

**LEASE - MUNICIPAL PROPERTY
Recorder's Cover Sheet**

Preparer Information: (name, address and phone number)

Seth D. Dodge, 4201 Westown Parkway, Suite 250, West Des Moines, IA 50266, Phone: (515) 283-1801

1LT Seth D. Dodge, JAG 671st TC, JFHQ, IANG

Taxpayer Information: (name and complete address)

State of Iowa

% Iowa Armory Board

7105 Northwest 70th Ave.

Johnston, IA 50131

Return Document To: (name and complete address)

Iowa Armory Board

7105 Northwest 70th Ave.

Johnston, IA 50131

Grantors:

City of Waterloo

Grantees:

State of Iowa, Iowa Armory Board

Legal Description: See Page 2

**LEASE AGREEMENT
FOR
CITY-OWNED PROPERTY**

This Lease Agreement (hereinafter, the "Agreement") made the 26th day of August 2019, between the **City of Waterloo**, a municipal corporation, hereinafter referred to as the "Lessor" and the **The State of Iowa**, represented herein by the **Iowa Armory Board**, pursuant to Iowa Military Code, Chapter 29A.57, or its successor provision, hereinafter referred to as "Lessee" (collectively referred to as "the Parties").

WITNESSETH:

1. PREMISES. The Lessor hereby leases to the Lessee the following premises, locally known as the Iowa National Guard Armory and Field Maintenance Shop, 3106 Airport Blvd., Waterloo, Iowa (and adjacent property), and legally described as follows (hereinafter, the "Premises"):

PARCEL 1:

TRACT A, MIDPORT AMERICA PLAT NO.1, CITY OF WATERLOO, BLACK HAWK COUNTY, STATE OF IOWA.

and

PARCEL 2:

TRACT B, MIDPORT AMERICA PLAT NO.1, CITY OF WATERLOO, BLACK HAWK COUNTY, STATE OF IOWA, EXCEPT:

That part of said Tract "B" lying North of a line which begins at a point on the East line of Tract "B" which is Four Hundred Twenty (420.0) feet South of the Northeast corner of said Tract "B", thence N90°00'00"W Seven Hundred Ninety (790.0) feet to the West line of said Tract "B" and point of termination.

ALSO except:

The North 100 feet of the West 360 feet of that part of said Tract "B" lying south of the parcel shown on the Plat of Survey recorded in City Lot Deed Book 665, at Page 403, in the records of the Black Hawk County Recorder.

2. INITIAL TERM. The term of this Agreement shall be for a period of **fifty (50) years** commencing on the first day of _____, 2019 and ending on the last day of _____, 2069. Lessee shall have the option to renew this Agreement as provided in Section 3, or otherwise by mutual written agreement of the parties.
3. OPTION TO RENEW. So long as Lessee is not in default under the terms and provisions of this Agreement during the final six (6) months of the initial term, Lessee shall have the right and option to renew this Agreement for an additional fifty-year term ("Option Term") with the same terms and upon the same covenants, conditions and provisions provided in this Agreement. Lessee shall exercise such option, if at all, by giving written notice to Lessor not less than ninety (90) days prior to the expiration of the initial term. If Lessee fails to give such notice to Lessor, the Parties covenant and agree that the

terms of this Agreement shall continue in force and effect for successive terms of **one (1) year** each, until such time as the Lessee shall give notice of termination or as otherwise agreed by the Parties.

4. **TERMINATION.** Lessee may terminate this Agreement at any time upon thirty (30) days' advance written notice to the Lessor. Said notice shall state the effective date of the termination, which date shall not be less than 30 days from the date of written acknowledgment of receipt by Lessor, or from the date of mailing said notice to Lessor.
5. **CONDITION OF PREMISES UPON TERMINATION.** The Parties acknowledge that the Lessee has developed and improved the Premises, including the installation of several buildings. The Parties further acknowledge that Lessee intends to continue to improve the Premises at its discretion. Upon termination of this Agreement, the Lessee is not obligated to restore the Premises to its previous condition. Lessor acknowledges that the improvements may remain with the Premises in their then-current condition. Lessee is neither obligated to remove any structures or improvements, nor restricted from removing any structures or improvements, upon termination.
6. **RIGHT OF FIRST REFUSAL.** Lessor hereby grants to Lessee, a right of first refusal to purchase the Premises. Such right of first refusal shall continue during the term of this Agreement, as well as any extension or renewal period. Lessor shall promptly notify Lessee of any bona fide offer for sale of the Premises. Upon receipt of such notice, Lessee shall have sixty (60) days to exercise its right of first refusal. Lessee shall have the right to complete any due diligence to review the third-party offer in order to determine if it is a bona fide offer in good faith. If Lessee exercises its right of first refusal, such transaction shall be on substantially similar terms to the third-party offer. Any purchaser, or successor in interest to the Lessor, shall take title subject to the provisions of this Agreement.
7. **POSSESSION.** The Parties acknowledge that Lessee is currently in possession of the Premises.
8. **RENT.** Lessee agrees to pay Lessor rent of **fifty dollars (\$50)**, due and payable on the **first day of the Initial Term**
9. **LEASE TERMINATIONS.** The Parties hereby agree to terminate the following existing lease agreements with the City of Waterloo and the State of Iowa, Iowa Armory Board, or Iowa National Guard, impacting the premises, effective on the first day of July 2019:
 - A) Lease Agreement dated 9 September, 2002 (Midport America Park Plat 1, Tract A), which lease was recorded on 27 September, 2003, in **Book 2003, Page 08346** of the County Records.
 - B) Lease Agreement dated 19 June 2006 (South 125' of Tract B, Midport America Plat 1), which lease was not recorded.
10. **CARE AND MAINTENANCE.** Lessee agrees to maintain the Premises in a safe, serviceable, clean and presentable condition, except for repairs and replacements to be made by Lessor. Lessee shall make all repairs, replacements and improvements to the improvement on the Premises. Lessee may make any such improvements, structural changes, or alterations without the prior written consent of Lessor.
11. **UTILITIES AND SERVICES.** Lessee shall pay for all utility services utilized by Lessee within the Premises, including heat, water (including sewage charges and/or taxes based on water consumption), gas, utility and any other utility services used or consumed by Lessee within the Premises. Lessor shall not be liable for damages for any utility failures, or for any stoppage for needed repairs or for

improvements of utilities or arising from causes beyond the control of Lessor, provided Lessor uses reasonable diligence to resume such services if such services are provided for, maintained by, or under the control of Lessor.

12. **IMPROVEMENTS.** Lessee may construct, own and maintain at Lessee's expense, all improvements on the premises. In connection with any physical improvements that Lessee desires to make to the Premises, Lessee will provide a site plan to Lessor for review. Construction of improvements shall be in substantial conformance with plans as submitted to Lessor. Lessee shall provide written notice to Lessor of any substantial change to the plans prior to completion of the improvements. Within 2 years from the date of this Agreement, Lessee shall commence construction of parking and fencing improvements on the premises. Within 10 years from the date of this Agreement, Lessee shall substantially complete construction of a National Guard field maintenance shop on the premises. Any fence installed around the facility shall be located on the premises. The improvements may include a means of allowing storm water to flow through the Premises if deemed necessary by Lessor or county, and any storm water plan is subject to approval by Lessor. Lessee acknowledges that there are certain sanitary sewers on the Premises, and Lessee agrees to provide reasonable access to the Premises as requested by Lessor to allow maintenance of the sanitary sewer system. , Lessor agrees that it will work with Lessee in good faith to abandon or relocate the existing sanitary sewer if necessary for the completion of such improvements.
13. **PERMITS.** Lessee shall obtain and maintain, at Lessee expense, all permits necessary for operations.
14. **ASSIGNMENT/SUBLET.** Lessee **may** assign, transfer, sublease, pledge, surrender or otherwise encumber or dispose of this Agreement or any portion thereof to a governmental entity without the prior written consent of the Lessor, provided that Lessee shall promptly provide written notification to Lessor of any such action.
15. **INSURANCE.**
 - A. **PROPERTY INSURANCE.** Lessor and Lessee may keep insurance policies on their respective interests in the Premises. To the extent permitted by any such policies, the Lessor and Lessee each waive all rights of recovery against each other.
 - B. **LIABILITY INSURANCE.** Lessee is not required to carry liability insurance.
16. **LIABILITY FOR DAMAGE.** Each party shall be liable to the other for all damage to the property of the other negligently, recklessly or intentionally caused by that party (or their officials, agents, employees or invitees), except to the extent the loss is insured and subrogation is waived under the owner's policy.
17. **REAL ESTATE TAXES.** The Lessee shall be responsible for payment of any real estate taxes levied against the premises or any improvements thereon.
18. **DAMAGE.** In the event of damage to the premises, such that Lessee is unable to conduct its operations on the premises, this Agreement may be terminated at the option of either party. Such termination shall be effected by notice of one party to the other within 30 days after such notice; and both parties shall thereafter be released from all future obligations hereunder.
19. **MECHANICS' LIENS.** Neither Lessee, nor anyone claiming by, through, or under Lessee, shall have the right to file any mechanic's lien against the premises.

20. SIGNAGE. Lessee shall at Lessee's expense be permitted to place its signage upon the building facade and any monument sign on the Premises with available space.
21. DEFAULT, NOTICE OF DEFAULT AND REMEDIES.
- A) EVENTS OF DEFAULT. Each of the following shall constitute an event of default by Lessee: (1) Failure to pay Rent when due; (2) failure to observe or perform any duties, obligations, agreements, or conditions imposed on Lessee pursuant to the terms of the Agreement, including but not limited to the requirement to complete construction of improvements as set forth in Section 12; or (3) abandonment of the Premises. "Abandonment" means the Lessee has failed to engage in its usual and customary operations on the Premises for more than six (6) consecutive months.
- B) NOTICE OF DEFAULT. Lessor shall give Lessee a written notice specifying the default and giving the Lessee three (3) months in which to correct the default. Consent to additional time shall not be unreasonably withheld by Lessor. Notice pursuant to this subsection shall be by regular and certified mail to the Iowa Armory Board, the Adjutant General's office, the Iowa Attorney General, and to the Staff Judge Advocate for the Iowa Army National Guard, at the last known address of each.
- C) REMEDIES. In the event Lessee has not remedied a default in a timely manner following a Notice of Default, Lessor is limited to the following remedy: Termination. Lessor may declare this Agreement to be terminated and shall give Lessee a written notice of such termination. Notice pursuant to this subsection shall be by regular and certified mail to the Iowa Armory Board, the Adjutant General's office, the Iowa Attorney General, and to the Staff Judge Advocate for the Iowa Army National Guard, at the last known address of each.
22. CONDITION OF PREMISES. It is understood by and between the Parties herein that the Lessee accepts the premises in their present, AS-IS condition, without any representation or warranty by Lessor as to the condition of same or their suitability for any particular purposes. The parties acknowledge that Lessee has occupied a portion of the Premises for more than 15 years and is fully familiar with the condition and attributes of same.
23. USE OF PREMISES. The Lessee will use said premises pursuant to its own operational discretion, subject to applicable law.
24. MAINTENANCE. The Lessee agrees to provide for maintenance, mowing and snow removal of the Premises. Unless expressly stated to the contrary, Lessee's exercise of any right, option, privilege or remedy under or in relation to this Agreement shall be at the sole cost and expense of Lessee, without reimbursement or contribution by Lessor.
25. EASEMENTS. Lessee acknowledges that this Agreement is subject to any existing easements, covenants, or restrictions of record.
26. NOTICES AND DEMANDS. All notices shall be given to the Parties hereto at the addresses designated unless either party notifies the other, in writing, of a different address. Without prejudice to any other method of notifying a party in writing or making a demand or other communication, such notice shall be considered given under the terms of this Agreement when it is deposited in the U.S. Mail, registered or certified, properly addressed, return receipt requested, and postage prepaid.

27. SEVERANCE. Any provision contained in the Agreement which is unenforceable shall not affect the enforceability of the remaining provisions.

28. ENTIRE AGREEMENT. This Agreement contains the entire agreement between the Parties. None of the covenants, provisions, terms or conditions of this Agreement will be in any manner modified, waived, or abandoned, except by written instrument duly signed by both Parties and delivered to the Lessor and Lessee.

29. PROVISIONS BINDING. Each and every covenant and agreement herein contained shall extend to and be binding upon the respective successors, assigns and transferees of the Parties.

IN WITNESS WHEREOF, the Parties have entered into this Lease Agreement on the date appearing in the first paragraph hereof.

LESSOR

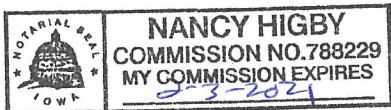
CITY OF WATERLOO

By: Quentin Hart
Quentin Hart, Mayor

Attest: Kelley Felchle
Kelley Felchle, City Clerk

STATE OF IOWA, COUNTY OF BLACK HAWK) ss.

On the 27th day of August, 2019, before me, the undersigned, a Notary Public in and from this state and county, personally appeared Quentin Hart and Kelley Felchle, to me personally known, who, before me duly sworn, did say that they are the MAYOR and City Clerk, respectively, of said City executing the within and foregoing instrument, that said instrument was signed and sealed on behalf of said City by authority of its City Council; and that the said MAYOR and City Clerk acknowledge the execution of said instrument to be the voluntary act and deed of said City, by it and by them voluntarily executed.



Nancy Higby
Notary Public

LESSEE

IOWA ARMORY BOARD

by *Gary A. Freese*
Gary A. Freese (OL(Kot) QM)
Chairman, Iowa Armory Board

STATE OF IOWA, COUNTY OF Polk) ss.

On the 10 day of February, 2019^{30 DKB}, before me, the undersigned, a Notary Public in and from this state and county, personally appeared Gary A. Freese, to me personally known, who, before me duly sworn, did say that they are the State Quartermaster, of the IOWA ARMORY BOARD, executing the within and foregoing instrument, that said instrument was signed on behalf of said IOWA ARMORY BOARD; and that the said State Quartermaster, acknowledge the execution of said instrument to be the voluntary act and deed of said IOWA ARMORY BOARD, by it and by them voluntarily executed.

Dawn K Baumunk
Notary Public in and for said County

