

Department of the Army Business Terms Agreement  
for the  
Enhanced Use Lease, Fort Leonard Wood, Missouri

The United States Department of the Army (the “DA”), through the Request for Proposals dated January 18<sup>th</sup>, 2013, and relating to the Fort Leonard Wood Enhanced Use Lease (“EUL”), as supplemented or amended (the “RFP”), has solicited proposals from the undersigned (the “Offeror”) and others to lease and develop the Site (as defined in the RFP) and design, finance, construct, operate, maintain, and manage the Project (as defined in the RFP) on the Site pursuant to an Enhanced Use Lease and any other documents to be executed in connection with the transaction either by the DA or the DA and the Offeror (collectively, the “Transaction Documents”). The Offeror has submitted a proposal to the DA in response to the RFP (the “Proposal”) and is submitting this Bid Terms Agreement (this “Agreement”) with and as a required part of the Proposal. Capitalized terms used and not otherwise defined in this Agreement have the meanings given in the RFP. In consideration of the foregoing and being allowed to compete for an award with respect to the RFP, the Offeror acknowledges and agrees as follows:

1. The Proposal becomes irrevocable on the Closing Time, subject to the provisions of this Agreement, which provides for changes agreed to by DA during the approval of the Development Plan. Until such time as any changes are made the Offeror is legally bound by this Agreement and the terms of the Proposal, including without limitation the development concept (the “Development Concept”) and the type and value of the consideration proposed to be provided to the DA as part of the EUL. The Proposal remains in force for one hundred eighty (180) days after the Closing Time. After the one hundred eighty (180) day period has expired and prior to the issuance by the DA of a Selection Notice (as defined below), the Offeror may either revoke, propose a modification to, or propose an extension of its Proposal by delivering to the DA written notice of such revocation, or proposals to either modify or extend. Upon receipt by the DA of a revocation notice, the Proposal shall be deemed to be revoked. If the Offeror proposes a modification or extension of its Proposal, the DA, in its sole discretion may approve or reject such proposal to modify or extend. If the DA accepts the Offeror’s proposal to modify or extend, the Proposal shall be extended for an additional hundred eighty (180) day period. If the DA rejects the Offeror’s proposal to modify or extend the Proposal shall be deemed to be revoked upon the DA’s rejection.
2. Any and all risks of error or mistake (including any omission) in the completion or submission of the Proposal, including this Agreement, or any other documentation submitted by the Offeror shall, as between the DA and the Offeror, be borne solely by the Offeror. No error or

mistake in the completion or submission of the Proposal, this Agreement or any other documentation shall relieve the Offeror of any of its obligations hereunder or under the RFP.

3. The Offeror is responsible for conducting, and represents and warrants that, to the extent the Offeror deems it necessary or appropriate, it has conducted, its own due diligence regarding the Site, including, without limitation, whether (i) the development of the Site, as contemplated by the Proposal, can be accomplished in compliance with applicable Federal, state and local laws (including zoning and other local land use restrictions); (ii) the condition of the Site is suitable for the Offeror's contemplated use; (iii) the necessary permits, variances, special exceptions, and other governmental actions or approvals required for the contemplated development reasonably can be obtained (at no cost or expense to the DA); and (iv) the contemplated use is otherwise practical and economically feasible.

4. If an Offeror and its Proposal is selected by the DA, the selected Offeror becomes the Selected Lessee. The DA will provide the Selected Lessee with a written notification of its selection (the "Selection Notice"). The Selection Notice will be accompanied by the duplicate original of this Agreement executed by the Selected Lessee (submitted with the Proposal) and a copy of the Milestone Timetable agreed to by the Selected Lessee and the DA (the "Agreed Milestone Timetable"). The DA may issue a Selection Notice that is conditional (a "Conditional Selection Notice") upon the Selected Lessee and the DA reaching agreement, within a timeframe specified in the Conditional Selection Notice, on certain matters regarding the Proposal that are not acceptable to the DA or with respect to which it requests clarification. If the DA issues a Conditional Selection Notice and the conditions set forth therein are met, the DA will then issue a Selection Notice. If the DA issues a Conditional Selection Notice and the conditions are not met, as determined by the DA in its sole and absolute discretion, then the conditional selection of the Selected Lessee may be revoked by the DA (which revocation may operate automatically and without any action on the part of the DA if the Conditional Selection Notice so provides) and the Selected Lessee shall have no rights or recourse against the DA with respect thereto. The Agreed Milestone Timetable, to be attached as Schedule 1 hereto, and the Proposal, including, without limitation, the Development Concept, as the same may be amended or revised at the request of the DA prior to the issuance of a Selection Notice, are incorporated into and made a part of this Agreement.

5. Following receipt of a Selection Notice, the Selected Lessee shall prepare a Development Plan in accordance with the Development Concept contained in the Proposal. The Development Plan shall comply with the requirements, terms, and conditions regarding a Development Plan as set forth in the RFP, including, without limitation, the provisions of Section 3 of the RFP. No material deviation from the Development Concept, including, without limitation, the type and value of consideration proposed therein to be provided to the DA, shall be permitted or effective unless approved in writing by the DA. Following the receipt of a Selection Notice, the Selected Lessee shall complete the Development Plan and meet the other milestones contained in the Agreed Milestone Timetable in a timely manner.

6. Within 30 days of receipt of Selection Notice, the Selected Lessee shall submit to DA a financial plan demonstrating a detailed strategy for securing financing for the project capital and operating expenses. The plan shall be updated with the submission of the complete Development Plan including the demonstration of financial feasibility.
7. Within five (5) Business Days of receipt from the DA of the execution form of the EUL and any other Transaction Documents, the Selected Lessee (and/or any other party thereto) shall execute and deliver the same to the DA.
8. The Selected Lessee understands that time is of the essence to the DA in accomplishing the milestones set forth on the Agreed Milestone Timetable and in otherwise complying with the Selected Lessee's obligations under this Agreement. If the Selected Lessee fails in any material respect to meet in a timely manner any milestone contained in the Agreed Milestone Timetable or fails to execute and deliver any of the Transaction Documents as and within the timeframe required by the preceding paragraph or otherwise fails to comply with or breaches any provision of this Agreement, the DA will have the right to declare the Selected Lessee in default under this Agreement and, upon any such default, the DA shall have the right to (i) terminate the Selected Lessee's rights under this Agreement (and all further discussions with the Selected Lessee) and (ii) in the DA's sole and absolute discretion, if it so chooses, make an award to another offeror.
9. Except for such representations and warranties of the DA as are expressly set forth in the EUL or any other Transaction Document to which the DA is a party, the DA makes no representations or warranties of any kind (whether express, implied, or arising by operation of law). Without limiting the foregoing, the DA makes no representation or warranty regarding the suitability of the Site for use of any kind.
10. Each of the Proposal and this Agreement have been, and any and all amendments, additions, and clarifications thereto and any other documents submitted to the DA in connection with the Proposal or the RFP have been or, if submitted hereafter, will be executed and delivered by a duly authorized representative of the Selected Lessee. The Selected Lessee has all requisite corporate or other authority necessary to submit the Proposal (including this Agreement) to the DA, to agree to any amendments, additions, and clarifications made thereto by the Selected Lessee, and to submit such other documents as the Selected Lessee has submitted or hereafter submits to the DA in connection with the RFP, the Proposal, or the contemplated transaction, and to be legally bound by the terms and conditions thereof and the RFP. This Agreement constitutes a valid and binding obligation of the Selected Lessee enforceable against the Selected Lessee in accordance with its terms (except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws affecting the enforcement of the rights of creditors generally and the application of equitable principles in any proceeding, whether at law or in equity).

11. Without limiting the indemnification and hold harmless obligation of the Selected Lessee set forth in the RFP, the Selected Lessee hereby indemnifies and holds harmless the DA and the United States and each of their respective officers, employees, contractors, and advisors and their respective successors and assigns (the “Indemnified Parties”) from and against (i) any and all claims asserted against any Indemnified Party arising from or relating in any way to any act or omission of the Selected Lessee or any person acting on behalf of or in conjunction with the Selected Lessee in connection with or as a result of the Selected Lessee’s or such other person’s participation or efforts to participate in the RFP process or in anticipation thereof, including without limitation the preparation or submission of the Proposal and this Agreement, and including without limitation any claim of any real estate or other broker, agent or finder (other than any such person retained by the DA), and any and all liabilities, losses, costs, and expenses (including reasonable attorneys’ fees and expenses) incurred as a result or in defense of any such claim; and (ii) any and all liabilities, losses, costs, and expenses (including reasonable attorneys’ fees and expenses) incurred by the DA in connection with any action taken by the DA to defend or enforce any of its rights and/or remedies under this Agreement or otherwise in connection with the RFP process, the Proposal, or this Agreement.

12. It is understood and agreed by the Selected Lessee that the DA is not obligated, and may not have the authority, to agree to any substantive change to the form of EUL or any other Transaction Documents included as part of the RFP or the structure of any transaction contemplated thereby.

13. The Selected Lessee represents, warrants, and covenants to the DA as follows:

(a) the Selected Lessee has read, and has had an opportunity to review with its legal counsel, the RFP (including, without limitation, all supplements thereto) and fully understands and is fully capable of complying with all of its terms and conditions and the obligations of the Selected Lessee set forth therein, including without limitation the Disclaimer that is a part thereof, and the Selected Lessee has had an opportunity to ask and has received satisfactory responses from the DA regarding the RFP;

(b) without limiting the foregoing, the Selected Lessee has read, and has had the opportunity to review with its legal counsel, this Agreement and the form of the EUL and other Transaction Documents included in the RFP and understands and is fully capable of complying with all of the terms, conditions, and obligations of the Selected Lessee set forth therein, including any and all time frames specified for performance in the Agreed Milestone Timetable;

(c) the information provided in the Proposal is true and correct in all material respects as of the date of the Proposal and, in the event any of such information ceases at any time to be true and correct in all material respects, the Selected Lessee promptly shall so inform the DA in writing (specifically identifying such information);

(d) (i) neither the Selected Lessee nor any of its partners, members, board members or principal stockholders (as defined below) is debarred or suspended from doing business with the DA or any other federal government agency; (ii) if at any time the Selected Lessee or any of its partners, members, board members or principal stockholders is proposed to be debarred or suspended from doing business with the DA or any other federal government agency, the Selected Lessee will immediately so advise the DA in writing; (iii) neither the Selected Lessee nor any of its partners, members, board members or stockholders is listed on the most current “Excluded Parties List System” published by the U.S. General Services Administration at <https://www.sam.gov/portal/public/SAM/>, as updated from time to time; (iv) neither the Selected Lessee nor any of its partners, members, board members or stockholders is a person who poses a security or safety risk as determined by the Secretary of State including, but not limited to, any person who either represents a country, or is a member of or provides political, financial, or military support to a group, that is listed in the most current “Country Reports on Terrorism” report, issued by the Secretary of State in compliance with 22 U.S.C. § 2656f(a), available from the Superintendent of Documents, U.S. Government Printing Office, Washington D.C. 20402 and also available at <http://www.state.gov/documents/organization/195768.pdf>; (v) neither the Selected Lessee nor any of its partners, members, board members or principal stockholders is subject to a criminal indictment or information for a felony in any court in the United States; and (vi), in conjunction with any proposed assignment of this Lease, the assignment would, as determined pursuant to an opinion of the DA’s Office of Counsel, not cause or result in a violation of any federal ethics law or regulation to include, but not be limited to, the “Standards of Ethical Conduct For Employees of the Executive Branch,” 5 C.F.R. 2635, 2637 and 2641. For purposes of this Lease, the term “principal stockholder” shall mean any person who is a beneficial owner (as defined for purposes of Rule 13d-3 promulgated by the Securities and Exchange Commission) of ten percent (10%) or more of the outstanding stock or other equity of the Lessee. For purposes of this Agreement, the term “principal stockholder” shall mean any person who is a beneficial owner (as defined for purposes of Rule 13d-3 promulgated by the Securities and Exchange Commission) of ten percent (10%) or more of the outstanding stock or other equity of the Selected Lessee.

(e) Neither the Selected Lessee, nor any of its affiliates, nor any of their respective officers, directors, partners, principals, agents, employees, or parties in interest has in any way colluded, conspired, connived, or agreed, directly or indirectly, with any other offeror, firm, or person to submit a collusive or sham proposal in connection with this RFP, or to take (or not take) any other action designed, or the effect of which is reasonably likely to be, to limit or curtail competition among prospective offerors with respect to the RFP.

14. Except as is otherwise set forth in the EUL and other Transaction Documents, each of the Selected Lessee and the DA shall pay its own expenses (including legal, accounting, investment banker, broker, or finder’s fees) incurred in connection with the RFP, the Proposal, this Agreement, and any transaction contemplated thereby, (including without limitation the

preparation and submission of the Proposal and related documentation and review and execution of this Agreement by the Selected Lessee and the preparation and dissemination of the RFP and review and evaluation of RFP proposals by the DA).

15. This Agreement may be amended or modified, and the terms hereof waived, only by a written instrument signed by the DA and the Selected Lessee. No failure or delay on the part of the DA to exercise any right, power, or privilege hereunder shall operate as a waiver thereof; nor shall any waiver on the part of the DA of any such right, power, or privilege, or any single or partial exercise of any such right, power, or privilege, preclude any other or further exercise thereof or the exercise of any other or subsequent right, power, or privilege.

16. To the maximum extent permitted by law, all disputes arising under or relating to this Agreement shall be resolved under the provisions of the Contract Disputes Act, 41 U.S.C. § 601 et seq. (the “Disputes Act”) and applicable regulations. For purposes of implementing this subsection, the DA will designate the person (the “Designated DA Representative”) authorized to act on its behalf under and in connection with administration of this Agreement. The Designated DA Representative shall be considered the “contracting officer” for purposes of the Disputes Act. The Designated DA Representative’s decision shall be final unless a party appeals or files suit as provided in the Disputes Act. The parties shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to this Agreement, and comply with any decision of the Designated DA Representative.

17. The Selected Lessee shall not assign or otherwise transfer this Agreement or any of its rights or obligations under this Agreement or with respect to the RFP or the Proposal without the prior written consent of the DA (which consent may be granted or withheld in the sole and absolute discretion of the DA), and any attempted transfer or assignment in violation of this provision shall (i) be void and of no force or effect, and (ii) constitute a material default under this Agreement and entitle the DA to exercise its rights and remedies hereunder with respect thereto.

18. The Selected Lessee shall not be liable for any failure to perform under this Agreement or any delay in performing under this Agreement (including any failure to meet a milestone set forth in the Agreed Milestone Timetable) if such failure is due directly to any of the following causes or circumstances and such cause or circumstance is beyond the Selected Lessee’s control (and such event, an event of Force Majeure): war, fire, riot, terrorist act, flood, or other extreme weather, accident, change (hereafter) in any law or regulation, labor strike or lockout, or failure of the DA to take an action required to be taken by it. If an event of Force Majeure occurs and the Selected Lessee is delayed in its performance as a result thereof, the Selected Lessee shall be entitled to an extension of time equal to the period of delay caused by the Force Majeure event, provided that the Selected Lessee notifies the DA in writing of the event of Force Majeure and the anticipated resultant delay within five (5) days after the occurrence of the event of Force Majeure.

19. This Agreement shall be binding on and inure to the benefit of the DA (and its successors and assigns) and the Selected Lessee (and its permitted successors and assigns), and there shall be no third party beneficiaries. This Agreement shall be binding upon the Selected Lessee as of the Closing Time, and shall remain binding on the Selected Lessee even if the Proposal is revoked in accordance with this Agreement. Neither the DA's execution nor delivery of this Agreement shall be required in order for the DA to be entitled to enforce this Agreement against the Selected Lessee. The DA shall execute and deliver this Agreement only if a Selection Notice is issued to the Selected Lessee and only for the purpose of confirming its agreement with the Agreed Milestone Schedule and the other provisions of this Agreement relating to the performance by the Selected Lessee of its obligations arising upon receipt of a Selection Notice.

20. If the Selected Lessee receives a Selection Notice, unless otherwise specified by the DA, the Selected Lessee shall provide the DA with six (6) hard copies and one (1) electronic copy of the Development Plan and each other item submitted to the DA (whether required by the Agreed Milestone Timetable or submitted voluntarily by the Selected Lessee). The electronic copy of a submission must be included on a single diskette or CD ROM in PDF format. In addition, any Excel or other spreadsheets that allow data to be manipulated must be included in their native (i.e., Excel) format.

21. Any and all notices, demands, requests and other communications given or delivered under or by reason of or in connection with the provisions of this Agreement shall be in writing, and shall be given by certified or registered mail, postage prepaid, by delivery by hand or by nationally recognized air courier service, or by facsimile transmission directed, in the case of the Selected Lessee, to the address or facsimile transmission number set forth below and, in the case of the DA, to the address or facsimile transmission number set forth below:

Selected Lessee

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Facsimile No.: \_\_\_\_\_

Department of the Army

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Facsimile No.: \_\_\_\_\_

Items directed to the DA must also be clearly labeled with the Selected Lessee's full name and the following subject heading: "Fort Leonard Wood Enhanced Use Lease".

Notices shall become effective when received (or refused) by the addressee, provided that any notice or communication that is received (or refused) other than during regular business hours of the recipient on a business day shall be deemed to have been given at the opening of business on the next business day. From time to time, either party may designate a new address or telecopy number for purposes of notice hereunder by notice hereunder to such effect to the other party.

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IN WITNESS WHEREOF, this Agreement has been duly executed and delivered as of the Closing Time by a duly authorized officer or representative of the Offeror/Selected Lessee.

Offeror/Selected Lessee:

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

Name:

Title:

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered as of the date of the Selection Notice by a duly authorized officer or representative of the DA solely for the purposes set forth herein.

DA:

Department of the Army

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

Name:

Title: