



DISCOVER ▶ INNOVATE ▶ TRANSFORM

**ADDENDUM #1**  
**DECEMBER 29, 2015**  
**TO**  
**REQUEST FOR PROPOSALS**  
**FOR**  
**THE SUBLEASE OF REAL PROPERTY**

**Fort Monmouth**  
**Building 603 Research & Development Facility**  
**Oceanport, New Jersey**

Issued by the

**FORT MONMOUTH ECONOMIC REVITALIZATION AUTHORITY**

Date Issued: December 9, 2015

**Responses due by 12:00 P.M. EST on January 8, 2016**

**This ADDENDUM is being issued to provide a template of the sublease agreement to be utilized for the sublease of Building 603 Research & Development Facility.**

**FORT MONMOUTH ECONOMIC REVITALIZATION AUTHORITY**

**SUBLEASE AGREEMENT**

THIS SUBLEASE AGREEMENT (the "Sublease") is made as of \_\_\_\_\_, 2016, (the "Effective Date") between the Fort Monmouth Economic Revitalization Authority (hereinafter referred to as "FMERA" or "Sublessor"), an independent authority and instrumentality of the State of New Jersey created by N.J.S.A. 52:271-18 et seq. with the powers set forth therein and with its principal address at 502 Brewer Avenue, Oceanport, New Jersey, 07757, and \_\_\_\_\_ ("Sublessee"), a \_\_\_\_\_ of the State of \_\_\_\_\_, having an address at \_\_\_\_\_.

WITNESSETH:

WHEREAS, on behalf of the United States Secretary of Defense, the Office of Economic Adjustment recognizes Sublessor as the Local Redevelopment Authority for Fort Monmouth, located in the Boroughs of Oceanport, Eatontown and Tinton Falls, New Jersey;

WHEREAS, Sublessor has acquired a leasehold interest in the Property (defined below) pursuant to that certain lease agreement between the Army and FMERA dated \_\_\_\_\_, 2016 (the "Lease");

WHEREAS, On December \_\_\_\_, 2015, Sublessor issued a Request for Proposals ("RFP") for subleasing the Property;

WHEREAS, Sublessee timely submitted the highest scoring, responsive proposal in response to the RFP;

WHEREAS, Sublessee desires to sublease the Property from Sublessor;

**DEFINITIONS**

For all purposes of this Sublease Agreement, the following terms shall have the respective meanings set forth below:

"Agreement" means this Sublease Agreement, as the same may be amended, modified or supplemented from time to time by the parties hereto.

"Army" means the United States Army and any division, department or agency thereof.

"NJDEP" mean the New Jersey Department of Environmental Protection.

"Personal Property" means any and all furniture, fixtures and equipment located within Building 603 as of the Effective Date.

"Subleased Premises" (a/k/a the "Property") means Building 603, totaling approximately 11,009 gross square feet, and associated parking area and surrounding area, containing approximately 1.75 acres

identified in Exhibit A, lying and being in the Oceanport Reuse Area of Fort Monmouth, in the Borough of Oceanport, County of Monmouth and State of New Jersey.

NOW THEREFORE

That the Sublessor for the consideration hereinafter set forth, hereby subleases to Sublessee a leasehold estate, for the Term as set forth below, in and to the Subleased Premises and the Personal Property.

THIS SUBLEASE is granted subject to the following conditions:

### **1. AUTHORIZED REPRESENTATIVES**

Any reference to "Sublessor" or "Sublessee" shall include any permitted assignees, or successors and their duly authorized representatives.

### **2. USE OF THE SUBLEASED PREMISES**

a) During the Term, the Subleased Premises and the Personal Property may be used, in the absence of prior written approval of the Sublessor, solely for scientific, engineering and/or information technology related research and development purposes that are consistent with FMERA's land use regulations and design and development guidelines (N.J.A.C. 19:31C-3, the "Land Use Rules").

b) Subject to the Section 38 of this Agreement, Sublessor grants Sublessee a license to enter the Property prior to commencement of the Term for the purpose of undertaking improvements to the Property.

### **3. TERM**

The Subleased Premises are subleased for a term (the "Term") of \_\_\_ [to be completed based on winning bidder's proposal] year(s), commencing on the Rent Commencement Date (defined below) and ending [\_\_\_] year(s) hence from the Rent Commencement Date with an option for two (2) additional twelve (12) month periods to be exercised upon mutual agreement of Sublessor and Sublessee; provided, however, the Term will terminate early in the event that FMERA does not obtain an extension of the Army's lease or acquire ownership of the Property before the Term expires. Notice of sublease expiration or renewal shall be due at six (6) months prior to respectively expiration of the Term. Any renewal of the Term shall be subject to both parties agreeing in writing to the sublease extension and the rent to be paid during the extension.

### **4. JOB CREATION COVENANT**

a) Sublessee shall cause the creation and/or relocation of a minimum of \_\_\_ [to be completed based on winning bidder's proposal] research and development positions at the Property within \_\_\_ [to be completed based on winning bidder's proposal] (\_\_\_) months of obtaining an initial certificate of occupancy.

b) Failure to comply with the covenant set forth in Paragraph 4(a) above shall be a material breach of this Agreement.

### **5. RENT**

a) Rent shall commence to accrue and be payable (the "Rent Commencement Date") on the business day that follows receipt by Sublessee of a temporary Certificate of Occupancy for the Subleased Premises. Sublessee covenants and agree to pay Sublessor rent, in advance, on the first day of each month during the Term of this Sublease as follows:           [to be completed as per winning bidder's proposal]          . Such net rent shall be in addition to, and over and above all other payments to be made by Sublessee as herein provided

b) Bid Deposit – Sublessor acknowledges that Sublessee paid to Sublessor a bid deposit in the amount of \$                     which shall be applied to pay rent as it accrues and becomes due.

c) General Rental Provisions

(1) All operating expenses and cost of utility service for the Subleased Premises shall be paid by Sublessee during the Term of the Sublease. Any property maintenance performed by Sublessor on Sublessee's behalf and all utility expenses paid by Sublessor in connection with the Subleased Premises shall be reimbursed to Sublessor by Sublessee at the rate 100% of the cost or expenses paid by Sublessor and within thirty (30) days of being billed by Sublessor.

(2) Upon Sublessor acquiring title to the Property from the Army, Sublessee shall make payments to the Borough of Oceanport in lieu of real estate taxes in accordance with N.J.S.A. 52:27I-30.

(3) It is the purpose and intent of Sublessor and Sublessee that the rent set forth in Paragraph 5(a) above shall be absolutely net to Sublessor, so that this Sublease shall yield net to Sublessor the rent specified in Paragraph 5(a) above during the Term of this Sublease and any renewal periods, and that all costs, operating expenses, maintenance, utility service and obligations, of every kind and nature whatsoever relating to the Subleased Premises that may arise or become due during the Term of this Sublease and any renewal periods shall be paid by Sublessee. Sublessor shall not be responsible for any operating expenses for the Subleased Premises except as expressly set forth in this Sublease.

(4) The rent shall be paid to Sublessor without notice or demand and without abatement, deduction or set-off, except as otherwise expressly set forth herein in current funds at an address or in a manner specified by Sublessor.

(5) If the Rent Commencement Date occurs on a day other than the first of the month, the rent for the partial month shall be prorated based upon the total number of days in the full calendar month and paid before Sublessee takes occupancy of the Subleased Premises.

(6) For any installment of rent payable by Sublessee which is not paid within fifteen (15) days after the date due, Sublessee will pay to Sublessor a late charge equal to two percent (2%) of such past due amount.

**6. RENOVATIONS AND MAINTENANCE**

a) Renovations by Sublessor – [This provision to be refined based on final agreement of the parties]

Sublessor agrees to expend not more than \$15,000 to complete the following renovations, repairs and cleaning prior to the Rent Commencement Date:

- (1) Complete identified and agreed upon in-house repairs;
- (2) Complete general cleaning of the building and custodial services;
- (3) Shampoo all existing carpeting which will remain with the building;
- (4) Replace and remove carpeting which is identified by FMERA as unsalvageable;
- (5) Patch and repair damage to walls of Building 603 and paint and/or wash down walls of associated rooms;
- (6) Provide IDP cabling to the building's demarc room to enable Sublessee to distribute cabling throughout the building; and
- (7) Provide an operational safety shower.

b) Renovations and Operations, Maintenance and Repair by Sublessee. Sublessee shall be responsible for the following:

- (1) Installation of any and all incidental wiring, security and computer cabling, etc. at Sublessee's sole cost and expense;
- (2) Operating, maintaining and repairing the Subleased Premises as follows: reasonably clean and free from dirt and other refuse matter; replace all glass windows, doors, which become broken; keep and maintain all waste and drain pipes within the Subleased Premises open; operate, maintain and repair under the supervision of a "black seal" certified boiler operator all boilers and boiler systems servicing the Subleased Premises; operate, maintain and repair all damage to plumbing within the Subleased Premises; keep in reasonably good order and repair and maintain all heat, air-conditioning, ventilation, mechanical, electrical, gas and plumbing systems within the Subleased Premises; keep in reasonably good order and repair and maintain all non-structural portions of the Subleased Premises; and generally keep and maintain the Subleased Premises in as reasonably good order and repair as they are at the Rent Commencement Date.

## **7. APPLICABLE LAWS AND REGULATIONS**

- a) The Sublessee shall comply with all applicable Federal, state, and local laws, ordinances, regulations and standards that are or may become applicable to its activities on the Subleased Premises, including, but not limited to, those regarding the environment, construction, health, safety, food service, water supply, sanitation, use of pesticides, and licenses or permits to do business.
- b) Each worker hired or employed by Sublessee in connection with the improvement, repair, restoration or renovation of the Subleased Premise shall be paid not less than the prevailing wage rate for the worker's craft or trade, as determined by the Commissioner of Labor & Workforce Development pursuant to the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq.

## **8. CONDITION OF THE SUBLEASED PREMISES**

- a) The Sublessee acknowledges that it has inspected or has had the opportunity to inspect the Property and accepts the condition and state of repair of the Property. The Sublessee understands and agrees that

the Property and any part thereof is subleased "AS IS" and "WHERE IS" without any representation, warranty, or guarantee by Sublessor as to quantity, quality, title, character, condition, size, or kind, or that the same is in condition or fit to be used for the purpose(s) intended by the Sublessee, and no claim for allowance or deduction upon such grounds will be considered. Other than the obligations of Sublessor set forth in Paragraph 6(a) and 9(b), Sublessor shall be under no duty or obligation to make any repairs or alterations to the Subleased Premises.

b) The Sublessor and the Sublessee have jointly conducted an inventory and condition survey of the Subleased Premises, to include the environmental condition, prior to the Effective Date. The inventory and condition survey is documented in a Condition Survey report prepared by the Army and attached as Exhibit B to this Sublease. The Condition Survey will refer to and incorporate by reference the Environmental Condition of Property Report ("ECP") prepared by the Army, as well as any other environmental conditions that may not be specifically identified in the ECP. Preceding expiration, revocation or termination of this Sublease, the Sublessor and the Sublessee will jointly conduct a close-out survey. All significant variances from the initial Condition Survey shall be clearly documented in the close-out report. This close-out report will constitute the basis for settlement by the parties for any subleased property shown to be lost, damaged, contaminated, or destroyed during the Term, in determining any environmental restoration requirements to be completed by the Sublessee and restoration of the Subleased Premises as required in the condition on RESTORATION.

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

## **9. CERTIFICATE OF OCCUPANCY/CODE COMPLIANCE**

a) Subject to the obligation of Sublessee to pay all costs and expenses related to any improvements to the Subleased Premises that Sublessee may undertake pursuant to Section 38 of this Sublease, Sublessor shall be responsible to cause the Borough of Oceanport to issue a Certificate of Occupancy for Sublessee's use of the Subleased Premises.

b) Sublessor shall cause the HVAC, power and fire alarm systems for the Subleased Premises to be code compliant as of the Rent Commencement Date.

## **10. UTILITIES**

a) Sublessor shall provide and maintain the infrastructure that supplies water, sewer and electric service to the Subleased Premises, either directly from utility companies or indirectly through existing Army-owned infrastructure. Sublessor shall not charge Sublessee any fee or charge above the rates or charges billed by the water utility company for utility service provided to the Subleased Premises.

b) Sublessee shall establish accounts with JCP&L, New Jersey American Water Company (NJAW) and New Jersey Natural Gas Company (NJNG).

c) The Sublessee shall pay the cost of producing and/or supplying any utilities and other services furnished by the Sublessor or through Army-owned facilities for the use of the Sublessee, including the Sublessee's proportionate share of the cost of operation and maintenance of the Army-owned facilities by which such utilities or services are produced or supplied. The Sublessee has the option of obtaining utility services directly from local utility providers. If utilities are obtained through Army facilities the Sublessee shall install meters at its expense.

## **11. PROTECTION OF PROPERTY**

The Sublessee, at Sublessee's sole cost and expense, shall keep the Subleased Premises and the Personal Property in good order and in a clean, safe condition by and at the expense of the Sublessee. The Sublessee shall be responsible for any damage that may be caused to property of the Army or FMERA during the Term by the activities of the Sublessee and/or its invitees or licensees under this Sublease, and shall exercise due diligence in the protection of all property located on the Subleased Premises against fire or damage from any and all other causes. Any property the Army or of FMERA damaged or destroyed incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Sublessee to a condition satisfactory to Sublessor, or at the election of Sublessor, reimbursement made therefor by the Sublessee in an amount necessary to restore or replace the property, except personal property, to a condition satisfactory to the Sublessor.

## **12. INSURANCE**

a) Upon execution of this Agreement by both parties, the Sublessee, shall procure and maintain from a reputable insurance company, or companies, comprehensive liability insurance. The insurance shall provide an amount not less than that which is prudent, reasonable and consistent with sound business practices or an amount not less than a combined single limit of Five Million (\$5,000,000) dollars for any number of persons or claims arising from anyone incident with respect to bodily injuries or death resulting therefrom, property damage, or both, suffered or alleged to have been suffered by any person or persons upon the Subleased Premises or arising from activities conducted under this Sublease.

b) The liability insurance policy shall insure the hazards of the Subleased Premises and operations conducted in and on the Subleased Premises, independent contractors, contractual liability, and shall name FMERA and the Army as insured parties. Each policy will provide that any losses shall be payable notwithstanding any act or failure to act or negligence of the Sublessee or FMERA or any other person; provide that the insurer will have no right of subrogation against FMERA; and be reasonably satisfactory to the Sublessor in all respects. Under no circumstances will the Sublessee be entitled to assign to any third party rights of action that it may have against FMERA arising out of this Sublease.

c) The Sublessee shall require that the insurance company give Sublessor thirty (30) days written notice of any cancellation or change in such insurance. Sublessor may require closure of any or all of the Subleased Premises during any period for which the Sublessee does not have the required insurance coverage. The Sublessee shall require its insurance company to furnish to Sublessor a copy of the policy or policies, or if acceptable to the Sublessor, certificates of insurance evidencing the purchase of such insurance. The minimum amount of liability insurance coverage is subject to revision by the Sublessor every year or upon renewal or modification of this Sublease.

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

### **13. RIGHT TO ENTER**

The right is reserved to FMERA, its officers, agents, and employees to enter upon the Subleased Premises at any time and for any purpose necessary or convenient in connection with government purposes; to make inspections, to make any other use of the lands as may be necessary in connection with government purposes, and the Sublessee shall have no claim for damages on account thereof against FMERA or any officer, agent, or employee thereof, except as may be authorized under the New Jersey Tort Claims Act or other applicable law. Sublessor will attempt to give a minimum of 24 hours notice prior to entry, but is not obligated to do so during emergencies when there is a potential threat to health, safety, loss of life, or property damage.

### **14. HOLD HARMLESS**

a) Sublessee hereby agrees to indemnify and hold harmless the Sublessor and the Army from and against any and all claims, damages, losses, judgments, liabilities, costs or reasonable expenses whatsoever which the Sublessor or the Army may incur in connection with the performance by the Sublessee of its rights and obligations under or related to this Sublease. The Sublessor agrees that it will give Sublessee prompt notice in writing of any actual or potential claim described above and the institution of any suit or action. The provisions of this paragraph shall survive the expiration or termination of this Sublease.

b) The Sublessee expressly waives all claims against FMERA and the Army for any such loss, damage, personal injury or death caused by or occurring as a consequence of such condition, possession and/or use of the Subleased Premises by the Sublessee, or the conduct of activities or the performance of responsibilities under this Sublease by the Sublessee, except with regard to existing conditions related to munitions or explosives of concern ("MEC") or hazardous substances for which the Army is responsible for under applicable law.

### **15. RESTORATION**



a) On or before the earlier of expiration, revocation, or termination date of this Sublease, the Sublessee and the Sublessor shall prepare an inventory and condition report showing the improvements and related personal property located on the Subleased Premises. This report shall constitute the basis for settlement of RESTORATION obligations under this Condition.

b) The Sublessee and the Sublessor will negotiate which property will be removed by Sublessee; which property will be surrendered to FMERA, with title reverting to FMERA without consideration; the restoration of the Subleased Premises required; and the time allowed for compliance with such actions. The Sublessee will then remove the agreed upon property; restore the Subleased Premises; and vacate the Subleased Premises.

c) If the Sublessee shall fail or neglect to remove said agreed property, then, at the option of the Sublessor, (a) title to said property shall revert to FMERA without compensation therefore, or (b) the Sublessor may cause the property to be removed as restoration of the Subleased Premises, set out in d. below.

d) If the Sublessee shall fail or neglect to restore the Subleased Premises, as agreed, the Sublessor may cause restoration work to be performed. The Sublessee shall pay FMERA on demand any sum which may be expended by FMERA after the expiration, revocation, or termination of this Sublease in restoring the Subleased Premises.

e) No claim for damages against FMERA or its officers or agents shall be created by or made on account of such reversion, removal and restoration, except for such claims as may be authorized under the New Jersey Tort Claims Act or other applicable law.

f) Each worker hired or employed by Sublessee to restore the Subleased Premises shall be paid not less than the prevailing wage rate for the worker's craft or trade, as determined by the Commissioner of Labor & Workforce Development pursuant to the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq.

## **16. NON-DISCRIMINATION**

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

## **17. SUBJECT TO EASEMENTS**

This Sublease is subject to all existing easements, or those subsequently granted as well as established access routes for roadways and utilities located, or to be located, on the Subleased Premises, provided that the proposed grant of any new easement or route will be coordinated with the Sublessee, and easements will not be granted which will, in the opinion of FMERA, interfere with the use of the Subleased Premises by the Sublessee.

## **18. SUBJECT TO MINERAL INTERESTS**

This Sublease is subject to all outstanding mineral interests. As to federally owned mineral interests, it is understood that they may be included in present or future mineral leases issued by the Bureau of Land Management (BLM) which has responsibility for mineral development on federal lands. The Sublessor

will provide lease stipulations to BLM for inclusion in said mineral leases that are designed to protect the Subleased Premises from activities that would interfere with the Sublessee's operations or would be contrary to local law.

## **19. PROHIBITED USES**

- a) The Sublessee shall not permit gambling or alcohol on the Subleased Premises or install or operate, or permit to be installed or operated thereon, any device which is illegal; or use the Subleased Premises or permit them to be used for any illegal business or purpose. There shall not be conducted on or permitted upon the Subleased Premises any activity which would constitute a nuisance.
- b) The Sublessee shall not construct or place any structure, improvement, leasehold improvement or advertising sign or allow or permit such construction or placement without prior written approval of FMERA and the Army.

## **20. NATURAL RESOURCES**

The Sublessee shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the Subleased Premises except as authorized in writing by the Sublessor.

## **21. ENVIRONMENTAL PROTECTION PROVISIONS**

- a) The Sublessee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs from activities of the Sublessee, the Sublessee shall be liable to restore the damaged resources. The Sublessee shall not discharge waste or effluent from the Subleased Premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance. The Sublessee must obtain approval in writing from FMERA before any pesticides or herbicides are applied to the Subleased Premises, unless a plan for such application has been approved by the Sublessor and all such applications are done pursuant to that plan.
- b) The Sublessee shall be solely responsible for obtaining at its own cost and expense any regulatory or environmental permits required for their operation under the Sublease. The Sublessee shall also be required to obtain its own EPA Identification Number if applicable.
- c) The rights of the Sublessor under this Sublease specifically include the right of the Sublessor to inspect, upon reasonable notice, the Subleased Premises for compliance with environmental, safety, and occupational health laws and regulations, whether or not the Sublessor is responsible for enforcing them. Such inspections are without prejudice to the right of duly constituted enforcement officials to make such inspections. The Sublessor normally will give the Sublessee twenty-four (24) hours prior notice of its intention to enter the Subleased Premises unless it determines the entry is required for safety, environmental, operations, or security purposes. The Sublessee shall have no claim on account of any entries against FMERA or any officer, agent, employee, or contractor thereof, except as may be authorized under the New Jersey Tort Claims Act or other applicable law.

d) The Sublessee acknowledges that it has received a fully executed copy of the Lease between the Army and FMERA. By entering into this Sublease, Sublessee represents that it accepts, assumes and agrees to comply with all of Sublessor's environmental obligations under the Lease.

## **22. NOTICE OF THE PRESENCE OF LEAD-BASED PAINT (LBP) AND COVENANT AGAINST THE USE OF THE PROPERTY FOR RESIDENTIAL PURPOSE**

a) The Sublessee is hereby informed and does acknowledge that all buildings on the Subleased Premises, which were constructed or rehabilitated prior to 1978, are presumed to contain lead-based paint. Building 286 is presumed to contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly.

b) The Subleased Premises are not being subleased for residential purposes. The Sublessee covenants and agrees that it shall not permit the occupancy or use of any buildings or structures on the Subleased Premises as Residential Property, as defined under 24 Code of Federal Regulations part 35, without complying with this section and all applicable Federal, State, and local laws and regulations pertaining to lead-based paint and/or lead-based paint hazards. Prior to permitting the occupancy of the Subleased Premises where its use subsequent to sublease is intended for residential habitation, the Sublessee specifically agrees to obtain written consent from the Army and, upon receiving written consent, to perform, at its sole expense, the Army's abatement requirements under Title X of the Housing and Community Development Act of 1992 (Residential Lead-Based Paint Hazard Reduction Act of 1992). Sublessee covenants and agrees that it shall manage the Subleased Premises in compliance with all applicable laws and regulations pertaining to lead-based paint and/or lead-based paint hazards and Army Regulation 420-1.

c) The Sublessee acknowledges that it has inspected or has had the opportunity to inspect the Subleased Premises as to its lead-based paint content and condition and any hazardous or environmental conditions relating thereto. The Sublessee shall be deemed to have relied solely on its own judgment in assessing the overall condition of all or any portion of the Subleased Premises, including, without limitation, any lead-based paint hazards or concerns.

## **23. NOTICE OF THE PRESENCE OF ASBESTOS AND COVENANT**

a) The Sublessee is hereby informed and does acknowledge that non-friable asbestos or asbestos containing material (ACM) may be found on the Subleased Premises. The Subleased Premises may also contain improvements, such as buildings, facilities, equipment, and pipelines, above and below the ground, that contain friable and non-friable asbestos or ACM. The Occupational Safety and Health Administration (OSHA) and the U.S. Environmental Protection Agency (EPA) have determined that unprotected or unregulated exposure to airborne asbestos fibers increases the risk of asbestos-related diseases, including certain cancers that can result in disability or death.

b) The Sublessee covenants and agrees that its use and occupancy of the Subleased Premises will be in compliance with all applicable laws and with Army Regulation 420-1.

C) The Sublessee acknowledges that it has inspected or has had the opportunity to inspect the Subleased Premises as to its asbestos and ACM content and condition, and any hazardous or environmental conditions relating thereto. The Sublessee shall be deemed to have relied solely on its own judgment in

assessing the overall condition of all or any portion of the Subleased Premises, including, without limitation, any asbestos or ACM hazards or concerns.

#### **24. OTHER ENVIRONMENTAL RESTRICTION**

a) ALTERATIONS, ADDITIONS AND IMPROVEMENTS TO THE SUBLEASED PREMISES: The Sublessee shall not construct, make or permit any alterations, additions, or improvements or otherwise modify the Subleased Premises in any way which may adversely affect the Army's investigations, restoration, or human health or the environment without prior written consent of the Army. Such consent may include a requirement to provide the Army with a performance and payment bond to it in all respects and other requirements deemed necessary to protect the interests of the Army. Except as such written approval shall expressly provide otherwise, all such approved alterations/additions/modifications shall become government property when annexed to Subleased Premises.

b) INTERFERENCE WITH ON-GOING RESTORATION. The Sublessee shall not disrupt, inflict damage, obstruct, or impede on-going environmental restoration work on the Subleased Premises or anywhere else on Fort Monmouth.

c) ARMY ACCESS CLAUSE. FMERA's rights under this Sublease specifically include the right for Army officials to inspect, upon reasonable notice, the Subleased Premises for compliance with environmental, safety, and occupational health laws and regulations, whether or not the Army is responsible for enforcing them. Such inspections are without prejudice to the right of duly constituted enforcement officials to make such inspections. The Army normally will give the Sublessee twenty-four (24) hours prior notice of its intention to enter the Subleased Premises unless it determines the entry is required for safety, environmental, operations, or security purposes. The Sublessee shall have no claim against FMERA or the Army or any officer, agent, employee, or contractor thereof on account of any entries, except as may be authorized under the Federal Tort Claims Act, State Tort Claims Act or other applicable law.

d) RIGHT OF ACCESS

(1) Pursuant to section 120(h)(3)(A)(iii) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §§ 9620(h)(3)(A)(iii)), the Army retains and reserves a perpetual and assignable right of access on, over, and through the Subleased Premises, to enter upon the Subleased Premises in any case in which an environmental response action or corrective action is found to be necessary on the part of the Army, without regard to whether such environmental response action or corrective action is on the Subleased Premises or on adjoining or nearby lands. Such right of access includes, without limitation, the right to perform any environmental investigation, survey, monitoring, sampling, testing, drilling, boring, coring, test-pitting, installing monitoring or pumping wells or other treatment facilities, response action, corrective action, or any other action necessary for the Army to meet its responsibilities under applicable laws and as provided for in this instrument. Such right of access shall be binding on the Sublessee and its successors and assigns and shall run with the land.

(2) In exercising such right of access, the Army shall provide the Sublessee or its successors or assigns, as the case may be, with reasonable notice of its intent to enter upon the Subleased Premises and exercise its rights under this clause, which notice may be severely curtailed or even eliminated in emergency

situations. The Army shall use reasonable means, but without significant additional costs to the Army, to avoid and to minimize interference with the Sublessee's and the Sublessee's successors' and assigns' quiet enjoyment of the Subleased Premises. At the completion of work, the work site shall be reasonably restored. Such right of access includes the right to obtain and use utility services, including water, gas, electricity, sewer, and communications services available on the Subleased Premises at a reasonable charge to the Army. Excluding the reasonable charges for such utility services, no fee, charge, or compensation will be due the Sublessee nor its successors and assigns, for the exercise of the right of access hereby retained and reserved by the Army.

(3) In exercising such right of access, neither the Sublessee nor its successors and assigns, as the case may be, shall have any claim at law or equity against FMERA, the Army or any officer, employee, agent, contractor of any tier, or servant of the Army based on actions taken by the Army or its officers, employees, agents, contractors of any tier, or servants pursuant to and in accordance with this covenant. Provided, however, that nothing in this paragraph shall be considered as a waiver by the Sublessee and its successors and assigns of any remedy available to them under the New Jersey or Federal Tort Claims Act. In addition, the Sublessee, its successors and assigns, shall not interfere with any response action or corrective action conducted by the Sublessor on the Subleased Premises.

e) SUBLESSEE COMPLIANCE DURING RESPONSE OR CORRECTIVE ACTION. The Sublessee will agree to comply with the provisions of the appropriate health or safety plan in effect during the course of any of the above-described actions. Any inspection, survey, investigation, or other corrective or response action will, to the extent practicable, be coordinated with representatives designated by the Sublessee.

f) ENVIRONMENTAL COMPLIANCE PLANS.

(1) Within thirty (30) days of the execution of this Sublease, the Sublessee shall submit to FMERA for transmittal to the Army, and maintain thereafter, an Environmental Compliance Plan which describes, in detail, the program for environmental management and method of compliance, by the user of any portion of the Subleased Premises, whether Sublessee, with all Army, Federal, State, and local laws and regulations for the use, management, generation, storage, treatment, and disposal of all hazardous waste, hazardous materials, and hazardous substances. Each Environmental Compliance Plan for a portion of the Subleased Premises, or request for waiver of the requirement for a plan due to the non-hazardous nature of the proposed use, must be submitted and approved in writing by the Army prior to occupancy of the intended portion of the Subleased Premises. Thereafter, each such Environmental Compliance Plan shall be incorporated in the Sublease, and shall be included as an exhibit in the relevant sublease(s). The Sublessee will be responsible for the overall compliance of its operations. The Sublessee will be responsible for ensuring the preparation of all documents, records, and reports associated with the environmental compliance of its operation. No liability or responsibility shall attach to FMERA, Fort Monmouth or the Army as a result of the Army's review and approval of the Environmental Compliance Plan under this paragraph.

(2) The Sublessee further agrees that in the event of any assignment or sublease of the Subleased Premises, it shall provide to the NJDEP a copy of the agreement or sublease of the Subleased Premises, by certified mail, within 14 days after the effective date of such transaction. The Sublessee shall delete the

financial terms and any other proprietary information from the copy of any agreement of assignment or sublease furnished pursuant to this condition.

g) SUBLESSEE RESPONSE PLAN. Within thirty (30) days of the execution of this Sublease, the Sublessee shall prepare and submit to FMERA for transmittal to the Army, and maintain thereafter, an Army-approved plan for responding to hazardous waste, fuel and other chemical spills prior to commencement of operations on the Subleased Premises. Such plan shall be independent of Fort Monmouth's Spill Contingency Plan and, shall not rely on use of Fort Monmouth installation personnel or equipment. Should the Army provide any personnel or equipment, whether for initial fire response and/or spill containment, or otherwise on request of the Sublessee, or because the Sublessee was not, in the opinion of the said officer, conducting timely cleanup actions, the Sublessee agrees to reimburse the Army for its response costs.

h) LAND USE RESTRICTIONS. The Army has undertaken careful environmental study of the Subleased Premises and concluded that the land use restrictions set forth below are required to ensure protection of human health and the environment. The Sublessee shall not undertake nor allow any activity on or use of the Subleased Premises that would violate the land use restrictions contained herein.

(1) Residential Use Restriction. The Sublessee shall not use the Subleased Premises for residential purposes. For purposes of this provision, residential use includes, but is not limited to: single family or multi-family residences; child care facilities; nursing home or assisted living facilities; and any type of educational purpose for children/young adults in grades kindergarten through 12.

(2) Groundwater Restriction. Sublessee shall not access or use groundwater underlying the Subleased Premises for any purpose without prior written approval of the Army and NJDEP. For the purpose of this restriction, "groundwater" shall have the same meaning as in section 101(12) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA").

(3) Excavation and Development Restriction. The Sublessee shall not conduct or permit others to conduct any excavation activities (i.e. digging, drilling, or any other excavation or disturbance of the land surface or subsurface) at the Subleased Premises without prior written approval of the Army, the , and NJDEP.

i) HAZARDOUS WASTE MANAGEMENT

The Sublessee will not store or dispose of hazardous materials on the Subleased Premises unless authorized under 10 U.S.C. § 2692. The Sublessee shall strictly comply with hazardous waste management requirements under RCRA and New Jersey hazardous waste management rules, including proper hazardous waste characterization, labeling, storage, disposal, and documentation requirements. Except as specifically authorized by FMERA and the Army in writing, the Sublessee must provide, at its own expense, such hazardous waste management facilities, as needed to maintain compliance with all laws and regulations. Army hazardous waste management facilities will not be available to the Sublessee. Any violation of the requirements in this condition shall be deemed a material breach of this Sublease.

j) EXISTING HAZARDOUS WASTE

The Sublessee will not use Fort Monmouth hazardous waste accumulation points. Neither will the Sublessee permit its hazardous wastes to be commingled with Fort -Monmouth's hazardous waste.

k) SUBLESSEE COMPLIANCE

The Sublessee shall comply with all lawful statutes, regulations, permits, or orders affecting the activity hereby authorized when such are issued by the Environmental Protection Agency; the NJDEP; or any other Federal, State, interstate, or local government agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the Subleased Premises by the Sublessee is prohibited.

l) SUBLESSEE COMPLIANCE DURING RESPONSE OR CORRECTIVE ACTION

The Sublessee will agree to comply with the provisions of the appropriate health or safety plan in effect during the course of any of the above-described actions. Any inspection, survey, investigation, or other corrective or response action will, to the extent practicable, be coordinated with representatives designated by the Sublessee.

m) PESTICIDE NOTIFICATION

The Sublessee, its successors, and assigns, is hereby notified and acknowledges that registered pesticides have been applied to the Subleased Premises and may continue to be present thereon. The Sublessor, represents that where pesticides were applied by Sublessor or at Sublessor's direction, it was applied in accordance with the pesticide's intended purpose and consistent with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA --7 U.S.C. Sec. 136, et seq.) and other applicable laws and regulations.

**25. SITE SPECIFIC RESTRICTIONS**

Any pesticides, herbicides, fungicides, and insecticides must be applied by a legally certified applicator and must be applied in accordance with the product label and all federal, state, and local laws. Quantities used must not exceed the limits set forth by the Department of Defense to be used on military installations.

**26. HISTORIC PRESERVATION**

The Sublessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered on the Subleased Premises, the Sublessee shall immediately notify the State Historic Preservation officer and protect the site and the material from further disturbance until said officer gives clearance to proceed.

**27. SOIL AND WATER CONSERVATION**

The Sublessee shall maintain, in a manner satisfactory to said officer, all soil and water conservation structures that may be in existence upon said Subleased Premises at the beginning of or that may be constructed by the Sublessee during the Term, and the Sublessee shall take appropriate measures to prevent or control soil erosion within the Subleased Premises. Any soil erosion occurring outside the

Subleased Premises resulting from the activities of the Sublessee shall be corrected by the Sublessee as directed by the said officer.

## **28. SUB-SUBLEASING AND ASSIGNMENT**

- a) Sublessee shall not assign this Sublease or sub-sublet the whole or any part of the Subleased Premises without the prior written consent of Sublessor, which consent may be withheld at the sole discretion of Sublessor.
- b) Any assignment this Sublease or sub-sublease of the Subleased Premises shall not relieve Sublessee of its obligations under this Sublease.

## **29. DEFAULT, TERMINATION AND CONVERSION**

- a) Default.

The following events shall be deemed to be events of default by the Sublessee under this Sublease:

- (1) Sublessee shall have failed to correct the alleged event of default within a period of fifteen (15) days after Sublessor provides notice of the alleged event of default if the event of default be one which can be cured by the payment of money.
- (2) Failure by Sublessee to comply with any condition, provision, covenant, or warranty made under this Sublease by Sublessee where the alleged event of default be one which cannot be cured by the payment of money and Sublessee shall have failed to initiate a cure and diligently pursue actions required to perfect a cure, within sixty (60) days after written notice thereof to Sublessee, unless said noncompliance is the subject of a shorter notice given by a federal or state agency, in which case the shorter notice shall apply.
- (3) Sublessee shall become insolvent, or shall make a transfer in fraud of creditors, or shall make an assignment for the benefit of creditors;
- (4) Sublessee shall file a petition under any Section or Chapter of the United States Bankruptcy Code, as amended, or under any similar law or statute of the United States or any State thereof, or there shall be filed against the Sublessee a petition for reorganization for an insolvency or a similar proceeding filed against Sublessee;
- (5) A receiver or trustee shall be appointed for the Subleased Premises or for all or a substantially all of the assets of the Sublessee.
- (6) Sublessee shall do or permit to be done anything which creates a lien upon the Subleased Premises unless any such lien is discharged or otherwise satisfied by a bond or other appropriate mechanism, or properly contested in a court of law by Sublessee within sixty (60) days of its imposition.

- b) Termination.



In the event the Army decides to terminate the Lease, this Sublease shall terminate immediately upon the effective date of the termination of the Lease by the Army upon giving the Sublessee written notice of termination.

c) Conversion.

Automatically and immediately upon the Sublessor acquiring title to the Property from the Army, this Sublease shall, with no further action or consent by Sublessor or Sublessee, convert into a direct Lease Agreement between FMERA and [Sublessee], subject to all of the same terms and conditions as this Sublease (except for those provisions which relate directly to Sublessor holding a leasehold estate in the Property).

### **30. LANDLORD'S REMEDIES and HOLDOVER RENT**

a) Upon the occurrence of any event of default by Sublessee:

(1) Sublessor may declare the whole balance of rent for the entire balance of the Term or any part of such charges and any other damages due to Sublessor from Sublessee under this Sublease to be due and immediately payable.

(2) Sublessor may terminate this Sublease by sending to Sublessee a written Notice of Termination no less than five (5) days before the Termination and thereby immediately, upon such fifth (5th) day, without the need to take any further action, terminate, cancel and extinguish all of Sublessee's rights of possession and occupancy to or in the Subleased Premises.

(3) Sublessor may relet the Subleased Premises or any part or parts thereof to such person or persons as may, in Sublessor's discretion, be best; and Sublessee shall be liable for deficiency between the rental rate stated in this Sublease and rent collected from reletting the Subleased Premises. In the event that Sublessor relets the Subleased Premises or any part or parts thereof at a rent higher than Sublessee's rent, Sublessee shall have no claim for such excess rents. Any such re-entry or re-letting by Sublessor shall be without prejudice to Sublessor's claim for actual damages (including but not limited to the costs of reletting), and shall under no circumstances, release Sublessee from liability for the payments of rent and such damages arising out of the breach of any of the covenants, terms, and conditions of this Sublease.

(4) Should Sublessee fail to timely cure an event of default, Sublessor may exercise "self-help" remedies to regain possession of the Subleased Premises or bar Sublessee from entry into the Subleased Premises provided that Sublessor does so at all times in a peaceful manner.

(5) Sublessor may exercise all or any of the rights granted to a landlord in law or in equity upon an event of default by a tenant under a lease including, without limitation, termination of the Sublease and a suit to recover damages for such breach in an amount equal to the amount of rent reserved in the balance of the Term.

(6) Sublessor may (but shall not be obligated to do so) cure such event of default and the cost thereof shall be added to the next monthly installment of rent payable under this Sublease.

b) Should Sublessee remain in possession of the Subleased, or part thereof, after the expiration of the term without the execution of a new lease by Sublessor and Sublessee or the exercise of a renewal option,

Sublessee shall become a tenant from month-to-month of the Subleased Premises, or part thereof, under all the terms, conditions, provisions and obligations of this Sublease but with a rent equal to Two hundred percent (200%) of the rental rate stated in this Sublease and applicable immediately prior to the holdover and such month-to-month tenancy may be terminated by either Sublessor or Sublessee as of the end of any calendar month upon thirty (30) days prior written notice.

c) The failure of the Sublessor to insist, in anyone or more instances, upon performance of any of the terms, covenants or conditions of this Sublease shall not be construed as a waiver of relinquishment of the Sublessor's right to the current or future performance of any such terms, covenants or conditions and the Sublessee's obligations in respect to such performance shall continue in full force and effect.

d) No remedy herein or otherwise conferred upon or reserved to Sublessor shall be considered to exclude or suspend any other remedy but the same shall be cumulative and shall be in addition to every other remedy given hereunder, or now or hereafter existing at or in equity, regulation or by statute, and every power and remedy given by this Sublease to Sublessor may be exercised from time to time and so often as occasion may arise or as may be deemed expedient.

e) In addition to the rights and obligations arising under this Sublease, the Parties retain their rights and obligations under law.

### **31. QUIET ENJOYMENT**

Sublessor covenants that as long as there is no event of default hereunder, Sublessee shall peaceably and quietly have hold and enjoy the Subleased Premises for the Term.

### **32. TITLE TO IMPROVEMENTS**

The renovation, construction and installation of improvements by the Sublessee are private undertakings, and during the Term, title to all such improvements vest and remain in Sublessee. All structures and equipment furnished by the Sublessee shall be and remain the property of the Sublessee.

### **33. DISCLAIMER**

This Sublease is effective only insofar as the rights of FMERA and the Army in the Subleased Premises are concerned; and the Sublessee shall obtain any permit or license which may be required by Federal, state, or local statute in connection with the use of the Subleased Premises. It is understood that the granting of this Sublease does not preclude the necessity of obtaining a Department of the Army permit for activities which involve the discharge of dredge or fill material or the placement of fixed structures in the waters of the United States, pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (33 USC 403), Section 404 of the Clean Waters Act (33 USC 1344) or Section 408 (33 U.S.C. § 408) or any other permit or license which may be required by Federal, state, interstate or local laws in connection with the use of the Subleased Premises.

### **34. OFFICIALS NOT TO BENEFIT**

No member of or delegate to congress or resident commissioner shall be admitted to any share or part of this Sublease or to any benefits to arise therefrom. However, nothing herein contained shall be construed

to extend to any incorporated company if this Sublease is for the general benefit of such corporation or company.

### **35. IDENTIFICATION OF GOVERNMENT AGENCIES, STATUTES, PROGRAMS AND FORMS**

Any reference in this Sublease, by name or number, to a government department, agency, statute, regulation, program, or form shall include any successor, amendment, or similar department, agency, statute, regulation, program or form.

### **36. NO INDIVIDUAL LIABILITY OF GOVERNMENT OFFICIALS**

No covenant or agreement contained in this Sublease shall be deemed to be the covenant or agreement of any individual officer, agent, employee or representative of the State or Federal Government, in his or her individual capacity and none of such persons shall be subject to any personal liability or accountability by reason of the execution of this Sublease, whether by virtue of any constitution, statute or rule of law or by the enforcement of any assessment or penalty, or otherwise.

### **37. CLAIMS AGAINST FMERA**

Any and all claims made or to be made against FMERA under this Sublease, or related documents or actions based on tort law for damages shall be governed by and subject to provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq. and any and all claims made or to be made against FMERA based in contract law shall be governed by and subject to the provisions of the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq.

### **38. IMPROVEMENTS BY SUBLESSEE**

a) The Sublessee may make improvements to the Subleased Premises, which improvements may include, without limitation, improvements to existing buildings, provided that:

(1) the Sublessee receives prior written approval by the Sublessor of plans submitted to the Sublessor for review,

(2) the Sublessor receives prior written approval by the Army of plans submitted by the Sublessee to the Sublessor and transmitted to the Army by Sublessor for review by the Army,

(3) the Sublessor and Sublessee enter into an agreement regarding the removal of said improvements and the restoration of the Subleased Premises and the time allowed for compliance with such actions which agreement will become operative in the event that the Subleased Premises are not conveyed to Sublessee,

(4) said improvements are undertaken or constructed in a good and workmanlike manner and in accordance with all requirements of applicable federal, state and local ordinances and with the rules, regulations and requirements of all departments, boards, bureaus, officials and authorities having jurisdiction thereover,

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

(6) All necessary permits for such improvements shall be obtained by the Sublessee.

(7) Each worker hired or employed by Sublessee to make improvement to the Subleased Premises shall be paid not less than the prevailing wage rate for the worker's craft or trade, as determined by the Commissioner of Labor & Workforce Development pursuant to the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq.

b) The Sublessee shall provide to the Sublessor, at the Sublessee's expense, upon receipt thereof by the Sublessee, copies of all permits, certificates of occupancy, and other approvals, including copies of all plans submitted in connection therewith, obtained from governmental authorities in connection with the construction, use and occupancy of such improvement.

### **39. SPECIAL CONDITIONS**

a) Sublessor shall have no responsibility to make fire, emergency response or security services available to respond to activities occurring on the Subleased Premises.

b) Sublessor does not guarantee the cleanliness of running potable water. It is the recommendation of the Sublessor that every individual obtain clean bottled water for drinking and that every individual who consumes the running water from the installation is doing so at their own risk.

c) **[Optional Provision - Other than a License Agreement that permits Sublessee to use the 400 Area located east of Oceanport Avenue in connection with its sublease of the Subleased Premises, - Optional Provision]** It is understood and agreed that all understandings and agreements between the parties regarding sublease of the Property are merged in this Agreement which alone fully and completely expresses their agreement. This Agreement replaces and cancels any previous agreements between the Sublessee and the Sublessor regarding the sublease of the Property. This Agreement can only be changed by an agreement in writing signed by both Sublessee and Sublessor. The Sublessor states that the Sublessor has not made any other Agreement to lease, sublease or sell the Property to anyone else.

d) This Sublease is not an obligation of the State of New Jersey or any political subdivision thereof nor shall the State or any political subdivision thereof be liable for any of the obligations under this Sublease. Nothing contained in this Sublease shall be deemed to pledge the general credit or taxing power of the State or any political subdivision thereof.

### **40. GOVERNING LAW**

This Agreement shall be governed by, interpreted under and construed and enforced in accordance with, the laws of the State of New Jersey without respect to any principles of conflict of law, both as to interpretation and performance. Sublessor and Sublessee waive any statutory or common law presumption which would serve to have this document construed in favor and against either party as the drafter.

### **41. PARTIAL INVALIDITY**

If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by Law.

#### **42. HEADINGS**

The headings of the various Paragraphs and Exhibits of this Agreement have been inserted only for the purposes of convenience, and are not part of this Agreement and shall not be deemed in any manner to modify, explain or restrict any of the provisions of this Agreement.

#### **43. NO PARTNERSHIP OR JOINT VENTURE**

Nothing contained in this Agreement will make or will be construed to make the parties hereto joint venture partners with each other, it being understood and agreed that the only relationship between Sublessee and Sublessor hereunder is that of landlord and tenant. Nor should anything in this Agreement render or be construed to render either of the parties hereto liable to the other for any third party debts or obligations due the other party.

#### **44. NO THIRD-PARTY RIGHTS OR BENEFITS**

Nothing in this Agreement shall be construed as creating any rights of enforcement against any person or entity that is not a party to this Agreement, nor any rights, interest or third-party beneficiary status for any entity or person other than Sublessee and Sublessor. This Agreement is not an obligation of the State of New Jersey or any political subdivision thereof (other than FMERA) nor shall the State or any political subdivision thereof (other than FMERA) be liable for any of the obligations under this Agreement. Nothing contained in this Agreement shall be deemed to pledge the general credit or taxing power of the state or any political subdivision thereof (other than FMERA).

#### **45. REAL ESTATE BROKERS**

Sublessee represents and warrants to Sublessor that it has not been represented by a real estate broker in connection with this transaction.

#### **46. TIME PERIODS**

All time periods contained in this Agreement shall expire at 5:00 p.m. Eastern Time on the date performance is due and any performance after such time and any Notice received after such time shall be deemed to have occurred on the next business day. In the event that any date falls on a weekend or any other day which commercial banks in the State of New Jersey are closed or permitted to be closed, the date shall be deemed to extend to the next weekday.

#### **47. NOTICES**

Any notices required to be given under this Agreement must be in writing and shall be addressed as follows:

- a) to Fort Monmouth Economic Revitalization Authority at 502 Brewer Avenue, Oceanport, New Jersey 07757, Attention: Bruce Steadman, Executive Director;

with a copy to:

- b) to  
Attention:

With a copy to:

- c) All notices which must be given under this Agreement are to be given either by:

- (1) personal service,
- (2) certified mail, return receipt requested, addressed to the other party at their address specified above, or
- (3) overnight delivery service, addressed to the other party at their address specified above (e.g. Federal Express, United Parcel Service, DHL, United State Postal Service Next Day Mail).

d) Either party may change the address to which notice must be provided pursuant to this Agreement by providing notice, in accordance with this provision, to the other party at that party's last-identified address, provided that such change of address shall not take effect until five (5) days following the date of such notice.

e) Each party authorizes the other to rely in connection with their respective rights and obligations under this Agreement upon approval by the parties named above or any person designated in substitution or addition hereto by notice, in writing, to the party so relying.

#### **48. POLITICAL CAMPAIGN CONTRIBUTIONS**

- a) For the purpose of this Section 48, the following shall be defined as follows:

(1) "Contribution" means a contribution reportable as a recipient under "The New Jersey Campaign Contributions and Expenditures Reporting Act." P.L. 1973, c. 83 (C.10:44A-1 et seq.), and implementing regulations set forth at N.J.A.C. 19:25-7 and N.J.A.C. 19:25-10.1 et seq. Currently, contributions in excess of \$300 during a reporting period are deemed "reportable" under these laws.

(2) "Business Entity" means any natural or legal person, business corporation, professional services corporation, limited liability company, partnership, limited partnership, business trust, association or any other legal commercial entity organized under the laws of New Jersey or any other state or foreign jurisdiction. It also includes (i) all principals who own or control more than 10 percent of the profits or assets of a business entity or 10 percent of the stock in the case of a business entity that is a corporation for profit, as appropriate; (ii) any subsidiaries directly or indirectly controlled by the business entity; (iii) any political organization organized under 26 U.S.C.A. 527 that is directly or indirectly controlled by the business entity, other than a candidate committee, election fund, or political party committee; and (iv) if a business entity is a natural person, that person's spouse or child, residing in the same household.

(3) "EO 134" – means Executive Order 134, signed by former New Jersey Governor James E. McGreevey on September 22, 2004.

b) The terms, restrictions, requirements and prohibitions set forth in EO 134 are incorporated into this Sublease by reference as material terms of this Sublease with the same force and effect as if EO 134 were stated herein its entirety. Compliance with EO 134 by Sublessee shall be a material term of this Sublease.

c) In addition to any other event of default specified in this Sublease, Sublessor shall have the right, but not the obligation, to declare an event of default under this Sublease if: (i) Sublessee makes or solicits a Contribution in violation of EO 134, (ii) Sublessee knowingly conceals or misrepresents a Contribution given or received; (iii) Sublessee makes or solicits Contributions through intermediaries for the purpose of concealing or misrepresenting the source of the Contribution; (iv) Sublessee makes or solicits any Contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate or holder of the public office of Governor, or to any State or county party committee; (v) Sublessee engages or employs a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any Contribution, which if made or solicited by Sublessee directly would violate the restrictions of EO 134; (vi) Sublessee funds Contributions made by third parties, including consultants, attorneys, family members, and employees; (vii) Sublessee engages in any exchange of Contributions to circumvent the intent of EO 134; (viii) Sublessee directly or indirectly through or by any other person or means, does any act which would violate the restrictions of EO 134; or (ix) any material misrepresentation exists in any Executive Order Certification and Disclosure which was delivered by Sublessee to Sublessor in connection with this Sublease.

d) Sublessee hereby acknowledges and agrees that pursuant to EO 134, Sublessee shall have a continuing obligation to report to the Office of the State Treasurer, EO 134 Review Unit of any Contributions it makes during the term of this Sublease. If after the Effective Date, any Contribution is made by Sublessee and the Treasurer of the State of New Jersey determines such Contribution to be a conflict of interest in violation of EO 134, Sublessor shall have the right, but not the obligation, to declare this Sublease to be in default.

IN WITNESS WHEREOF, The Sublessee and Sublessor have signed this Sublease Agreement as of the date first written above.

ATTEST:

**FORT MONMOUTH ECONOMIC  
REVITALIZATION AUTHORITY, SUBLESSOR**

\_\_\_\_\_

By: \_\_\_\_\_

Bruce Steadman, Executive Director

ATTEST:

\_\_\_\_\_, **SUBLESSEE**

\_\_\_\_\_

By: \_\_\_\_\_  
[Name]

SAMPLE



**Exhibit A**

**Description of the Subleased Premises**

SAMPLE

**Exhibit B**  
**Condition Survey**

SAMPLE