for the Leased Premises with which it has a collective bargaining agreement or other contract or understanding a notice to be provided by GOVERNMENT, advising the labor union or worker's representative of commitments under this Equal Opportunity clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

18.1.4. LESSEE will comply with all provisions of Exec. Order No. 11,246 of September 24, 1965, as amended by Exec. Order No. 11,375 of October 13, 1967 (the "Executive Order"), and of the rules, regulations, and relevant orders of the Secretary of Labor as it relates to the Leased Premises.

18.1.5. LESSEE will furnish all information and reports required by the Executive Order, and by the rules, regulations, and orders of the Secretary of Labor or pursuant to it, and will permit access to its books, records, and accounts by GOVERNMENT and the Secretary of Labor for purposes of ascertaining compliance with those rules, regulations, and orders.

18.1.6. In the event of LESSEE's noncompliance with this Equal Opportunity clause or with any of the applicable rules, regulations, or orders, this Lease or any sublease may be canceled, terminated, or suspended in whole or in part and LESSEE may be declared ineligible for further GOVERNMENT contracts in accordance with procedures authorized in the Executive Order, and other sanctions may be imposed and remedies invoked, all as contained in the Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

18.2. Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701 et seq.) (the "Act"). This Lease and each sublease, to the extent that it is a contract of a character specified in the Act and is not covered by the Walsh-Healy Public Contracts Act (41 U.S.C. §§ 35-45) or the Davis-Bacon Act (40 U.S.C. §§ 3141-3148), is subject to the following provisions and exceptions of the Act and to all other sections and exceptions of that law as they apply to employment at the Leased Premises:

18.2.1. LESSEE will not require or permit any laborer or mechanic in any workweek in which he/she is employed on any work on the Leased Premises to work in excess of 40 hours on work subject to the contents provisions of the Act unless the laborer or mechanic receives compensation at a

rate not less than one and one-half times his/her basic rate of pay for those excess hours. The "basic rate of pay," as used in this clause, shall be the amount paid per hour, exclusive of the employer's contribution or cost for fringe benefits and any cash payment made in lieu of affording fringe benefits, or the basic hourly rate contained in the wage determination, whichever is greater.

18.2.2. In the event of any violation of the preceding sub-paragraph, LESSEE will be liable to any affected employee for any amounts due, and to GOVERNMENT for liquidated damages. The liquidated damages shall be computed for each individual laborer or mechanic employed in violation of Paragraph 18.2.1 above, in the sum of \$10 for each calendar day on which the employee was required or permitted to be employed in excess of the standard workweek of 40 hours without payment of the required overtime wages.

18.3. Convict Labor. In connection with the performance of work required by this Lease or any sublease, LESSEE agrees not to employ any person undergoing a sentence of imprisonment at hard labor.

18.4. Davis-Bacon Act. All construction workers, laborers, and mechanics employed by LESSEE, and each of its subcontractors and sub-subcontractors, who perform work under Paragraph 9, or in-kind work under Paragraph 3.3, are covered by the Davis-Bacon Act, as amended, 40 U.S.C. §§ 3141-3148, and the implementing regulation at, 29 C.F.R. pt. 5, (together, the "Davis-Bacon Act"), and shall be paid wages and rates not less than those prevailing on similar work in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act. To the extent that there is not a prevailing wage for a particular labor category and the Davis-Bacon Act permits a negotiated wage to be paid, the negotiated wage may be paid. LESSEE will cause its general contractor(s) to comply and assure compliance by its subcontractors and sub-subcontractors.

19. NOTICES. Notices shall be sufficient under this Lease if made in writing and submitted in the case of LESSEE to:

The City of Key West  
Attn: City Manager  
PO Box 1409  
Key West, FL 33041-1409

And in the case of the GOVERNMENT to:

Commanding Officer, Naval Facilities Engineering Command Southeast  
Attn: Real Estate Contracting Officer, (Lease Contract No: N69450-12-RP-00166)  
Box 30A, Bldg 903, Room 260  
Jacksonville, Florida 32212-0030

AND

Public Works Officer  
Building A-629  
NAS Key West, FL

The above-named individuals shall be the representatives of the Parties and the points of contact during the term of this Lease. Any notice shall be deemed to have been given, unless delivered personally, when deposited in the U.S. mail, postage pre-paid, certified mail, return receipt requested, or delivered by express mail and addressed as set forth above or to another address that LESSEE or GOVERNMENT shall have stated to the other by like notice, or upon confirmation of receipt if sent by telefacsimile on a regular business day and addressed as set forth above, or within twenty-four (24) hours, or the next business day if sent by a recognized overnight delivery service.

20. **AUDIT.** This Lease and the Accounting Records will be subject to audit by the GOVERNMENT. LESSEE will make available to the GOVERNMENT and/or its agents all Accounting Records and any other records related to this Lease and the Leased Premises. If any audit shall disclose any inaccuracy of greater than two percent (2%) error with respect to the amount of rent paid to the GOVERNMENT then this Lease may be immediately terminated by the GOVERNMENT.

21. **INTEREST.** Notwithstanding any other provision of this Lease, unless paid within thirty (30) calendar days, all amounts that become payable by LESSEE to GOVERNMENT under this Lease (net of any applicable tax credit under the Internal Revenue Code) shall bear interest from the date due. The rate of interest will be the Current Value of Funds Rate published by the Secretary of the Treasury under the Debt Collection Act of 1982 (31 U.S.C. § 3717). Amounts shall be due upon the earliest of (a) the date fixed by this Lease, (b) the date of the first written demand for payment, consistent with this Lease, including demand consequent upon default termination, (c) the date of transmittal by GOVERNMENT to LESSEE of a proposed supplemental agreement to confirm completed negotiations fixing the amount, or (d) if this Lease allows for revision of prices, the date of written notice to LESSEE stating the amount of refund payable in connection with a pricing proposal or in connection with a negotiated pricing agreement not confirmed by lease supplement.

22. **AGREEMENT.** This Lease shall not be modified except in a single writing that is signed by both LESSEE and GOVERNMENT. No oral statements or representation made by, or for, on behalf of either LESSEE or GOVERNMENT shall be a part of this Lease. Should conflict arise between the provisions of this Lease and any attachment to it, or any other agreement between GOVERNMENT and LESSEE, the provisions of this Lease shall take precedence.

23. **FAILURE TO INSIST ON COMPLIANCE.** The failure of GOVERNMENT to insist in any one or more instances upon performance of any of the terms, covenants, or conditions of this Lease shall not be construed as a waiver or relinquishment of GOVERNMENT's right to the future performance of any of those terms, covenants, or conditions and LESSEE's obligations for their future performance shall continue in full force and effect.

24. **DISPUTES.**

24.1. This Lease is subject to the provisions of the Contract Disputes Act of 1978, as amended, (41 U.S.C. § 7101-7112) (the "Disputes Act").

24.2. Except as provided in the Disputes Act, all disputes arising under or relating to this Lease shall be resolved under this clause and the provisions of the Disputes Act.

24.3. "Claim", as used in this clause, means a written demand or written assertion by LESSEE or GOVERNMENT seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of Lease terms, or other relief arising under or relating to this Lease. A claim arising under this Lease, unlike a claim relating to this Lease, is a claim that can be resolved under a Lease clause that includes the relief sought by the claimant. However, a written demand or written assertion by LESSEE seeking the payment of money exceeding \$100,000 is not a claim under the Disputes Act until certified as required by Paragraph 24.5. A voucher, invoice, or other routine request for payment that is not in dispute is not a claim under the Disputes Act. The request may be converted to a claim under the Disputes Act by complying with the submission and certification requirements of this clause, if it is disputed either for liability or amount or is not acted upon in a reasonable time.

24.4. A claim by LESSEE shall be made in writing and submitted within six (6) years after accrual of the claim to GOVERNMENT (Attention: RECO), for a written decision. A claim by GOVERNMENT against LESSEE shall be subject to a written decision by GOVERNMENT (RECO).

24.5. LESSEE shall deliver the certification stated in Paragraph 24.6. when submitting any claim:

24.5.1. Exceeding One Hundred Thousand Dollars (\$100,000); or

24.5.2. Regardless of the amount claimed, when using:

24.5.2.1. Arbitration conducted pursuant to 5 U.S.C. §§ 575-580; or

24.5.2.2. Any other alternative means of dispute resolution ("ADR") technique that the agency elects to handle in accordance with the Administrative Dispute Resolution Act ("ADRA").

24.6. The certification statement is as follows:

"I certify that the claim is made in good faith; that the supporting data is accurate and complete to the best of LESSEE's knowledge and belief; that the amount requested accurately reflects the Lease adjustment for which LESSEE believes the GOVERNMENT is liable; and that I am duly authorized to certify the claim on behalf of LESSEE."

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

24.8. The certification may be executed by any person duly authorized to bind LESSEE for the claim.

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

24.10. The decision of the GOVERNMENT shall be final unless LESSEE appeals or files a suit as outlined in the Disputes Act.

24.11. At the time a claim by LESSEE is submitted to the Commanding Officer, Naval Facilities Engineering Command Southeast, or a claim by GOVERNMENT is presented to LESSEE, the Parties may agree to use alternative means of dispute resolution. When using arbitration conducted under 5 U.S.C. § 575-580 or when using any other ADR techniques that the agency elects to handle in accordance with ADRA, any claim, regardless of amount, shall be accompanied by the certification described in Paragraph 24.4.2.2. and executed in accordance with Paragraph 24.4.4.

24.12. GOVERNMENT shall pay interest on the amount found due and unpaid by it from (1) the date the (RECO) received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in the Federal Acquisition Regulation (48 C.F.R. § 33.201), interest shall be paid from the date that the (RECO) initially receives the claim. Simple interest on claims shall be paid at the rate fixed by the Secretary of the Treasury, as stated in the Disputes Act, which is applicable to the period during which the (RECO) receives the claim and then at the rate applicable for each six (6) month period as fixed by the Secretary of the Treasury during the pendency of the claim.

24.13. Notwithstanding anything in this Paragraph, LESSEE shall proceed diligently with the performance of this Lease pending final resolution of any request for relief, claim, appeal, or action arising under this Lease, and comply with any decision of the GOVERNMENT.

**25. COVENANT AGAINST CONTINGENT FEES.** LESSEE warrants that no person or agency has been employed or retained to solicit or obtain this Lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial agencies maintained by LESSEE for the purpose of obtaining business. For breach or violation of this warranty, GOVERNMENT shall have the right to annul this Lease without liability or in its discretion to require LESSEE to pay, in addition to the rent or consideration, the full amount of the commission, percentage, brokerage, or contingent fee.

**26. OFFICIALS NOT TO BENEFIT.** No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of the Lease or to any benefit to arise therefrom, but this provision shall not be construed to extend to this Lease if made with a corporation for its general benefit.

**27. LIENS.** LESSEE shall promptly discharge, or cause to be discharged, a valid lien, right *in rem*, claim, or demand of any kind, except one in favor of GOVERNMENT that at any time may arise or exist regarding the Leased Premises or materials or equipment furnished to it, or work done on it, or to any part of it, by LESSEE's use of the Leased Premises. If the lien, right, claim, or demand shall not be promptly discharged by LESSEE, or should a petition be filed by or against LESSEE in bankruptcy, or should LESSEE file for liquidation or make an assignment on behalf of creditors, or should the leasehold estate be taken by execution, GOVERNMENT reserves the right to take immediate

possession without any liability to LESSEE. LESSEE shall be responsible for any costs incurred by GOVERNMENT in obtaining clear title to its property due to their acts or omissions clouding the title.

28. **TAXES.** LESSEE shall pay to the proper authority when and as the same become due and payable all taxes, assessments, and similar charges that, at any time during the term of this Lease may be imposed on the Leased Premises. 10 U.S.C. § 2667(f) contains the consent of Congress to the taxation of LESSEE's interest in the Leased Premises, whether or not the Leased Premises are in an area of exclusive Federal jurisdiction. Should Congress consent to taxation of GOVERNMENT's interest in the Leased Premises, this Lease will be renegotiated.

29. **SUBJECT TO EXISTING AND FUTURE EASEMENTS.** This Lease is subject to all outstanding easements and rights in the nature of an easement (collectively, "easements") for the location of any type of facility under, over, across, in, and upon all or any part of the Leased Premises, and to the right of GOVERNMENT to grant additional easements under, over, across, in and upon the Leased Premises for the public interest. However, GOVERNMENT shall coordinate with LESSEE to minimize any impact to LESSEE's operations, and any additional easement shall be conditioned on the assumption by its grantee of liability to LESSEE for damages that LESSEE shall suffer for property destroyed or rendered unusable on account of the grantee's exercise of its easement rights. There is hereby reserved to the holders of outstanding easements or which may be granted later, to any workers officially engaged in the construction, installation, maintenance, operation, repair, or replacement of facilities located on the easement area, and to any Federal, state, or local official engaged in the official inspection of that work, reasonable rights of ingress and egress over the Leased Premises that may be necessary for the performance of their duties with regard to those facilities, subject to Paragraph 10..

30. **INGRESS, EGRESS, PARKING AND SECURITY.**

30.1. LESSEE, and its employees, vendors, and invitees will be granted reasonable access to the Leased Premises under this Lease. As a condition, LESSEE and their employees, vendors, and invitees, agree to adhere to all Installation rules and regulations regarding Installation security, ingress, egress, safety and sanitation that may be prescribed from time to time by the Installation Commanding Officer. LESSEE will ensure all cruise ship passengers are transported (ex., by shuttle) off and on of the Leased Premises during berthing events. LESSEE and any and their employees, vendors, and business invitees, shall coordinate parking with the appropriate office of the installation. LESSEE and its invitees and contractors agree to absorb all costs, including time and expense, associated with gaining access to the installation under the RAPIDGATE or similar program.

30.2. Installation Security. The Leased Premises is located on a secure Navy Installation and LESSEE and any are required to comply with all applicable security rules, regulations, and procedures issued by the Installation Commanding Officer. All employees of LESSEE that are required by the Installation to do so, shall obtain a security clearance to access the Leased Premises. Failure to obtain the required security clearance shall result in denial of access to the Leased Premises of LESSEE's employees. **LESSEE agrees to hold harmless GOVERNMENT from any liability of any nature for financial or other losses incurred by LESSEE by reason of LESSEE's employees failure to obtain security clearance for access to the Leased Premises.** The prior sentence shall survive the termination of this Lease.

31. **ADMINISTRATION**. Except as otherwise stated in this Lease, the RECO shall have complete charge of the administration of this Lease, including granting any consents and approvals hereunder it, and shall exercise full supervision and general direction insofar as the interests of GOVERNMENT are affected. The RECO's Administrative Representative, identified below, is authorized to administer this lease and oversee the execution of in-kind projects:

Ms. Robin McCarthy  
Realty Specialist  
NAVFAC Southeast  
PO BOX 30, Bldg 135 N  
NAS Jacksonville, FL 32212-0030

32. **DAMAGE TO THE LEASED PREMISES**. In the event all or any part of the Leased Premises is damaged either directly or indirectly as a result of LESSEE's use or occupancy, whether during the construction, operation, maintenance, or replacement, or removal of improvements or otherwise, due to acts or omissions of LESSEE, its agents, contractors, or employees, LESSEE shall, upon demand, either compensate GOVERNMENT for the loss or damage, or rebuild, replace, or repair the item or items of the Leased Premises or facilities so lost or damaged, as GOVERNMENT may elect.

33. **APPLICABLE RULES AND REGULATIONS**.

33.1. LESSEE shall comply with all Federal, state, and local laws, regulations, ordinances and restrictions that are applicable, or may become applicable, to LESSEE's activities on the Leased Premises. This includes, but is not limited to, laws and regulations concerning the environment, construction of facilities, health, safety, food service, water supply, sanitation, and any licenses and permits to conduct business. LESSEE is responsible for obtaining and paying for permits required for its operations under this Lease.

33.2. Further, all activities authorized under this Lease shall be subject to rules, regulations, and procedures regarding installation security, supervision, or otherwise, that may, from time to time, be prescribed by the Installation Commanding Officer.

34. **SUBCONTRACTORS AND AGENTS FOR LESSEE**. All work involving LESSEE facilities must be performed by skilled tradesmen who are accomplished at their craft and bonded against loss due to damages resulting directly or indirectly from work performed.

35. **PAYMENTS**. All cash payments to the GOVERNMENT required under this Lease shall be made by check or postal money order made payable to the "United States Treasury" and sent to the following address: Commanding Officer, Naval Facilities Engineering Command Southeast, Attn: Real Estate Contracting Officer, Box 30A, Bldg 903, Room 260, Jacksonville, Florida 32212-0030 (Lease Contract No: N69450-12-RP-00166).

36. **SURRENDER**. Upon the expiration of this Lease or its prior termination, and subject to the election of GOVERNMENT, LESSEE shall quietly and peacefully remove itself and its personal



property from the Leased Premises and surrender possession to GOVERNMENT. However, in the event GOVERNMENT shall terminate this Lease upon less than ninety (90) days notice, LESSEE shall be allowed a reasonable period of time, as determined by the RECO, but in no event less than thirty (30) days from receipt of notice of termination, in which to remove all of personal property from, and terminate its operations on, the Leased Premises. During the period prior to surrender, all obligations assumed by LESSEE under this Lease shall remain in full force and effect; provided, however, that if GOVERNMENT shall in its sole discretion, determine that any action is equitable under the circumstances, it may suspend, in whole or in part, any further accruals of rent, if any, or maximum amount to be expended between the date of termination of this Lease and the date of final surrender of the Leased Premises. GOVERNMENT may, in its discretion, declare any personal property that has not been removed from the Leased Premises upon termination as abandoned upon an additional ninety (90) days notice.

37. **REPRESENTATIONS.** LESSEE has examined, knows and accepts the condition and state of repair of the Leased Premises and the Installation of which it forms a part, and acknowledges that the GOVERNMENT has made no representation concerning such condition and state of repair, nor any agreement or promise to alter, improve, adapt, repair or keep in repair the same, or any item thereof, which has not been fully set forth in this Lease which contains all the agreements made and entered into between the LESSEE and the GOVERNMENT.

38. **SEVERABILITY.** If any provision of this Lease shall to any extent be invalid or unenforceable, the remainder of this shall not be affected thereby, and each provision of this Lease, unless specifically conditioned upon such invalid or unenforceable provision, shall be valid and enforceable to the fullest extent permitted by law.

39. **TEMPORARY VACATION.** Temporary vacation of the Leased Premises may be required within a 72 hour time period in the case of a National Emergency or other unforeseen event. A Plan of vacation will be provided to the Public Works Officer showing evacuation routes, alternate sites and vehicle removal plans. The LESSEE will be responsible for any cost incurred by the GOVERNMENT should the GOVERNMENT have no option but to clear the Leased Premises for mobilization purposes. Non-compliance with or untimely execution of the Plan of Vacation are grounds for Lease termination. Rental payments will be adjusted according to the length of required vacation by Modification to the Lease. Notwithstanding the above provisions, the GOVERNMENT reserves the right, in its sole discretion, to require the LESSEE to remove any or all temporary and permanent buildings in the case of such extreme National Emergency.

40. **STATION MEETINGS.** The LESSEE representative shall meet with the Local GOVERNMENT Representative as often as necessary, but not less than monthly. A mutual effort will be made to resolve all problems identified. The written minutes of those meetings, prepared by the LESSEE, shall be signed by the LESSEE and the Designated Installation Representative. Should the Designated Installation Representative not concur with the minutes, the Designated Installation Representative shall state, in writing, to the LESSEE any areas of disagreement within five (5) days. These meetings are not to replace the quarterly meetings between the GOVERNMENT and LESSEE as stated in Paragraph 3.3.2.

41. **RECORDING.** If a statutory short form or Memorandum of this Lease is required to be recorded, LESSEE shall cause it to be prepared and recorded at its expense. In no event shall LESSEE cause this entire Lease to be recorded, and a recordation of this entire Lease by LESSEE shall constitute a breach of this Lease.

42. **FEDERAL FUNDS.** This Lease does not obligate any appropriated funds.

43. **HEADINGS.** The headings of paragraphs in this Lease are used solely for ease of reference. They may not be used to construe the meaning of all or any part of a paragraph.

44. **ATTACHMENTS.** Attachments to this Lease are set forth below:

- A. The Leased Premises
- B. Joint Inspection and Inventory Report (JIIR)
- C. Environmental Condition of Property (ECP) Document
- D. Berthing Procedures
- E. Schedule of Monthly Deliverable Documents

**IN WITNESS WHEREOF**, the Parties have, on the respective dates set forth below, duly executed this Lease effective as of the day and year first above written.

**GOVERNMENT**

**WITNESS:**

Sign: Cassandra S. Norris  
Print Name: CASSANDRA S. NORRIS

The United States of America  
By the Secretary of the Navy  
By: [Signature]  
ROBERT W. MCDOWELL, III  
Real Estate Contracting Officer

Date: 5/19/14

**LESSEE**

**WITNESS:**

Sign: Susan P. Harrison  
Print Name: SUSAN P. HARRISON

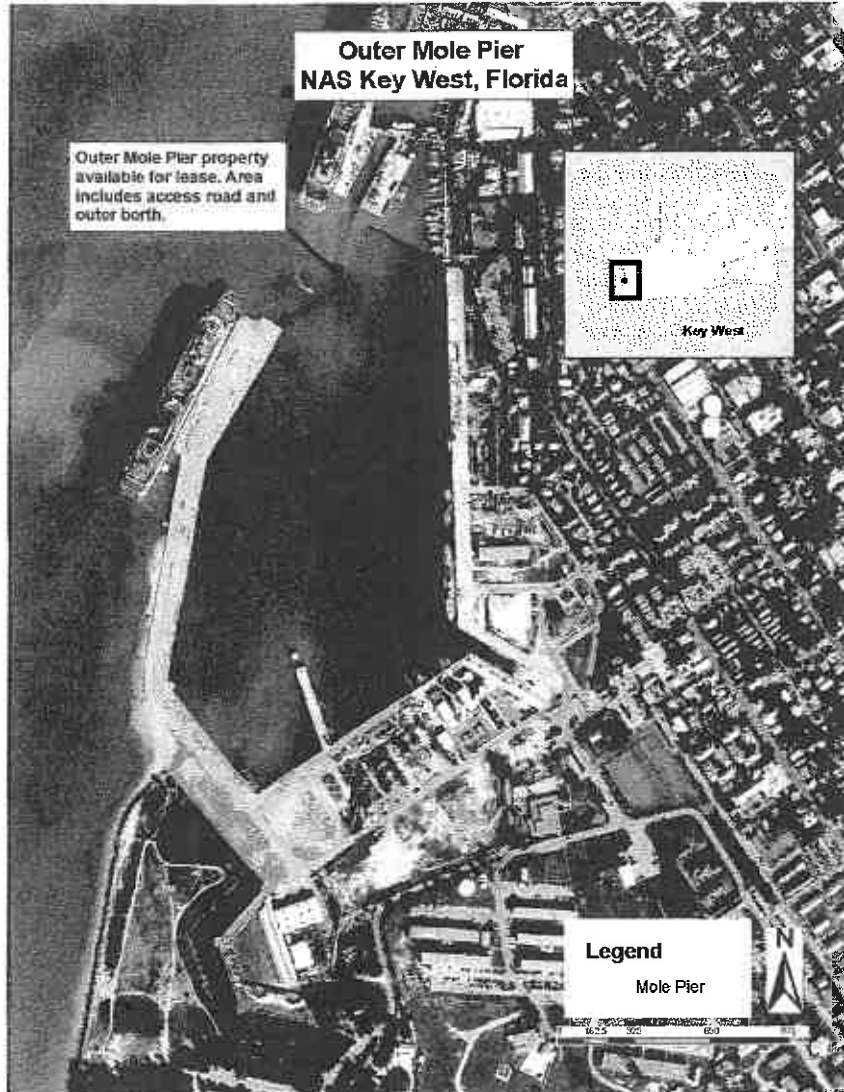
City of Key West, Florida  
By: [Signature]  
Craig Cates  
Mayor

Date: January 30, 2014

Cheri Smith  
City Clerk  
Sign: [Signature]  
Print Name: Cheryl Smith

# Attachment A

## The Leased Premises





**Attachment B**

**JOINT INSPECTION AND INVENTORY REPORT (JIIR)**

**Name of Installation:** NAVAL AIR STATION KEY WEST      **UIC:** N00213  
**Location:**      TRUMAN ANNEX      **AREA:** Outer Mole Pier  
**Date of Inspection:** 5/6/2014  
**iNFADS current:**    Yes / No  
**Contract Number:** N69450-12-RP-00166  
**Commencement Date:** \_\_\_\_\_ **Termination Date:** \_\_\_\_\_  
**Options:**      Three (3) option renewal periods of 5 years each, NTE 20 years total  
**Grantee:**      City of Key West  
**Grantor:**      U.S. Government  
**Type of In/Outgrant:** Out-Lease  
**Intended use:**      Cruise Ship Berthing  
**Address:**      Truman Annex, Outer Mole Pier  
**Area:**      800 linear feet and ingress/egress to the pier berth

**Physical Condition of the Property**

1. Grantor is presently using the property for the following purpose(s):  
Cruise berthing; Powerboat and Sailboat Races
2. Property (is) / (is not) suitable for intended use (Circle one).
3. Describe any/all present property uses that would be incompatible with Grantee's intended use:  
N/A
4. Describe and document any major physical conditions that need to be addressed/corrected:  
Shelters need maintenance (i.e. rust)
5. List and describe any safety concerns that need to be addressed:  
N/A

6. Describe any/all items discovered in the physical inspection that do not comply with the terms and conditions of the agreement:

N/A

The following personnel have inspected the premises on 6 May 2014 and agree to the findings and conditions listed on this report:

NAVFAC SE

GRANTOR

Inspected By: Robin McCarthy

Inspected By: James Bouquet

Signed:  Signed: 

Additional

Comments: N/A  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

JIRR PICTURES 2014











**ENVIRONMENTAL CONDITION OF PROPERTY (ECP) CHECKLIST**

**Installation:** Naval Air Station, Key West, Florida

**Parcel/Site Location and Description:** Approximately 800 feet of the outer portion of the Mole Pier at Truman Annex (See Lease (N69450-12-RP-00166) Truman Annex, Naval Air Station Key West Florida.

**Proposed Real Estate Action Description:** Lease renewal for the continued temporary use of the Mole Pier as an alternate dock to berth cruise ships.

**SITE SUMMARY INFORMATION**

**1. Information regarding site uses and any hazardous materials, contamination, or conditions.** All available and pertinent files, records, reports and aerial photographs were reviewed and, where necessary, a site inspection and/or personal interviews were conducted to document the environmental conditions of the property to support the proposed real estate action. A summary of the conditions, sources of information (including location), and any required use restrictions are provided for each environmental condition.

**A. Parcel/Site Uses:**

Prior Uses: Docking Facility

Current Uses: Docking Facility

Future Uses: Docking Facility

**B. Contaminants:**  Yes  No  Unknown

If yes, identify contaminant and media:

Source of information: Records reviews, Interviews and Subsequent Investigations. Documents maintained in NAVY NIRIS data base.

Restrictions or Land Use Controls:  Yes  No

If yes, please identify and explain in detail in Section 2 below.

**C. Hazardous Materials Use:**  Yes  No  Unknown

**Hazardous Materials Storage:**  Yes  No  Unknown

Type of HM:

Type of Use and/or Storage:

Source of information: Records reviews, Interviews and Subsequent Investigations. Documents maintained in NAVY NIRIS data base.

Restrictions or Land Use Controls:  Yes  No

If yes, please identify and explain in detail in Section 2 below.

**D. Treatment, Storage, Disposal of Hazardous Waste:**  Yes  No  Unknown

Source of information: Records reviews, Interviews and Subsequent Investigations.

Restrictions or Land Use Controls:  Yes  No

If yes, please identify and explain in detail in Section 2 below.

**E. Underground Storage Tanks:**  Yes  No  Unknown

UST No. \_\_\_\_\_ Gals. \_\_\_\_\_

Source of information: Records reviews, Interviews and Subsequent Investigations. Documents maintained in NAVY NIRIS data base.

Restrictions or Land Use Controls:  Yes  No

If yes, please identify and explain in detail in Section 2 below.

# ENVIRONMENTAL CONDITION OF PROPERTY (ECP) CHECKLIST

**F. Above-Ground Storage Tanks:**  Yes  No

AST No. 6 Gals. 1000 gal gasoline

Source of information: Records reviews, Interviews and Subsequent Investigations. Documents maintained in NAVY NIRIS data base.

Restrictions or Land Use Controls:  Yes  No

If yes, please identify and explain in detail in Section 2 below.

**G. Presence of Polychlorinated Biphenyl's (PCB's):**  Yes  No  Unknown

Source of information: Records reviews, Interviews and Subsequent Investigations. Documents maintained in NAVY NIRIS data base.

Restrictions or Land Use Controls:  Yes  No

If yes, please identify and explain in detail in Section 2 below.

**H. Asbestos:**  Yes  No  Unknown

If yes:  Friable  Non-friable  Unknown

Source of information: Records reviews, Interviews and Subsequent Investigations. Documents maintained in NAVY NIRIS data base. No asbestos survey conducted in association with this report. Presence of asbestos is not expected, however underground transite pipes may be present, see Section 2. Land Use Controls.

Restrictions or Land Use Controls:  Yes  No

If yes, please identify and explain in detail in Section 2 below.

**I. Lead Paint:**  Yes  No  Unknown

Source of information: Records reviews, Interviews and Subsequent Investigations. Documents maintained in NAVY NIRIS data base. No LBP Survey conducted in association with this report. Presence of LBP is not likely, however due to age of overall facility possibility exists that some LBP may be encountered, see Section 2. Land Use Controls.

Restrictions or Land Use Controls:  Yes  No

If yes, please identify and explain in detail in Section 2 below.

**J. Radon:**  Yes  No  Unknown

Source of information: Records reviews, Interviews and Subsequent Investigations. No Radon survey conducted, but typical Radon levels in the county are is 1.1 pCi/L, well below 4.0 pCi/L action levels per State of FL Dept. of Health.

Restrictions or Land Use Controls:  Yes  No

If yes, please identify and explain in detail in Section 2 below.

**K. Radiological Materials:**  Yes  No  Unknown

Source of information: Records reviews, Interviews and Subsequent Investigations. Documents maintained in NAVY NIRIS data base.

Restrictions or Land Use Controls:  Yes  No

If yes, please identify and explain in detail in Section 2 below.

**L. Solid/Bio-Hazardous Waste:**  Yes  No  Unknown

Source of information: Records reviews, Interviews and Subsequent Investigations. Documents maintained in NAVY NIRIS data base.

Restrictions or Land Use Controls:  Yes  No

If yes, please identify and explain in detail in Section 2 below.

**M. Munitions and Explosives of Concern:**  Yes  No  Unknown

Source of information: Records reviews, Interviews and Subsequent Investigations. Documents maintained in NAVY NIRIS data base.

Restrictions or Land Use Controls:  Yes  No

If yes, please identify and explain in detail in Section 2 below.

# ENVIRONMENTAL CONDITION OF PROPERTY (ECP) CHECKLIST

**N. Threatened or Endangered Species:**  Yes  No  Unknown

Source of information: Records reviews, Interviews and Subsequent Investigations. See Section O. below.

Restrictions or Land Use Controls:  Yes  No

If yes, please identify and explain in detail in Section 2 below.

**O. Natural or Cultural Resources:**  Yes  No  Unknown

Source of information: Records reviews, Interviews and Subsequent Investigations. The submerged/shoreline areas of the proposed lease are covered under the Florida Keys National Marine Sanctuary designation that protects 2,900 square nautical miles of waters surrounding the Florida Keys. The shoreward boundary of the sanctuary is the mean high-water mark. See Section 2. Land Use Controls below.

Restrictions or Land Use Controls:  Yes  No

If yes, please identify and explain in detail in Section 2 below.

**P. Use of Adjacent Property:**

Current Use: Military

Past Use: Military

Source of information: Records reviews, Interviews and Subsequent Investigations. Documents maintained in NAVY NIRIS data base. See Item R for more information and Section 2 for Land Use Controls.

Restrictions or Land Use Controls:  Yes  No

If yes, please identify and explain in detail in Section 2 below.

**Q. Has the site had any Notices of Violation?**  Yes  No.

If yes, please explain:

Source of information: Records reviews, Interviews and Subsequent Investigations.

Restrictions or Land Use Controls:  Yes  No

If yes, please identify and explain in detail in Section 2 below.

**R. Additional information or comments regarding questions shown above (attach sheet(s) if additional room is needed):**

All answers provided on this ECP checklist were based on information available to the NAS Key West Public Works Department Environmental Division and Site Visit conducted 28 Feb 2014.

Source of information:

Restrictions or Land Use Controls:  Yes  No

If yes, please identify and explain in detail in Section 2 below.

**2. List of Land Use Controls required for Real Estate Action:**

Natural and Cultural Resources within submerged/shoreline areas of the proposed lease are covered under the Florida Keys National Marine Sanctuary designation as regulated under CFR Title 15: Commerce and Foreign Trade, Part 922: National Marine Sanctuary Program Regulations, Subpart P—Florida Keys National Marine Sanctuary.

Unknown existence of lead based paints and asbestos within proposed lease area. Contractors should be advised on the possibility of disturbing lead based painted surfaces or uncovering asbestos containing pipe (transite pipe) during ground disturbing activities. Contact NASKW Environmental Office with any questions.



## Attachment D

### Berthing Procedures

The following terms and conditions govern the berthing procedures for joint use of the Premises by the Government and the Lessee:

1. The Government will attempt to schedule Government vessels or Government sponsored vessels intending to utilize the Outer Mole Berth portion of the Premises at least twenty-four (24) hours in advance.
2. Berthing of larger Government or Government sponsored-vessels (those preferring Outer Mole berthing) will be handled in the following order of precedence if the Lessee desires to utilize the Outer Mole Berth and provide alternative berthing that can accommodate the Government's need for berthing.
  - a. If the Outer Mole Berth is available on the dates and times required by the Government, Government and Government sponsored-vessels shall be berthed there.
  - b. If the Outer Mole Berth is previously scheduled for use by another vessel covered by this Lease on the date requested, and the Lessee elects to displace the Government or Government sponsored vessel from the Outer Mole Berth to support Lessee sponsored ship berthing and the Captain of the Government or Government sponsored-vessel determines that his/her ship can safely be berthed at an Inner Mole Berth, then the ship will be berthed at an Inner Mole Berth.
  - c. If the Outer Mole Berth is so scheduled and the Government or Government sponsored-vessel cannot be berthed at the Inner Mole due to safety/security concerns or unavailability, then the Lessee will make Mallory Dock available for berthing. If Mallory Dock is used, the vessel will not be required to be relocated for the nightly sunset celebration. If sewage, other utility service normally provided for at the Mole, and/or special Anti-Terrorism/Force Protection measures are required, Mallory Dock shall not be used unless provisions are made to accommodate the requirements at Lessee's expense.
  - d. If berths at the Mole Pier and Mallory Dock are all unavailable, then the Government or the Government sponsored-vessel may be berthed on the East Quay. The Lessee will determine the availability of Mallory Dock and East Quay berthing.
  - e. If no other suitable berths are available for Government and Government sponsored-vessels, the Lessee will shift a vessel berthed (or scheduled to be berthed) at the Outer Mole Berth to an alternate site in order to permit use of the Outer Mole Berth by the Government. The Government's use will take priority over any other Mole berthing thereby displacing other vessels of required to provide Government use. In such event, the Lessee shall have no claims against the Government.

The following additional terms and conditions apply for periods when the Government agrees to displace its vessels from the Outer Mole Berth.

1. The Lessee agrees to provide all services required to provide alternative dock sites at the Port of Key West, including the Inner Mole, East Quay, Pier 8, and Mallory Dock at no additional cost to the Government beyond those costs necessary for the Government to berth at the Outer Mole Berth. These services include but are not limited to potable water, telephone (communications), electrical power, sanitary sewer service, solid waste disposal (except at Mallory Dock if not available) and tug services.
  - a. Utility services will be billed and paid upon metered usage. Lessee will be responsible for installing and maintaining any meters necessary for Government use of the Lessee owned property
  - b. Lessee will provide tug services at established commercial rates or as otherwise negotiated with the Government. However, if a Government or Government sponsored-vessel would have berthed at the Outer Mole Berth without tugboat assistance, but does not because of Lessee use, then the Lessee will pay for any tug serviced required to berth the vessel at one of the alternative locations mentioned above.
  - c. Solid waste disposal will be provided at all Lessee property in accordance with established practice or as may otherwise be agreed to between the Government and the Lessee.
  - d. The Government, at its option, may provide any or all of these services through its own sources.
  
2. To the extent to which the Lessee seeks to have the Government use any of the Port of Key West alternate dock sites in lieu of the Mole Pier, the Lessee agrees to maintain the alternate dock sites in the condition necessary to accommodate the relocated Government vessels. Lessee will ensure that any upgrades to Lessee utilities including, but not limited to potable water, sewer, telecommunications, or power connections will meet established Government standards. For any upgrades requested by the Government, in writing, for meeting uniquely Government facility requirements beyond which are available at the Outer Mole Berth, that exceed the cost of routine repair/replacement, the Government will bear the cost. The Lessee shall bare the cost of any utility work required to support ships at alternate (non-Government) berthing locations if those utility provisions are available at the Outer Mole Berth and are requested for ship support.

## **Attachment E**

### **Schedule of Monthly Deliverable Documents**

Documents\* to be provided to GOVERNMENT no later than the 10th of each month ("Monthly Deliverable Documents"):

1. Cover letter accounting for the rent owed to the GOVERNMENT for that month.
2. Rent check payable to U.S. Treasury Department (unless paying with in-kind consideration).
3. Monthly Cruise Ship Schedule.
4. U.S. Customs and Border Protection, Vessel Entrance or Clearance Statement, CBP Form 1300, for each ship berthed at the Mole Pier during the prior month.
5. City of Key West US Navy Outer Mole Pier Payment Record based on Port Operations Monthly Arrived Data
6. Statement of the deposit account established by LESSEE pursuant to Subparagraph 3.3.1 itemizing the beginning and ending balance of the deposit account and all transactions affecting the account that occurred during the previous month (a printout of the of the account from the bank's website will suffice)

\*Sample documents for #1 through #5 are attached for reference.



## Cover Letter (E-1)



Post Office Box 6434  
Key West, Florida 33041-6434  
[www.keywestcity.com](http://www.keywestcity.com)

December 3, 2013

Commander, Naval Facilities Engineering Command Southeast  
ATTN: Real Estate Contracting Officer  
BOX 30A, Bldg. 903, Room 260  
Jacksonville, Florida 32212-0030

To Whom It May Concern:

Please find enclosed payment for the License Contract No. N69450-13-RP00085 for use of the Outer Mole Pier at the Truman Annex, Naval Air Station Key West, Florida, in the amount of \$56,876.00.

The following adjustments in the payment are as indicated:

Payment 1 November - 30 November 2013	\$56,876.00
---------------------------------------	-------------

If you should have any questions please do not hesitate to call me at 305-809-3790.

Sincerely,

A handwritten signature in cursive script that reads "Martha Arencibia".

Martha Arencibia  
Port Coordinator  
City of Key West  
[marencib@keywestcity.com](mailto:marencib@keywestcity.com)

C: Bob Vitas, City Manager  
Robin McCarthy, Realty Specialist, IPT South Atlantic NAVFAC SE



# Monthly Cruise Ship Schedule (E-3)

## December 2013

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1 10/1/2013	2 Ryndam (M) 1200-1800 ✓	3 Imagination (OM) 0730-1330 Sunshine (B) 1000-1800 530-1700	4	5 Majesty (B) 0930-1800	6 Victory (B) 0730-1400 Regatta (M) 0800-1400	7 Nieuw Amsterdam (OM) 0900-1700 Disney Magic (B) 0630-1700
8 Ecstasy (B) 1200-2000	9 Ryndam (OM) 1200-1800 Disney Wonder (B) 1030-1700	10 Imagination (OM) 0730-1330 Carnival Magic (B) 1000-1900	11 Grandeur (B) 0900-1700	12 Silver Spirit (M) 0800-1645 Majesty (B) 0930-1800	13 Constellation (B) 0700-1700	14 Serenade (B) 0800-1630
15 Constellation (B) 0700-1700	16 Disney Wonder (B) 1030-1700	17 Imagination (OM) 0730-1330 Brilliance (B) 1130-1730	18	19 Eurodam (OM) 0800-1600 Majesty (B) 0930-1800	20 Victory (B) 0730-1400	21 Nieuw Amsterdam (OM) 0900-1700 Disney Magic (B) 0630-1700
22 Constellation (B) 0700-1700	23 Freedom (B) 0800-1600 Ryndam (M) 1200-1800 ✓ Serenade (OM) 1100-1700	24 Imagination (OM) 0730-1330 Constellation (B) 0700-1700	25 Fascination (B) 0700-1500	26 Majesty (B) 0930-1800	27	28 Eurodam (B) 0800-1700
29 Noordam (OM) 0800-1700 Constellation (B) 0700-1700	30 Ryndam (M) 1200-1800 ✓ Serenade (B) 1100-1700 Fascination (OM) 0700-1500	31 Imagination (OM) 0730-1330 Brilliance (B) 1130-1730				

# Customs and Border Patrol (CBP) Form 1300 (E-4)

935

DEPARTMENT OF HOMELAND SECURITY  
U.S. Customs and Border Protection


Approved OMB, No. 1651-0019  
Exp. 02-28-2014

## VESSEL ENTRANCE OR CLEARANCE STATEMENT

18 CFR Part 4

See back for instructions

**NIEUW AMSTERDAM - CAPTAIN BAS VAN DREUMEL - DOB APRIL 5, 1973**  ENTRANCE  CLEARANCE

TRADE CODES (see back)						Check One: <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 6					
1. Manifest No. VI33		2. Port Arrival/Departure KEY WEST		3. Date & Time of Arrival/Departure 11/09/2013 9:00:00AM		4. Vessel Operating Draft (in feet and inches) 26 ft 0.2 in.					
5. Nationality, Name and Type of Vessel MS NIEUW AMSTERDAM THE NETHERLANDS PASSENGER (350)			6. Vessel Built at/Year ITALY, 2010			7. Name, Address & Phone No. of Ship's Agent Caribe Nautical Services, Greta Philips-Ford 3057970284 kwestships@aol.com					
8. Name & Country of Owner HOLLAND AMERICA LINE N.V. THE NETHERLANDS				9. Name & Country of Operator HOLLAND AMERICA LINE N.V. THE NETHERLANDS							
10. Gross Tonnage 96,273		11. Net Tonnage 53,711		12. Port Arrived From/Departed For COZUMEL, MEXICO		13. IMO # 9378450	Official # 10204	Call Sign PBWQ			
14. List All Dock Locations (continue on back if necessary) NAVY MOLE PIER											
15. Particulars of Voyage (Previous and subsequent Parts of Call, include dates; underline where remaining cargo will be discharged) (Cont't on back) REFER TO BACK PAGE											
16. Brief Description of Cargo NO CARGO ONBOARD/PASSENGER ONLY						17. <input type="checkbox"/> Check if Incomplete Manifest for Export <input type="checkbox"/> Check if Licensed Cargo Loaded <input checked="" type="checkbox"/> Check if Complete Manifest filed for Export					
18. No. of Crew 872		19. No. of Passengers 1,943		20. List All Carriers on board by SCAC Code HAWI							
21. Tonnage Mark <input type="checkbox"/> None <input type="checkbox"/> Submerged <input checked="" type="checkbox"/> Not Submerged			22. Bunkers: Type, Barrels, Value 0								
23. Load Line Expires 06/29/2015		24. Solas Certificate Expires 06/29/2014		25. Passengers Allowed Per Coast Guard Certificate 2,667		26. No. of Passengers Embarking/Disembarking 2					
27. Cert. Of Fin. Resp. No. (Water Pollution) and Exp. Date 842979-14 08/02/2016			28. Cert. Of Fin. Resp. (Passenger Death/Injury) C-1970 EFF 06/30/2010			29. Cert. Of Fin. Resp. (Passenger Transportation Indemnification) P-1279 EFF 01/13 EXPO9/01/18					
30. PURPOSE OF ENTRANCE OR CLEARANCE <input type="checkbox"/> D (Discharge Foreign Cargo) <input type="checkbox"/> X (Export Cargo Aboard on Arrival) <input type="checkbox"/> L (Laden Cargo for Discharge to be Laden) <input type="checkbox"/> F (FROB - Foreign Cargo to Remain on Board) <input checked="" type="checkbox"/> N (No Cargo transactions) <input type="checkbox"/> Y (Migrant Crew Discharge to be Laden)											
31. Print and Sign Name of Master, Authorized Agent or Officer, Date CAPTAIN BAS VAN DREUMEL						 11/09/2013					
<b>FOR CBP USE ONLY</b>											
32. <input type="checkbox"/> CBP User Fee Paid Up*			33. <input type="checkbox"/> APHS User Fee Paid Up*			34. <input type="checkbox"/> Tonnage Tax Paid Up *					
35. Cash Receipt, CBP 388 or Transaction No.			36. Total Fees Collected			37. Port Entered/Cleared, Time and Date					
38. CBP Officer Remarks											
39. Signature and Title of Officer Receiving Entry/Granting Clearance											

\*Check boxes only if fees not collected

## City of Key West US Navy Outer Mole Payment Record, Monthly (E-5)

**City of Key West**  
**US Navy Outer Mole Lease Payment Record**  
**Fiscal Year: 2011-2012**  
**Billing Report: Based on Port Operations - Monthly Arrival Data**

	October	November	December	January	February	March	April	May	June	July	August	September	Total
<b>Actual</b>													
Ships	6	6	11	9	13	10	7	6	5	4	2	2	81
Passengers	13,891	14,838	26,888	18,876	28,241	24,707	18,532	15,131	13,142	10,681	5,313	4,521	194,761
Rate Per Passenger	\$10.63	\$10.63	\$10.63	\$10.63	\$10.63	\$10.83	\$10.63	\$10.63	\$10.63	\$10.63	\$10.63	\$10.83	\$10.63
Gross Revenues	\$147,861	\$157,728	\$285,819	\$200,652	\$300,202	\$262,635	\$196,995	\$160,843	\$138,699	\$113,539	\$56,477	\$48,058	\$2,070,309
Less Security Surcharge Reduction													
Passengers	13,891	14,838	26,888	18,876	28,241	24,707	18,532	15,131	13,142	10,681	5,313	4,521	
Security Surcharge	(\$0.63)	(\$0.63)	(\$0.63)	(\$0.63)	(\$0.63)	(\$0.63)	(\$0.63)	(\$0.63)	(\$0.63)	(\$0.63)	(\$0.63)	(\$0.63)	(\$0.63)
Security Surcharge Reduction	(\$8,761)	(\$9,348)	(\$16,936)	(\$11,892)	(\$17,792)	(\$15,565)	(\$11,675)	(\$9,533)	(\$8,279)	(\$6,729)	(\$3,347)	(\$2,848)	(\$122,699)
Gross Revenues Less Security Surcharge	\$138,910	\$148,380	\$268,880	\$188,760	\$282,410	\$247,070	\$185,320	\$151,310	\$131,420	\$106,810	\$53,130	\$45,210	\$1,947,610
Navy Billing Rate	40%	40%	40%	40%	40%	40%	40%	40%	40%	40%	40%	40%	40%
Due - to Outer Mole Payment Fund	\$55,564	\$59,352	\$107,552	\$75,504	\$112,964	\$98,828	\$74,128	\$60,524	\$52,568	\$42,724	\$21,252	\$18,084	\$779,044
<b>Dockage</b>													
Total Feet	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Rate Per Foot	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Gross Revenues	\$3,058	\$2,947	\$5,736	\$4,142	\$8,302	\$5,157	\$3,489	\$3,088	\$2,288	\$1,630	\$915	\$915	\$39,867
Navy Billing Rate	40%	40%	40%	40%	40%	40%	40%	40%	40%	40%	40%	40%	40%
Due - Current Month	\$1,223	\$1,179	\$2,294	\$1,657	\$2,521	\$2,063	\$1,396	\$1,235	\$915	\$732	\$366	\$366	\$15,947
<b>Total Due Navy Outer Mole Pmt. Fnd. Fund</b>	<b>\$56,787</b>	<b>\$60,531</b>	<b>\$109,846</b>	<b>\$77,161</b>	<b>\$115,485</b>	<b>\$100,891</b>	<b>\$75,524</b>	<b>\$61,759</b>	<b>\$53,483</b>	<b>\$43,456</b>	<b>\$21,618</b>	<b>\$18,450</b>	<b>\$794,991</b>

Bank Account Statement (E-6)

- To be provided by the LESSEE -