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FORMER RIVERBANK ARMY AMMUNITION PLANT
STANISLAUS COUNTY, CALIFORNIA

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FORMER RIVERBANK ARMY AMMUNITION PLANT
STANISLAUS COUNTY, CALIFORNIA**

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DEPARTMENT OF THE ARMY INTERIM LEASE
UNDER
BASE REALIGNMENT AND CLOSURE
(BRAC) FOR THE
FORMER RIVERBANK ARMY AMMUNITION PLANT
STANISLAUS COUNTY, CALIFORNIA

Lease No. DACA05-1-21-508

THIS INTERIM LEASE of the former Riverbank Army Ammunition Plant (hereafter the "RBAAP") is made on behalf of the United States of America, between the **SECRETARY OF THE ARMY** (hereafter the "Lessor") and the **CITY OF RIVERBANK** (hereafter the "Lessee").

WITNESSETH:

That the Lessor, by the authority of Title 10, United States Code, Section 2667 (10 U.S.C. § 2667), and for the consideration hereinafter set forth, hereby leases to the Lessee the property identified in **Exhibit A**, attached hereto and made a part hereof, hereafter referred to as the "Leased Premises."

THIS INTERIM LEASE is granted subject to the following conditions:

1. AUTHORIZED REPRESENTATIVES

Except as otherwise specifically provided the Lessor may act by and through any duly authorized representatives, in the administration of this interim lease (hereafter the "Interim Lease"). The Lessee also may act by and through duly authorized representatives. Any reference to "Lessee" shall include any assignees, or successors and their duly authorized representatives.

2. USE OF THE LEASED PREMISES

a. The sole purposes for which the Leased Premises and any improvements thereon may be used, in the absence of prior written approval of the Lessor for any other use, are the purposes designated in or consistent with the approved local reuse plan of the Lessee covering the Leased Premises, attached hereto as **Exhibit B**, which have been properly evaluated by the Lessor under the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et seq., and conforming with all use restrictions set forth in Conditions 21 and 31 of this Interim Lease and **Exhibit J**, attached hereto and made a part hereof.

b. If the Lessee requests any changes in allowable uses for the Leased Premises, the Lessee shall furnish, at its expense, any additional environmental analysis and documentation deemed necessary by the Lessor to comply with the National Environmental Policy Act of 1969, as amended, and implementing regulations and other applicable environmental laws and regulations. The Lessor retains the right to approve or deny, in its sole discretion, any request by the Lessee for a new or changed use of the Leased Premises. In granting approval for a change in use, the Lessor may impose additional environmental protection provisions and restrictions as the Lessor deems appropriate.

c. For the duration of the Interim Lease and any extension hereof the Lessor requires exclusive use of the buildings, structures, storage facilities and parking areas within the former Riverbank Army Ammunition Plant shown on Exhibit C, attached hereto and made a part hereof, and known as the "Army Hold Back Area." Accordingly, the Lessor expressly excludes from this Interim Lease the Army Hold Back Area shown in red on Exhibit C and described as follows: Building 182 (Ground Water Treatment Plant), Building 185 (Compressor Shed), Building 192 (Office Trailer), and adjacent parking area and grounds.

d. The Lessee may enter Army Hold Back Area at reasonable times for emergency response actions and shall provide immediate notice thereof to the Lessor. In addition to the Army Hold Back Area, the Lessor operates approximately 100 groundwater monitoring wells within the Leased Premises. Although well locations are not individually identified as Army Hold Back Areas, the wells shall remain under the Lessor's exclusive control for the duration of the Interim Lease so that the Lessor may periodically take water samples and undertake other operations and well maintenance activities.

e. The Lessee may utilize the portion of the Leased Premises identified as the Former Industrial Waste Treatment Plant (hereafter "IWTP") site, which has been removed and repaved, and is more particularly described in Exhibit D, attached hereto and made a part hereof, subject to the use restrictions set forth in paragraph 11.A.4 of Exhibit J.

3. TERM

a. The term of this Interim Lease shall be for two (2) years, beginning on April 1, 2021 (hereafter the "Effective Date") and ending on March 31, 2023, or until terminated, revoked, or relinquished under the condition on TERMINATION, REVOCATION, DEFAULT AND RELINQUISHMENT (Condition 4, below), whichever is sooner.

b. The Lessee shall have three (3) one-year options to extend the Interim Lease for up to three (3) consecutive and continuous one-year periods beyond the expiration date of the original term, on the same terms and conditions contained herein. The grant of these options is personal to the Lessee and cannot be assigned or exercised by any other party.

c. The Lessee may exercise each option, provided the Lessee is in full compliance with the terms of the Interim Lease, under the following conditions:

(1) The Lessee must give written notice to the Lessor of the Lessee's election to exercise each option at least ninety (90) days prior to the expiration date of the current term of the Interim Lease, and

(2) At the time Lessee gives such notice of intent to exercise an option there shall be no uncured event of default on the part of the Lessee, and the Lessor shall not have terminated or revoked the Interim Lease under Condition 4 hereof.

d. Upon timely notice by the Lessee, in good standing hereunder, of its election to exercise an option and extend the term of the Interim Lease, the Lessor shall promptly prepare a lease modification reflecting the revised expiration date of the Interim Lease. All other terms and conditions of the Interim Lease shall remain unchanged unless the parties mutually agree to other modifications.

4. TERMINATION, REVOCATION, DEFAULT AND RELINQUISHMENT

a. Termination.

(1) In the event the Lessor conveys fee title in the Leased Premises, or a portion thereof, to the Lessee or any other party, the Interim Lease shall terminate on the date of conveyance with respect to that portion so conveyed. All references to the Leased Premises shall be deemed thereafter to exclude such conveyed portions of the RBAAP and the Interim Lease shall continue in full force and effect with respect to that portion of the RBAAP retained in fee by the Lessor.

(2) In the event the Lessor decides to convey the Leased Premises or a portion thereof to a third party and the Lessor executes a Finding of Suitability to Transfer (FOST) or a Finding of Suitability for Early Transfer (FOSET), the Lessor may terminate the Interim Lease with respect to any portion of the Leased Premises to be so conveyed by giving the Lessee ninety (90) days written notice of termination.

(3) The Lessor may terminate the Interim Lease and remove the Lessee and any sublessees if the Lessee is in default of any of the terms hereof and fails to cure the default in a timely manner, after notice from the Lessor, as set forth in subparagraph b, below.

b. Default. The following events shall be deemed to be events of default by the Lessee under the Interim Lease:

(1) Lessee shall fail to comply with any condition, provision, covenant, or warranty it has made or agreed to under the Interim Lease, and shall not cure such failure within ninety (90) days after written notice thereof to Lessee, unless said non-compliance is the subject of a shorter notice given by a federal, state, or local governmental agency, in which case the shorter notice shall apply.

- (2) Early termination of any Memorandum of Agreement (MOA) executed between the Lessor and the Lessee for conveyance of the fee title in the Leased Premises before conveyance of said fee interest, or a default by the Lessee in performance of its obligations under any MOA prior to conveyance of the fee.
- (3) Actions or expressions of the Lessee or the City unequivocally indicating an intention not to accept conveyance of the fee interest in the Leased Premises, as determined in the sole discretion of the Lessor.
- (4) Insolvency of the Lessee, a transfer by the Lessee in fraud of creditors, or an assignment made by the Lessee for the benefit of creditors.
- (5) The filing of a petition by the Lessee under any Section of 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 any filing against the Lessee of a petition for reorganization for any insolvency or a similar proceeding.
- (6) Appointment of a receiver or trustee for the Leased Premises or for all or substantially all the assets of the Lessee.
- (7) Any action taken or permitted by the Lessee which creates a lien upon the Leased Premises.

c. Revocation. The Lessee is charged at all times with full knowledge of all of the conditions and requirements of the Interim Lease, and the necessity to correct any default or non-compliance. Upon the occurrence of any of the aforesaid events of default, and in the absence of timely cure by the Lessee, Lessor shall have the option to revoke the Interim Lease, in which event Lessee shall immediately surrender the Leased Premises to Lessor, and if Lessee fails to do so, Lessor may, without prejudice to any other remedy which it may have for possession, enter upon and take possession of the Leased Premises and expel or remove Lessee and any other person who may be occupying said Leased Premises or any part thereof, without being liable for any claim of damages therefor; Lessee hereby agrees to pay to Lessor on demand the amount of all loss and damage which Lessor may suffer by reason of such termination. Pursuit of any of the foregoing remedies shall not preclude pursuit of any other remedy herein provided, including closure of the Leased Premises or temporary suspension of activities under the Interim Lease, or any other remedy provided by law or at equity, nor shall pursuit of any remedy herein provided constitute an election of remedies, thereby excluding the later election of an alternate remedy. Forbearance by Lessor to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of such default. Lessee agrees to pay to Lessor all costs and expenses incurred by Lessor in the enforcement of the Interim Lease, including, without limitation, the reasonable fees of Lessor's attorneys when such attorneys are employed by Lessor to effect collection of any sums due hereunder or to enforce any right or remedy of Lessor.

d. Default or non-compliance by a sublessee or licensee. In accordance with the Condition on TRANSFERS, ASSIGNMENTS, AND SUBLEASING (Condition No. 11, below),

any sublease is subject to the conditions and terms of the Interim Lease. Nevertheless, should a default or non-compliance described in subparagraph b, above, arise from the activities of a sublessee or licensee, the Lessee is responsible for ensuring compliance, either by corrective action itself or through the sublessee or licensee. If the Lessee is making diligent, good faith efforts to obtain corrective action and compliance by the sublessee or licensee to the satisfaction of the Lessor, then the Lessor may forebear in enforcing its remedies under subparagraph c, above, until either the Lessee is successful in realizing the corrections needed to cure its default or until the Lessor, in its sole judgment, concludes that satisfactory corrections will not be forthcoming in a timely manner. In the event the Lessor concludes that a timely cure of the default is unlikely, the Lessor may exercise its rights under subparagraph c, above, only as to the portion of the Premises under the control of the non-complying sublessee or licensee.

e. Relinquishment. The Interim Lease may be terminated or relinquished by the Lessee by giving thirty (30) days prior written notice to the District Engineer in the manner prescribed in the Condition on NOTICES (Condition No. 7, below).

5. CONSIDERATION

a. Partial consideration for the Interim Lease is the operation and maintenance of the Leased Premises in good condition by the Lessee for the benefit of the United States and the general public, including provision to the Lessor of any unmetered utility services described in Condition 12, below, in accordance with the requirements and conditions set forth in the Interim Lease.

b. As additional partial consideration due the Lessor for the granting of the Interim Lease, the Lessee shall remit to the Lessor all Net Installation Income, as defined in Condition No. 6, below, within ninety (90) days after the expiration, termination in connection with a conveyance of the Leased Premises to a third party, relinquishment, or revocation of the Interim Lease for default, such remittance to be made to the appropriate BRAC account or to the general treasury as directed by the District Engineer.

c. If the Interim Lease is terminated because the Leased Premises are conveyed to the Lessee as an Economic Development Conveyance (EDC) in accordance with 32 C.F.R. § 174.9, the Lessee may retain all Net Installation Income to pay for, or offset the costs of, public investment on or related to the former Riverbank Army Ammunition Plant during the reinvestment period described in 32 C.F.R. § 174.9(d)(8) for the purposes described in 32 C.F.R. § 174.9(d)(8)(i) through (xii) and in accordance with the terms of a memorandum of agreement to be entered into between the Lessor and Lessee in connection therewith.

6. BOOKKEEPING AND ACCOUNTING

a. As used herein the term "Installation Income" shall mean all rental income and miscellaneous income received by the Lessee from the rental or use of real or personal property within the Leased Premises to sublessees, licensees, or other parties. Reimbursable security deposits or other reimbursable deposits tendered to the Lessee by sublessees, licensees, or other parties shall not be included in calculation the Installation income.

b. As used herein the term "Installation Costs" shall mean all reasonable and customary expenditures paid by the Lessee for the operation, maintenance, repair, protection, improvement, management, and marketing of the Leased Premises, including but not limited to expenses for maintenance materials, supplies and labor, capital improvements to the installation, private security services, maintenance or improvement of on-site fire protection equipment, property management and marketing services, real estate brokerage commissions, fees for project development advisory services, building, planning and inspection fees, property taxes, tax assessments, and use or occupancy taxes applicable to the Lessee's leasehold interest.

c. As used herein the term "Net Installation Income" shall mean the portion of Installation Income, if any, that exceeds Installation Costs during the twelve (12) month period following the Effective Date and during each succeeding twelve (12) month period the Interim Lease is in effect or, if the Interim Lease is terminated, revoked, or relinquished before the passage of twelve (12) months, such shorter period. Net Installation Income shall include also the balance of Installation Income less Installation Costs received by the Lessee during prior interim leases of the Leased Premises and held by the Lessee for future public investment on or related to the former Riverbank Army Ammunition Plant.

d. Any monies received, held or disbursed by the Lessee in connection with the performance of any Environmental Services Cooperation Agreement (hereafter "ESCA") to which the Lessee may be a party are excluded from the definition of the terms "Installation Income" and "Installation Costs" and shall be excluded from the Lessee's records and books of accounts to be maintained hereunder.

e. The Lessee shall keep a separate and complete record and book of account for the Leased Premises, consistent with standard accounting practices, showing all Installation Income received and all Installation Costs paid during each calendar month the Lessee is in possession of any portion of the Leased Premises.

f. (i) Within ninety (90) days after the first anniversary of the Effective Date of the Interim Lease and each subsequent anniversary of the Effective Date for so long as the Interim Lease remains in effect, the Lessee shall provide to the District Engineer a complete and detailed accounting statement showing all Installation Income and Installation Costs for the period of the Interim Lease concluded on the respective anniversary of the Effective Date, hereafter called the "Annual Accounting". (ii) The Lessee shall also provide to the District Engineer a complete and detailed accounting statement showing all Installation Income and Installation Costs for the period of the Interim Lease concluded on the termination, revocation, expiration, or relinquishment of the Interim Lease, hereafter called the "Final Accounting," within ninety (90) days thereof. Each Annual Accounting and the Final Accounting shall be prepared in accordance with generally accepted accounting standards and certified by an independent public accountant, as required by the Base Redevelopment and Realignment Manual of the Department of Defense, DoD 4165.66-M.

g. Any financial irregularity exceeding \$7,000 contained in the Annual Accounting that is not resolved to the reasonable satisfaction of the Lessor within ninety (90) days after notice to Lessee may be found a material breach of the Interim Lease, in the sole discretion of the Lessor.

h. The Lessee shall maintain its records and books of account available for inspection by the Lessor at all times during regular business hours of the Lessee and shall promptly provide to the District Engineer any additional documentation or information reasonably sought to clarify the Lessee's Installation Income and Installation Costs. The Lessor retains the right to audit Lessee's financial records, or to require the Lessee to perform and complete such an audit at Lessee's expense and to furnish Lessor a copy thereof, whenever the Lessor judges an audit necessary, in Lessor's sole discretion. Any audit shall be conducted in accordance with generally accepted accounting standards.

7. NOTICES

Except as provided in paragraph 11.C of Exhibit J, all correspondence and notices to be given pursuant to the Interim Lease shall be addressed, if to the Lessee, to Executive Director, Riverbank Local Redevelopment Authority, 5300 Claus Road, Modesto, California 95357, and if to the Lessor, to the District Engineer, Attention: Chief, Real Estate Division, Sacramento District, U.S. Army Corps of Engineers, 1325 J Street, Sacramento, California 95814, or as may from time to time otherwise be directed by the parties. Notices must be given in a property sealed envelope, addressed as aforesaid, and deposited postage prepaid by either registered mail, return receipt requested, or by certified mail, return receipt requested, in a post office regularly maintained by the United States Postal Service. Service of the notice shall be deemed complete upon receipt of said notice, or the refusal thereof, by the party to whom it is addressed.

8. SUPERVISION OF THE LEASED PREMISES

The use and occupancy of the Leased Premises shall be subject to the general supervision and approval of the Office of the Deputy Chief of Staff , G-9 (DAIN-ISE) (BRAC) hereinafter referred to as "Said Officer," and to such rules and regulations as may be prescribed from time to time by Said Officer.

9. APPLICABLE LAWS AND REGULATIONS

a. The Lessee shall comply with all applicable federal, state, and local laws, regulations, ordinances, and standards that are or may become applicable to its activities on the Leased Premises, including, but not limited to, laws, regulations, ordinances and standards governing the environment, construction, health, safety, water supply, sanitation, and use of pesticides. The Lessee and any sublessees shall obtain and keep current all required licenses and permits applicable to their respective activities.

b. Additional compliance conditions are included in the condition on ENVIRONMENTAL PROTECTION, Condition No. 25 hereof.

10. CONDITION OF THE LEASED PREMISES

a. The Lessee has been in possession of the RBAAP's industrial facilities since April 1, 2010. Accordingly, the Lessee acknowledges that it possesses a detailed knowledge of the

condition of the Leased Premises and accepts the Leased Premises on an “as is” and “where is” basis, without any representation or warranty made by the Lessor as to condition, and without any obligation on the part of the Lessor to make any alterations, repairs or additions thereto.

b. The Lessor has conducted an inventory and condition survey of the Leased Premises, including an assessment of environmental conditions, documented an updated Environmental Condition of Property Phase I Report, dated March 2017, attached hereto as **Exhibit E**, the “Condition Survey”. Preceding expiration, revocation, or termination of the Interim Lease for any reason other than conveyance of the Leased Premises to the Lessee, the Lessor and the Lessee will jointly conduct a close-out survey. The Lessor will prepare a close-out report. The Lessee shall fully fund the Lessor’s preparation of an updated Condition Survey that will document the environmental condition of the Leased Premises at that time as part of the close-out survey. The close-out survey and report will refer to, and incorporate by reference, the updated Condition 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 leased property shown to be lost, damaged, contaminated, or destroyed during the lease term, in determining any environmental restoration requirements to be completed by the Lessee, and restoration of the property as required in Conditions No. 17 on RESTORATION.

11. TRANSFERS, ASSIGNMENTS, AND SUBLEASING

a. Successors. Lessor reserves an unconditional right to deny any assignment of the Interim Lease or any transfer of the Lessee’s responsibilities hereunder, at Lessor’s sole discretion. Assignment of the Interim Lease requires prior written approval by the Lessor’s BRAC Division, Office of the Assistance Chief of Staff for Installation Management. The Interim Lease and the covenants and conditions herein contained shall inure to the benefit of only such successors or assignees of the Lessee to whom a transfer or assignment by Lessee has been previously approved and consented to by the Lessor in writing. No transfers or assignments shall be valid unless the successor or assignee shall, by an instrument in a form sufficient for recording and acceptable to the Lessor, enter into an assumption agreement and assume all of the Lessee’s obligation under the Interim Lease. A duplicate original of that assumption agreement shall be delivered to the Lessor, and the assignment shall not take effect until delivery is made.

b. Subleases. The Lessee may sublease portions of the Leased Premises with Lessor’s written consent, but in all events the Lessee remains primarily liable for performance of all obligations of the Interim Lease. The Lessee shall neither sublease, license nor grant any interest in the Leased Premises or any part thereof or any property thereon, nor grant any other interest, privilege, or license whatsoever in connection with the Interim Lease, without receiving the prior written consent of the Lessor. In the event, the Lessor has given its written consent to a proposed sublease the Lessee shall provide the Lessor a signed copy of said sublease promptly upon its execution. No sublease shall be valid unless and until the Lessee has delivered to the Lessor a copy of the executed sublease. Every sublease shall contain the Environmental Protection Provisions set out in Exhibit J to this Interim Lease and shall include an express affirmation that the terms and conditions of the sublease are subject to the terms and conditions of the Interim Lease and that, in the event of any conflict between the instruments, the Interim Lease will

control. The Lessee shall provide each approved sublessee or licensee with a copy of the Interim Lease. Any subleases reviewed and approved by the Lessor under a previous Interim Lease need not be resubmitted to the Lessor for a new approval.

12. COST OF UTILITIES

a. Procurement of utilities. The Lessee is responsible for procuring or supplying utility services for the Leased Premises at its cost, including electricity, water, gas, sewer, telephone, and trash removal. The Lessor has no obligation to furnish utilities or services.

b. Lessee shall insure that existing utilities continue to be available to the Leased Premises. Any significant modification to the current utility infrastructure beyond normal maintenance and repair should be made only with the prior written approval of the Lessor.

c. All utility services except water and sewage required by the Lessor and its contractor(s) within the Army Hold Back Area are provided either by independent utilities paid directly by the Lessor or its contractors or metered by the Lessee. Any reimbursement to be made by the Lessor to the Lessee for the reasonable cost of utility services shall be provided for in a separate agreement between the Lessor and the Lessee, to be executed simultaneously hereof. To the extent that such separate agreement is not forthcoming, the Lessee may file a claim for reimbursement for the reasonable cost of the metered and unmetered utility services provided to the Lessor, however any such claim shall not be a "claim" under this Interim Lease as defined in subparagraph 24.b., below.

13. MAINTENANCE AND PROTECTION OF THE LEASED PREMISIES

a. The Lessee shall keep the Leased Premises in good order and in a clean, safe condition by and at its own expense, including property maintenance of all on-site fire safety equipment and the provision of on-site security services, as needed in the discretion of the Lessee, with the exception of the Army Hold Back Area, as identified in Exhibit C. The Lessor shall be solely responsible for protection, maintenance, preservation, and repair of the Army Hold Back Area identified in Exhibit C for the duration of any period of such exclusive use.

b. Existing fences and gates shall not be substantially altered and shall remain functional, with pedestrian and vehicular access from public roadways into the Leased Premises controlled by the Lessee.

c. The Lessee shall be responsible for any damage that may be caused to property of the Lessor by the activities of the Lessee and/or its sublessees or licensees under this Interim Lease, and shall exercise due diligence in the protection of all property within the Leased Premises against fire or damage from any and all other causes. Any property of the Lessor damaged or destroyed incident to the exercise of the privileges herein granted by the Lessee, any sublessee, licensee, invitee or third party shall be promptly repaired or replaced by the Lessee and restored to a condition satisfactory to the Said Officer, or at the election of Said Officer, reimbursement made therefor by the Lessee in an amount necessary to restore or replace the property, including personal property, to a condition satisfactory to Said Officer.

14. INSURANCE

a. As of the commencement of the Interim Lease the Lessee shall obtain from a sound and reputable insurance company, or companies, comprehensive liability insurance covering the Leased Premises. The insurance shall provide an amount of coverage that is prudent, reasonable, and commensurate with the level of risk, but not less than a combined single limit of two million dollars (\$2,000,000), whichever is greater, for claims for property damage, bodily injury or death, or both, arising from any one incident occurring within the Leased Premises, or arising from activities conducted under this Lease, and providing excess liability coverage of at least five million dollars (\$5,000,000). The Lessee shall maintain said liability insurance in force during the term of the Interim Lease and any extension hereof.

b. Lessee's liability insurance policy or policies shall insure the Lessee, its employees, agents, independent contractors and invitees against risks and hazards of property damage and bodily injury within the Leased Premises and shall insure the Lessee against contractual liability under this Lease and shall name the United States as an insured party. The liability policy or policies shall insure against covered losses notwithstanding any act or failure to act or the negligence of the Lessee or the United States or any other person and shall provide that the insurer possesses no right of subrogation against the United States. Under no circumstances will the Lessee be entitled to assign to any third-party rights of action that it may have against the United States arising out of this Lease.

c. The Lessee shall require its insurer to furnish to Said Officer and to the District Engineer a copy of the policy or policies insuring the Leased Premises. The Lessee shall require its insurer to give Said Officer and the District Engineer at least sixty (60) days written notice of any cancellation or change in such insurance. Said Officer or the District Engineer may require closure of any or all of the Leased Premises during any period for which the Lessee does not have required insurance coverage. The Lessee shall require its insurance company to furnish Said Officer and to the District Engineer a copy of the policy or policies, or if acceptable to the District Engineer, certificates of insurance evidencing the purchase of such insurance. The minimum amount of liability insurance coverage is subject to revision by the District Engineer upon renewal or modification of the Interim Lease.

d. Prior to commencement of this Lease the Lessee shall procure and maintain at Lessee's cost a standard fire and extended coverage insurance policy or policies covering the full insurable value of the Leased Premises, including the structures and improvements thereon. The Lessee 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 the Lessor, shall be payable to the Lessee to be used for the repair, restoration, or replacement of any property damaged or destroyed within the Leased Premises, and any balance of the proceeds not required for such repair, restoration or replacement shall be paid to the Lessor. If the District Engineer does not provide written notice to the insurer within sixty (60) days after the damage or destruction occurs of the Lessor's election to have the proceeds paid to the Lessee for the purposes hereinabove set forth, then such proceeds shall be paid to the Lessor; provided, however, that the insurer, after payment of any proceeds to the Lessee 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 Lessee. Nothing herein contained shall be construed as an obligation upon the Lessor to repair, restore, or replace the Leased Premises or any part thereof should it be diminished in value, damaged, or destroyed.

e. The Lessee may require any sublessees, assignees, transferees, or successors, as joint and several responsible parties with the Lessee for those portions of the Leased Premises under their control, to maintain and carry at their expense portions of the insurance requirement.

f. Notwithstanding anything herein to the contrary, each party hereto hereby releases the other party, its agents, sublessees and employees, to the full extent recoverable under the insurance policies of the releasing party, from any and all liability for any loss or damage which may be inflicted upon the property of such party, notwithstanding that such loss or damage shall have arisen out of the negligent or the tortious act or omission of the other party, its agents, sublessees or employees; provided, however, that this release shall be effective only with respect to loss or damage occurring during such time as the appropriate policy of insurance of the party so releasing shall contain a clause to the effect that such release shall not affect the said policy or the right of the insured to recover thereunder, and each party at the request of the other shall use reasonable efforts to have such a clause included in its said policies. Each party hereto shall notify the other in the event such a clause is not included in its said policies, or is withdrawn therefrom, in which event the release herein of the other party shall be null and void.

15. LESSOR'S RIGHT TO ENTER LEASED PREMISES

a. The right is hereby reserved to the Lessor, its officers, agents, employees and contractors, to enter upon the Leased Premises at any reasonable time for any purpose necessary or convenient in connection with government purposes; to make inspections, to oversee environmental remediation work on-going within the Leased Premises, to ensure compliance with Condition 2, Use of the Leased Premises, Condition 25, Environmental Protection, Condition 21, Prohibited Uses, Condition 31, Land Use Controls, and Exhibit J, contained herein, to operate, repair, or close groundwater monitoring wells located throughout the Leased Premises, or for any other purpose necessary or convenient to carry out Government objectives and requirements related to the Lessor's disposition of the RBAAP, and the Lessee shall have no claim for damages on account thereof against the Lessor or any officer, agent or employee thereof.

b. Lessee hereby acknowledges that representative(s) of the Lessor operate a full-time office in Building 192 of the Army Hold Back Area for the purpose of overseeing the Lessor's on-going environmental clean-up and remediation work within the Leased Premises. The Lessor's use of and regular access to this office and the Army Hold Back Area defined in Condition No. 2, above, is hereby reserved by Lessor.

16. INDEMNITY AND HOLD HARMLESS

a. Except as pertains to environmental conditions present within the Leased Premises on or before April 1, 2010 when the Lessee first took occupancy of the Leased Premises and

for which the Lessee is not responsible, the Lessee agrees to assume all risks of loss or damage to property and injury or death to persons by reason of, attributable to, or incident to the condition or state of repair of the Leased Premises or to the Lessee's possession of the Leased Premises or the activities conducted under the Interim Lease. The Lessee expressly waives the right to make a claim against the Lessor 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 Leased Premises by the Lessee, or caused by or occurring as a consequence of any of Lessee's activities under the Interim Lease. The Lessee further agrees to indemnify and hold harmless the Lessor, its officers, agents, and employees from and against all suits, claims, demands or actions, liabilities, judgments, costs, and attorneys' fees arising out of, or in any manner predicated upon, personal injury, death, or property damage resulting from, related to, caused by, or arising out of the possession and/or use of the Leased Premises by the Lessee. Lessor shall provide notice to Lessee of any claim against Lessor covered by this indemnity as soon as practicable after learning of such claim.

b. The Lessee shall indemnify and hold harmless the Lessor from any costs, expenses, liabilities, fines, or penalties resulting from any discharges, releases, emissions, spills, storage or disposal, or any other action or inaction by the Lessee or its subtenants, licensees or invitees giving rise to civil or criminal liability on the part of the Lessor, or responsibility under federal, state, or local environmental laws.

c. Subparagraphs a and b of this condition and the obligations of the Lessee hereunder shall survive the expiration or termination of the Interim Lease and the conveyance of the Leased Premises. The Lessee's obligation hereunder shall apply whenever the Lessor incurs costs or liabilities for the Lessee's actions.

d. Any sublessees, assignees, transferees, or successors shall be jointly and severally responsible with the Lessee for those portions of the Leased Premises under their control.

17. RESTORATION OF LEASED PREMISES

a. On or before the expiration, revocation or termination of the Interim Lease, the Lessor may require the Lessee to promptly vacate the Leased Premises, remove the personal property of the Lessee and any sublessees, and restore the Leased Premises to a condition satisfactory to Lessor. Lessor shall not require demolition or removal of any alterations or improvements constructed by the Lessee, or a sublessee previously approved by Lessor.

b. If the Lessee shall fail or neglect to remove its personal property and restore the Leased Premises within a reasonable time, then, at the option of the Lessor, the property shall either become the property of the United States without compensation therefor, or the Lessor may cause the property to be removed and no claim for damages against the Lessor or its officers or agents shall be created by or made on account of such removal and restoration work. The Lessee shall pay the Lessor on demand any reasonable sum which may be expended by the Lessor in restoring the Leased Premises after the expiration, revocation or termination of the Interim Lease.

c. The restoration obligations of the Lessee contained in this Condition shall not apply to any portion of the Leased Premises conveyed in fee to the Lessee upon termination of the Interim Lease.

18. NON-DISCRIMINATION

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

b. The Lessee, by acceptance of this Lease, is receiving a type of Federal assistance and, therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d); the Age Discrimination Act of 1975 (42 U.S.C. § 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 300) issued as Department of Defense Directives 5500.11 and 1020.1, and Army Regulation 600-7. This assurance shall be binding on the Lessee, its agents, successors, transferees, sublessees and assignees.

19. SUBJECT TO EASEMENTS

This Lease is subject to all existing easements, or any subsequently granted, as well as established access routes for roadways and utilities located, or to be located, on the Leased Premises, provided that the proposed grant of any new easement or route will be coordinated with the Lessee, and easements will not be granted which will, in the opinion of the District Engineer, interfere with the use of the Leased Premises by the Lessee, or conflict with the Reuse Plan as approved by the U.S. Department of Housing and Urban Development.

20. SUBJECT TO MINERAL INTERESTS

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

21. PROHIBITED USES

a. Neither the Lessee nor any sublessee hereunder may extract or use any groundwater from the subsurface of the Leased Premises during the term of the Interim Lease or any extension hereto.

b. The Lessee shall not allow gambling on the Leased Premises or any activity or conduct which would constitute a public nuisance, nor shall the Lessee sell, store or dispense, or permit the sale, storage, or dispensing of beer or other intoxicating liquors on the Leased Premises.

22. LEASEHOLD IMPROVEMENTS

a. The Lessee shall make no substantial alterations to existing structures, or construct any new structures, without first obtaining the written consent of the District Engineer. The Lessor consents to the Lessee replacing, at the Lessee's sole cost and expense, any siding and roofing on buildings where such siding or roofing is being removed under an ESCA.

b. Any improvement or alteration constructed within the Leased Premises shall comply with applicable state and local regulations, ordinances and building codes and shall be built in a sound and workmanlike manner. The Lessee shall obtain all required municipal approvals, building permits and certificates of occupancy.

23. WASTE OF NATURAL RESOURCES

The Lessee 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 conditions of the Leased Premises except as authorized in writing by the District Engineer.

24. DISPUTES CLAUSE

a. Except as provided in the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 - 7109), hereafter the "Act," disputes arising under or relating to this Interim Lease shall be resolved as set forth in this clause and in accordance with the provisions of the Act.

b. "Claim," as used in this clause, means a written demand or written assertion by the Lessee seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of a term of the Interim Lease not agreed to by the Lessor, or other relief arising under or relating to this Interim Lease. However, a written request or demand or written assertion by the Lessee seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified, as required by subparagraph c(2), below, and the Act.

c. (1) A claim by the Lessee shall be made in writing and submitted to the District Engineer for a written decision. A claim by the Lessor against the Lessee shall be subject to a written decision by the Executive Director of the Riverbank Local Reuse Authority or the City of Riverbank City Manager.

(2) For claims by the Lessee exceeding \$100,000, the Lessee shall submit with the claim a certification that –

- i. the claim is made in good faith; and
- ii. supporting data are accurate and complete to the best of the Lessee's knowledge and belief; and;

iii. the amount requested accurately reflects the Lease adjustment for which the Lessee believes the Lessor is liable.

(3) The certificate shall be executed by an officer or representative of the Lessee having overall responsibility for the conduct of the Lessee's affairs.

d. For Lessee claims of \$100,000 or less, the District Engineer must, if requested in writing by the Lessee, render a decision within 60 days of the request. For Lessee-certified claims over \$100,000, the District Engineer must, within 60 days, decide the claim or notify the Lessee of the date by which the decision will be made.

e. The District Engineer's decision shall be final unless the Lessee appeals the decision or files a suit as provided in the Act.

f. At the time a claim by the Lessee is submitted to the District Engineer or a claim by the Lessor is presented to the Lessee, the parties, by mutual consent, may agree to use alternate means of dispute resolution. When using alternate dispute resolution procedures, any claim of the Lessee, regardless of amount, shall be accompanied by the certificate described in subparagraph c(2) of this condition, and be executed in accordance with subparagraph c(3) of this condition.

g. The Lessor shall pay interest on the amount found due and unpaid by the Lessor from (1) the date that the District Engineer received the claim (properly certified, if required), or (2) the date payment would otherwise be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury, as provided in the Act, which is applicable to the period during which the District Engineer receives the claim and then at the rate applicable for each six-month period as fixed by the Treasury Secretary during the pendency of the claim.

h. The Lessee shall proceed diligently with the performance of the Interim Lease, pending final resolution of any request for relief, claim, or action arising hereunder, and comply with any decision of the District Engineer.

25. ENVIRONMENTAL PROTECTION

a. The Lessee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs from activities of the Lessee, the Lessee shall be liable to restore the damaged resources. Neither the Lessee nor any sublessees shall discharge waste or effluent from the Leased Premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance. The Lessee must obtain approval in writing from the District Engineer before any pesticides or herbicides may be applied to the Leased Premises.

b. The Lessee shall be responsible for obtaining and paying for any environmental or other permit required for the Lessee's operations and activities and shall ensure that its

sublessees obtain any environmental or other permit required for their operations and activities.

c. The Lessor's rights hereunder specifically include a right of entry to allow the Lessor's representatives, agents, and contractors to inspect the Leased Premises for compliance with environmental, safety, and occupational health laws and regulations whether or not the Lessor is responsible for enforcing them, to oversee or inspect on-going environmental remediation and restoration work, or to undertake such work. Such inspections are without prejudice to the right of duly constituted enforcement officials to make such inspections. The Lessor normally will give the 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; provided, however, that the Lessor shall have access to common areas of the Leased Premises at any time during normal working hours and without prior notice to the Lessee. The Lessee shall have no claim against the Lessor, its officers, representatives, agents, employees, or contractors on account of any entries within the Leased Premises made hereunder.

d. The Lessor acknowledges that the RBAAP has been identified as a National Priorities List Site under the Comprehensive Environmental Response, Conservation and Liability Act of 1980 (CERCLA). The Lessee acknowledges that the Lessor has provided it with a copy of the RBAAP Federal Facility Agreement (FFA) entered into by the United States Environmental Protection Agency Region 9 (the EPA), the Lessor, the California Department of Toxic Substances Control, and the Central Valley Regional Water Quality Control Board, effective June 1990, and will provide the Lessee with a copy of any amendments thereto. The Lessee agrees that should any conflict arise between the terms of the FFA, as it presently exists or may be amended, and the provisions of the Interim Lease, the terms of the FFA shall take precedence. The Lessee further agrees that notwithstanding any other provision of the Interim Lease, the Lessor assumes no liability to the Lessee should implementation of the FFA interfere with the Lessee's use of the Leased Premises. The Lessee shall have no claim against the Lessor or its officers, agents, employees, or contractors on account of any such interference.

e. The Lessor, the EPA, the California Department of Toxic Substances Control, and the Central Valley Regional Water Quality Control Board, their officers, agents, employees, contractors, and subcontractors are granted a right hereunder to enter upon the Leased Premises, upon reasonable notice to the Lessee, for purposes consistent with the applicable provisions of the FFA and for the following purposes:

(1) to conduct investigations and surveys, including, where necessary, drilling, soil and water sampling, test pitting, soil boring tests, and other activities related to the RBAAP Installation Restoration Program (IRP), FFA, and related environmental requirements;

(2) to inspect field activities of the Lessor and its employees, agents, contractors, and subcontractors in implementing the IRP, FFA, or related environmental requirements;

(3) to conduct any test or survey required by the EPA the California Department of Toxic Substances Control, or the Central Valley Regional Water Quality Control Board relating to the implementation of the FFA or environmental conditions at the Leased Premises, or to verify any data submitted to the EPA, the California Department of Toxic Substances Control, or the Central Valley Regional Water Quality Control Board by the Lessor relating to such conditions; and

(4) to construct, operate, or maintain any other response or remedial action as required or necessary under the IRP or FFA including, but not limited to, monitoring wells, soil removal, pumping wells, and treatment facilities.

f. The Lessee agrees to comply with the provisions of any health or safety plan in effect under the FFA during the course of any above-described response or remedial action. Any inspection, survey, investigation, or other response or remedial action will, to the extent practicable, be coordinated with the Lessee. The Lessee shall have no claim against the Lessor or any of its officers, agents, employees, contractors, or subcontractors on account of such entries. In addition, the Lessee shall comply with all applicable Federal, state, and local occupational safety and health regulations.

g. The Lessee shall comply with the requirements of 10 U.S.C. § 2692(b)(9) and (10) to obtain the Lessor's approval for the storage, treatment, or disposal of any toxic or hazardous materials not owned by the Department of Defense on the Leased Premises.

h. The Lessee and its sublessees shall comply with the hazardous waste permit requirements under the Resource Conservation and Recovery Act (RCRA), or the State of California equivalent, and all other applicable environmental laws, rules, and regulations. Except as specifically authorized by the Lessor in writing, the Lessee and its sublessees must provide, at their own expense, such hazardous waste management facilities, including storage, treatment, or disposal facilities, complying with all applicable laws and regulations, as may be required. Hazardous waste management facilities of the Lessor will not be available to the Lessee. Any violation of the requirements of this provision shall be deemed a material breach of this Interim Lease.

i. Any of Lessor's accumulation points for hazardous and other wastes shall not be used by the Lessee. The Lessee shall not permit its hazardous waste, or that of any sublessee or licensee, to be commingled with hazardous waste of the Lessor.

j. Should the Lessor provide any personnel or equipment, whether for initial fire response and/or spill containment, or otherwise at the request of the Lessee, or because the Lessee was not, in the opinion of the Lessor, conducting a timely cleanup action, the Lessee hereby agrees to reimburse the Lessor for its reasonable costs. The Lessee's hazardous waste, fuel and chemical spill response plan may be augmented to reflect changes in the Lessee's use, or its sublessees' use, of toxic, hazardous, or dangerous materials. Each sublessee shall provide the Lessee with individual emergency response and clean-up plans for its activities within its subleased portion

of the Leased Premises prior to commencement of the sublessee's operations. Sublessees' individual plans will be incorporated by the Lessee into its overall plan.

k. The Lessee shall not construct or make, or permit its sublessees, licensees or assigns, to construct or make any substantial alterations, additions, or improvements to or installations upon or otherwise modify or alter the Leased Premises in any way which may adversely affect property clean-up, human health, or the environment.

l. The Lessee shall not conduct or permit its sublessees to conduct any subsurface excavation, digging, drilling, or other disturbance of the surface without the prior written approval of the Lessor.

26. HAZARDOUS SUBSTANCES NOTICE

To the extent such information is available on the basis of a complete search of Lessor's files, notice regarding hazardous substances stored for one year or more, or known to have been released or disposed of on the Leased Premises, is provided in **Exhibit F**, attached hereto and made a part hereof. The Lessee should consult the Condition Survey for more detailed Information.

27. LEAD-BASED PAINT WARNING AND COVENANT

a. The Leased Premises do not contain residential housing and are not being leased for residential purposes. The Lessee is notified that the Leased Premises contain buildings built prior to 1978 that contain lead-based paint. Exposure to lead from lead-based paint may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. A risk assessment or inspection by Lessee for possible lead-based paint hazards is recommended prior to its execution of this Interim Lease.

b. Information concerning known lead-based paint and/or lead-based paint hazards, a list of the location of lead-based paint and/or lead-based paint hazards, and a chart showing the condition of painted surfaces are contained in the Condition Survey (Phase 1, Section 4.7), attached hereto as Exhibit E and previously provided to the Lessee. Additionally, the Lessee has been provided a copy of the federally approved pamphlet on lead poisoning prevention. The Lessee hereby acknowledges receipt of all the information described in this paragraph.

c. The Lessee acknowledges that it has had the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards prior to execution of this Lease.

d. The Lessee shall not permit use of any existing buildings or structures on the Leased Premises for residential habitation.

28. NOTICE OF THE PRESENT OF ASBESTOS AND COVENANT

a. The Lessee is hereby informed and does acknowledge that friable and non-friable asbestos or asbestos-containing materials (ACM) have been found on the Leased Premises, as described in the Condition Survey, attached as Exhibit E. To the best of the Lessor's knowledge, the ACM on the Leased Premises does not currently pose a threat to human health or the environment.

b. In addition to the Lessee's general indemnity contained in Condition No. 16, titled "Indemnity and Hold Harmless," above, the Lessee covenants and agrees that its use and occupancy of the Leased Premises will comply with all applicable laws relating to asbestos and ACM. The Lessee similarly covenants and agrees that the Lessor assumes no liability for future remediation of asbestos, or for damages for personal injury, illness, disability, or death of the Lessee, its sublessees, successors or assigns or any other person, including members of the general public, arising from, or incident to, the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the Leased Premises, whether the Lessee, its successors or assigns have properly warned or failed to properly to warn the individual(s) injured. The Lessee agrees to properly manage the ACM on the Leased Premises during the duration of the Interim Lease and to be responsible for any future remediation or abatement of any asbestos hazard found to be necessary on the Leased Premises.

29. POLYCHLORINATED BIPHENYLS (PCBs)

a. The following PCB-containing equipment is located on the property: electrical transformers. This equipment is operational, properly labeled in accordance with federal and state regulations, and has been determined not to be leaking. A list of electrical transformers containing PCBs in excess of 50 parts per million (ppm) is presented in **Exhibit G**. In addition, PCBs are present in the paint and coating on the exterior siding of several buildings.

b. Sampling results have detected PCBs above Toxic Substances Control Act (TSCA) criteria in several locations within and adjacent to buildings in the main plant area of the RBAAP. The Lessor and Lessee intend to remove PCBs from these areas by use of an environmental remediation contractor working under an ESCA.

c. Two sites have been investigated and removal actions completed to address PCB contamination in soils. These sites include a location containing transformer oil storage tanks and a distribution system designated as Site AOC-8-B and an electrical substation transformer pad designated as Site AOC-16; see **Exhibit G**. Remedial activities are complete and no further action is required at these sites. Five additional locations were investigated for PCBs in a 2007 site investigation that found each site below the TSCA remediation requirements for PCBs and no further action was required.

d. If the Lessee causes, creates or exacerbates a release of PCBs from any equipment located within the Leased Premises the Lessee agrees to undertake any and all necessary abatement or remediation costs at its sole expense.

e. The Lessee assumes no obligation under this Interim Lease for the maintenance or disposal of out-of-service electrical equipment consisting of transformers and circuit breakers currently stored on the Leased Premises at the locations shown on **Exhibit I**, Out-of-Service Equipment Locations, attached hereto and made a part hereof.

30. CLEAN AIR CONFORMITY

The Lessee hereby affirms that neither it nor any sublessee shall discharge or emit any air pollutant from the Leased Premises in greater than a de minimis quantity, or not in conformance with applicable criteria and standards for emissions in the Riverbank area under California's State Implementation Plan. The Lessor intends to convey the Leased Premises in fee to the Lessee as soon as practicable and therefore is not obligated to make a "Conformity Determination" otherwise required by Section 176(b) of the Clean Air Act (42 U.S.C. § 7506), as provided in the Clean Air Act regulations on "applicability," in particular the exception set forth at 40 CFR § 93.153(c)(2)(xix).

31. LAND USE CONTROLS

The "Property Management Plan for Land Use Control Actions - Riverbank Army Ammunition Plant," dated November 2006 (hereafter the "Land Use Control Plan") is attached hereto as **Exhibit H** and made a part of the Interim Lease. The Lessee is responsible for compliance with and adherence to the Land Use Control Plan and shall provide a copy to its sublessees and licensees.

32. HISTORIC PRESERVATION

The Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural, or other cultural artifact, relic, remains, or object of antiquity. In the event any such item is discovered on the Leased Premises, the Lessee shall immediately notify the District Engineer and protect the site and the material from further disturbance until the District Engineer notifies the Lessee about particular actions to be taken, if any.

33. SOIL AND WATER CONSERVATION

The Lessee shall maintain, in a manner satisfactory to the District Engineer, all soil and water conservation structures that may exist within the Leased Premises as of the commencement of the Interim Lease and that may be constructed during the term of the Interim Lease. The Lessee shall take appropriate measures to prevent or control soil erosion within the Leased Premises. Any soil erosion occurring outside the Leased Premises resulting from the activities of the Lessee shall be corrected by the Lessee as directed by the District Engineer.

34. TAXES

Any and all taxes and assessments legally imposed by the State of California, its political subdivisions, or other entity upon the interest of the Lessee in the Leased Premises shall be paid

promptly by the Lessee. If a dispute arises between the Lessee and an entity that has imposed a tax or assessment on the interest of the Lessee in the Leased Premises regarding such tax or assessment, the Lessee shall make diligent, good faith efforts to resolve the dispute in a timely manner. If and to the extent that the interest of the United States of America in the Leased Premises is later made taxable by a state or local government under an Act of Congress, the Interim Lease shall be renegotiated.

35. COVENANT AGAINST CONTINGENT FEES

The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this Lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty, the Lessor shall have the right to annul this Interim Lease without liability or, in its discretion, to require the Lessee to pay, in addition to the Interim Lease consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

36. OFFICIALS NOT TO BENEFIT

No member of or delegate to Congress or resident commissioner shall be admitted to any share or part of this Interim Lease or to any benefits to arise therefrom. However, nothing herein contained shall be construed to extend to any incorporated company if this Interim Lease is for the general benefit of such corporation or company.

37. MODIFICATIONS

This Interim Lease contains the entire agreement between the parties hereto, and no modification of this agreement, or waiver, or consent hereunder shall be valid unless the same is in writing and signed by the parties to be bound, or by a duly authorized representative.

38. NO COMMITMENTS FOR FUTURE USE

The Interim Lease does not commit the Lessor to any renewals of the use authorized herein after expiration or termination hereof, or to any future reuse or disposal and does not create any right or expectation for the Lessee or its sublessees to acquire the Leased Premises.

39. DISCLAIMER

This Interim Lease is effective only insofar as the rights of the Lessor in the Leased Premises are concerned; and the Lessee shall obtain any permit or license which may be required by federal, state, or local statutes, regulations, or ordinances in connection with its use of the Leased Premises. The granting of the Interim Lease does not preclude the need to apply for a permit from the Lessor for activities which involve the discharge of dredge or fill material or the placement of fixed structures in waters of the United States of America, pursuant to the provisions of Section 10 of the Rivers and Harbors Act of March 3, 1899 (33 U.S.C § 403), and Section 404 of the Clean Water Act (33 U.S.C. § 1344).

40. AVAILABILITY OF FUNDS

The Lessor's obligation to pay or reimburse any money under this Interim Lease is subject to the availability of appropriated funds, and nothing in this Interim Lease shall be interpreted to require obligations or payments by the Lessor in violation of the Anti-Deficiency Act; provided that the Lessor shall otherwise comply with applicable statutory requirements and its obligations under the terms of this Interim Lease.

41. COMPLIANCE WITH EXECUTIVE ORDER 13658

a. It has been determined this contract is not subject to Executive Order 13658 or the regulations issued by the Secretary of Labor in 29 C.F.R. Part 10 pursuant to the Executive Order, and the following provisions.

b. If a duly authorized representative of the United States discovers or determines, whether before or subsequent to executing this lease, that an erroneous determination regarding the applicability of Executive Order 13658 was made, Lessee, to the extent permitted by law, agrees to indemnify and hold harmless the United States, its officers, agents, and employees, for and from any and all liabilities, losses, claims, expenses, suits, fines, penalties, judgments, demands or actions, costs, fees, and damages directly or indirectly arising out of, caused by, related to, resulting from or in any way predicated upon, in whole or in part, the erroneous Executive Order 13658 determination. This includes Lessee releasing any claim or entitlement it would otherwise have to an equitable adjustment to the lease and indemnifying and holding harmless the United States from the claims of subcontractors and contractor employees.

42. COMPLIANCE WITH EXECUTIVE ORDER 13706

a. It has been determined this contract is not subject to Executive Order 13706 or the regulations issued by the Secretary of Labor in 29 C.F.R. Part 13 pursuant to the Executive Order, and the following provisions.

b. If a duly authorized representative of the United States discovers or determines, whether before or subsequent to executing this lease, that an erroneous determination regarding the applicability of Executive Order 13706 as made, Lessee, to the extent permitted by law, agrees to indemnify and hold harmless the United States, its officers, agents, and employees, for and from any and all liabilities, losses, claims, expenses, suits, fines, penalties, judgments, demands or actions, costs, fees, and damages directly or indirectly arising out of, caused by, related to, resulting from or in any way predicated upon, in whole or in part, the erroneous Executive Order 13706 determination. This includes Lessee releasing any claim or entitlement it would otherwise have to an equitable adjustment to the lease and indemnifying and holding harmless the United States from the claims of subcontractors and contractor employees.

-----SIGNATURE PAGE FOLLOWS-----

IN WITNESS WHEREOF, I have hereunto set my hand by authority of the Secretary of the Army this 25 day of March 2021.

ADAM B. OLSON
Chief, Real Estate
U.S. Army Corps of Engineers, Sacramento District

THIS INTERIM LEASE is executed by the Lessee this 25th day of March, 2021.



SEAN SCULLY
City Manager
City of Riverbank, California