

**LEASE AGREEMENT BETWEEN THE CITY OF PENSACOLA AND UNITED
SERVICES ORGANIZATION**

PENSACOLA INTERNATIONAL AIRPORT

THIS LEASE AGREEMENT (“Lease”) dated this ___ day of _____, 2017, by and between the City of Pensacola (“City”), a municipal corporation of the State of Florida and the United Services Organization (“USO” or “Lessee”), a Congressionally chartered, nongovernmental, nonprofit organization with the business address of 1168 Gator Boulevard, Building 3370, Virginia Beach, Virginia 23455, each at times hereinafter referred to as a “party” or collectively as “parties” is made and entered into in support of USO operations at the Pensacola International Airport..

WITNESSETH:

WHEREAS, the City owns, operates, and maintains Pensacola International Airport (“Airport”); and

WHEREAS, the Airport serves in excess of 1.5 million passengers each year, approximately 19% of which are travelling for military purposes; and

WHEREAS, the USO is a Congressionally chartered, nongovernmental, nonprofit organization whose mission is to enhance the quality of life for military personnel, single or married, and their families by helping them adjust to the special rigors of a transient military life style and by fostering a viable partnership between the military and the civilian communities; and

WHEREAS, the USO desires to provide at the Airport such services as further described below in the terms and conditions of this Lease; and

WHEREAS, the Airport desires the USO provide such services; and

WHEREAS the services, if not provided by the USO, would need to be provided by the Pensacola International Airport.

NOW, THEREFORE, for and in consideration of the premises, and of the mutual covenants and agreements and the payment of money herein contained, the City and Lessee do hereby mutually undertake, promise and agree, each for itself and its successors and assigns, as follows:

I. Recitals:

The recitals contained above are declared by the Parties to be true and correct and are incorporated into this Lease.

II. Use and Services:

Lessee shall provide the following services:

- A. Military Airport Center: Lessee shall outfit and staff an airport center in the Passenger Terminal Building, the location and any potential relocation of such center to be determined in the sole discretion of the Airport Director, and provide

comfort and convenience services to U.S. military personnel, Active Duty, Reserve, and Guard, as well as their family members, who may be transiting the facility. Said center shall be equipped and operated by Lessee in compliance with the USO's national policies and federal, state, and local laws and Airport rules, policies, and regulations.

- B. Information Booth: Lessee shall provide and staff a booth in the Passenger Terminal Building, the location and any potential relocation of such booth to be determined in the sole discretion of the Airport Director, for general customer assistance purposes, providing services to the total general public to assist with wayfinding within the Airport, and distributing visitor guides and other community information as determined in the sole discretion of the Airport Director. Lessee shall provide in a courteous manner to the general public information regarding the locations of concessions, restrooms, elevators, airlines, gates, and other facilities within the Passenger Terminal. Lessee shall maintain accurate knowledge of telephone numbers and other information for the benefit of the general public as other means through which such individuals can respond to requests for information.
- C. Special Services: Lessee shall cooperate and coordinate, in the sole discretion of the Airport Director, with Airport staff to host special events involving military personnel arriving or departing the Pensacola International Airport. Special services may include:
- Families of the Fallen: Lessee shall coordinate with Airport Administration for the dignified transfer of fallen service members arriving or departing the Pensacola International Airport, and for the care of family members who come to the facility for the transfer.
 - Large scale military arrival/departure: Lessee shall coordinate with the local military commands and Airport Administration to assist with the periodic mass arrival or departure of military personnel. Arrival assistance may include coordinating transportation to the correct local military installation. Departure assistance may include coordinating for the temporary outfitting and staffing of additional areas in the Passenger Terminal when the number of anticipated departing personnel exceed the capability of the Military Airport Center.

III. Hours of Operation:

Lessee shall staff areas as follows:

- A. Military Airport Center: 8:00 a.m. – 8:00 p.m.; All days of the week;
- B. Information Booth: 8:00 a.m. – 8:00 p.m.; All days of the week;
- C. Special Services: As needed and upon mutual agreement

IV. Leased Premises:

In consideration of the provisions of services pursuant to Section II and Section III above, City hereby leases to Lessee, solely for the use and purposes described in Section II above, the following space “Leased Premises” within the Passenger Terminal Building (“Terminal Building”) at the Pensacola International Airport:

- A. Military Airport Center: 1,104 square feet of space located on the second level of the Terminal Building as more accurately shown on Exhibit A attached hereto and incorporated by this reference.
- B. Information Booth: 100 square feet of space located on the second level of the Passenger Terminal Building as more accurately shown on Exhibit A.

V. Term and Renewal:

Subject to earlier termination as may be provided here, the term of this Lease shall commence on January 1, 2017 and shall continue for a period of thirty-six (36) consecutive months terminating at midnight on December 31, 2019.

City reserves the right to renew this Lease, at the sole discretion of the City and under terms and conditions to be determined by the City, for two (2) additional one (1) year terms. If the City chooses to exercise its right to renew this Lease, the USO shall be notified in writing of the terms and conditions to which the City shall exercise this right one hundred fifty (150) days before the expiration of the Lease. The USO shall have the choice as to whether to accept the City’s proposal or allow the Lease to expire and shall so notify the City in writing within thirty (30) days of receipt of City’s proposal. Nothing in this paragraph shall be construed as to require the City to exercise such option to renew or as to require the USO to accept such proposal from the City.

Should USO continue to provide the services upon the expiration of the term, or any extension thereof, without notice of cessation or termination by City, said continuation shall be deemed a month-to-month renewal of this Lease terminable by City, without cause, upon thirty (30) days written notice to USO.

Notwithstanding any other provision of this Lease, the City shall have the absolute right to terminate this Lease upon ninety (90) days of issuance of written notice to the Lessee for convenience in the sole discretion of the City. Upon ninety (90) days of issuance of written notice to the Lessee, Lessee shall cease all services and vacate the Airport.

VI. Payment:

Lessee acknowledges and agrees that the City must assess fees to all entities using space at the Airport. Terminal Building rental rates are determined each year using a rate making methodology as outlined in Pensacola City Code and in the agreements with the airlines utilizing the facility. In consideration of the services provided by Lessee, the parties agree Lessee shall pay such rate according to the methodology, provided however, the number of hours expended annually by Lessee in both the Military Airport Center and Information Booth, shall be multiplied by the then-current minimum wage rate in place in the State of Florida, and will be applied against the annual rental rate otherwise due for any given year in the form of a rent credit.

VII. Utilities, Maintenance, and Custodial Services:

Utilities:

During the term of this Lease, City shall provide, at its expense, existing power, air conditioning, and heating to the Leased Premises. The City shall not be obligated to provide for any extension, customization, modification or enhancement of these utilities, or to provide for the installation of any other utilities. The Lessee, at the Lessee's sole cost and expense, shall arrange for the extension of these utilities as needed. Throughout the term of this Agreement, the Lessee shall not disturb or render any utility lines inaccessible, and shall be liable for any consequences of disturbing City provided utilities.

The City shall not invoice the Lessee for power, air conditioning and heating. Lessee shall pay, at Lessee's expense, and remain solely liable for, any telephone services or other permitted utilities in the sole discretion of the Airport Director, within the Leased Premises. Lessee shall obtain and maintain separate accounts for Lessee's utilities as described in this paragraph in Lessee's name only, and is prohibited from obligating in any way the City on such accounts. Any violation of this provision by Lessee shall be a material breach of this Lease.

The City reserves the right to install, maintain, repair, replace, or remove and replace any utility lines for or about the Leased Premises, along with the right to enter the Leased Premises in order to accomplish the foregoing, provided, however, that City shall take reasonable precautions to avoid the disruption of the Lessee's services under this Lease.

Maintenance:

During the term of this Lease, the City shall provide, at its expense:

1. Structural repairs to the roof, floor, exterior walls and windows of the Terminal building.
2. General maintenance and upkeep of the Terminal building's interior common use area and external area. The City agrees to keep and maintain in reasonable condition all trunk water and sewer mains, supply mains and electrical power to the Leased Premises.

City shall have reasonable opportunity to commence repairs. Lessee is obligated to mitigate damage to Lessee's property until the City has had time to repair. City shall not be liable to Lessee for damage until City has had a reasonable time to perform repairs.

Lessee, at Lessee's sole expense, shall perform all preventive maintenance and ordinary upkeep and nonstructural repair of the Leased Premises and equipment, including but not limited to fixtures, doors, floor coverings, and walls (painting and wall covering). Lessee shall be required to keep all such areas in good operating condition and repair at all times.

Custodial:

During the term of this Lease, the City shall provide, at its expense, custodial services for the non-leased public areas of the Terminal Building and pest control services for

Leased Premises and the adjacent areas, provided however, any lapse in such services provided outside of the Leased Premises shall not be considered a breach of this Lease.

Lessee shall keep all of Leased Premises in the Terminal Building used in the course of its normal daily operations, in a neat, clean, safe, sanitary and orderly condition at all times; that it will keep such areas free at all times of all paper, rubbish and debris. Lessee shall deposit all trash and debris resulting from its operations in its space in containers approved by the City.

Lessee shall provide, at its own expense, to the satisfaction of the Airport Director janitorial and cleaning services and supplies for the maintenance of the Leased Premises. Lessee shall keep and maintain the space in a clean, neat, and sanitary condition and attractive appearance.

General:

Should Lessee fail to maintain the space in conformance with the terms and conditions of this article within a period of seven (7) calendar days following written notice of such failure (or for those items that cannot be reasonably cured within seven (7) days, USO fails to undertake action to cure and diligently pursue such cure), the City expressly may take any action to cure said failure and Lessee shall reimburse City's cost for such actions plus a ten percent (10%) administrative charge.

VIII. Right of Entry:

- A. Right of Entry and Inspection: The City and its authorized officers, employees, agents, contractors, subcontractors and other representatives shall have the right to enter upon the Leased Premises at all times:
- i. To inspect the areas to determine whether Lessee has complied with and is complying with the terms and conditions of this Lease; and
 - ii. To perform maintenance and make repairs in any case where Lessee is obligated but has failed to do so; and
 - iii. To perform any and all things which the Lessee is obligated to and has failed after reasonable notice so to do; and
 - iv. In the exercise of Lessee's police powers; and
 - v. As necessary for Airport business and operations or pursuant to any term or condition of this Lease in the sole discretion of the Airport Director.
- B. Right to Install Items: The City shall have the right to construct or install over, in, under or through Airport new lines, pipes, mains, wires, conduits and equipment as the City may deem necessary.

IX. Insurance and Indemnification:

General:

The USO shall procure and maintain insurance of the types and to the limits specified.

The term City as used in this section of the Lease is defined to mean the City of Pensacola itself, any subsidiaries or affiliates, elected and appointed officials, employees, volunteers, representatives and agents.

The USO and the City understand and agree that the minimum limits and types of insurance herein required may become inadequate during the term of the Lease. The USO agrees that it will increase or change such coverage as required by the City within ninety (90) days upon receipt of written notice from the Airport Director.

Insurance Requirements:

Insurance shall be issued by an insurer whose business reputation, financial stability and claims payment reputation is satisfactory to the City, for the City's protection only. Unless otherwise agreed, the amounts, form and type of insurance shall conform to the following minimum requirements:

A. Worker's Compensation:

The USO shall purchase and maintain Worker's Compensation Insurance Coverage for all Workers' Compensation obligations as legally required. Additionally, the policy, or separately obtained policy, must include Employers Liability Coverage of at least \$100,000 each person-accident, \$100,000 each person disease, \$500,000 aggregate-disease.

B. Commercial General, Automobile, and Umbrella Liability Coverages:

The USO shall purchase coverage on forms no more restrictive than the latest editions of the Commercial General Liability and Business Auto policies filed by the Insurance Services Office. The City shall be an Additional Insured and such coverage shall be at least as broad as that provided to the Named Insured under the policy for the terms and conditions of this agreement. The City shall not be considered liable for premium payment, entitled to any premium return or dividend and shall not be considered a member of any mutual or reciprocal company. Minimum limits of \$3,000,000 per occurrence, and per accident, combined single limit for liability must be provided, with umbrella insurance coverage making up any difference between the policy limits of underlying policies coverage and the total amount of coverage required.

1. Commercial General Liability coverage must be provided, including bodily injury and property damage liability for premises, operations, contractual, products and completed operations, and independent contractors. Broad Form Commercial General Liability coverage, or its equivalent, shall provide at least broad form contractual liability applicable to this specific contract, as well as personal injury liability and broad form property damage liability. The coverage shall be written on an occurrence-type basis.

2. Business Auto Policy coverage must be provided, including bodily injury and property damage arising out of operation, maintenance or use of owned, non-owned and hired automobiles and employee non-ownership use. Minimum limits of \$1,000,000 combined single limits must be provided.

3. Umbrella Liability Insurance coverage shall not be more restrictive than the underlying insurance policy coverages. The coverage shall be written on an occurrence-type basis.

Certificates of Insurance:

Required insurance shall be documented in the Certificates of Insurance that provide that the City of Pensacola shall be notified at least thirty (30) days in advance of cancellation, non-renewal or adverse change or restriction in coverage. The City of Pensacola shall be named on each Certificate as an Additional Insured and this contract shall be listed. If required by the City, the USO shall furnish copies of the USO's insurance policies, forms, endorsements, Jackets and other items forming a part of, or relating to such policies. The USO may black-out any proprietary or salary information included in any policy required under this agreement that is requested by the City. Certificates shall be on the "Certificate of Insurance" form equal to, as determined by the City an ACORD 25. Any wording in a Certificate which would make notification of cancellation, adverse change or restriction in coverage to the City an option shall be deleted or crossed out by the insurance carrier or the insurance carrier's agent or employee. The USO shall replace any canceled, adversely changed, restricted or non-renewed policies with new policies acceptable to the City and shall file with the City Certificates of Insurance under the new policies prior to the effective date of such cancellation, adverse change or restriction. If any policy is not timely replaced, in a manner acceptable to the City, the USO shall, upon instructions of the City, cease all operations under the Lease until directed by the City, in writing, to resume operations. The "Certificate Holder" address should read: City of Pensacola, Department of Risk Management, Post Office Box 12910, Pensacola, FL 32521. An additional copy should be sent to the Pensacola International Airport, Attn: Airport Administration and Contracts Manager, 2430 Airport Blvd., Suite 225, Pensacola, FL 32504.

Insurance of the Contractor Primary:

The USO's required coverage shall be considered primary, and all other insurance shall be considered as excess, over and above the USO's coverage. The USO's policies of coverage will be considered primary as relates to all provisions of the agreement.

Loss Control and Safety:

The USO shall retain control over its employees, agents, servants and subcontractors, as well as control over its invitees, and its activities on and about the subject premises and the manner in which such activities shall be undertaken and to that end, the USO shall not be deemed to be an agent of the City. Precaution shall be exercised at all times by the USO for the protection of all persons, including employees, and property. The USO shall make special effort to detect hazards and shall take prompt action where loss control/safety measures should reasonably be expected.

Hold Harmless:

The USO shall indemnify and hold harmless the City of Pensacola, its officers and employees, from any and all liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the USO and persons employed

or utilized by the USO in the performance of this agreement. The USO's obligation shall not be limited by, or in any way to, insurance coverage or by any provision in or exclusion or omission from any policy of insurance.

X. Compliance with Rules and Regulations:

Lessee shall conform to all Federal, State, or local laws and regulations, as well as all City of Pensacola Codes and Ordinances, and City and Airport rules, regulations and policies all of which may apply to the services to be performed.

Lessee shall obtain and maintain in force all licenses, permits, and other certificates required by Federal, State, County, or municipal or Airport authorities for operation under the terms of this Lease.

Lessee observe all security requirements of Transportation Security Administration 49 CFR 1542, and the Airport Security Program, as may be applicable, and as the same may, from time to time, be amended, and to take such steps as may be necessary or directed by the City to ensure that employees, invitees, agents, and guests observe these requirements.

Should City incurs any costs, fees, fines or penalties imposed by as a result of the acts or omissions of Lessee under this Section X, Lessee shall pay or reimburse the City upon demand by the Airport Director in accordance with such demand notice for all such monies.

Lessee acknowledges the Airport is a secure and significant facility and as such Lessee shall not through any act or omission cause even the risk of fire, slippage or other hazard whatsoever, or cause any hazard to persons, or property, or obstruct or interfere with the rights of any other Airport tenants, or in any way injure or annoy Airport tenants, or any act or omission which violates or causes violation of any applicable health, fire, environmental, or other regulation of any level of government. Any breach of this paragraph shall be a material breach of the Lease and City expressly may immediately take any action in the sole discretion of the Airport Director to secure correction of such risk exposure, and thereafter Lessee shall pay or reimburse the City upon demand by the Airport Director in accordance with such demand notice for all costs to the City.

XI. Supervision of Employees and Volunteers, Parking:

Lessee shall ensure that its employees and volunteers conduct themselves in a professional and courteous manner at all times. Lessee's employees shall be appropriately dressed at all times, and maintain a clean, neat, well-groomed appearance. Lessee will be obligated to control the actions of its employees and cooperate with the City in controlling any employee whose conduct the Airport Director feels is detrimental to the best interest of the Airport and public.

USO shall have the right to the use of reasonably adequate vehicular parking facilities for its employees and volunteers at the Airport. Such facilities shall be located in an area designated by the Airport Director. The City reserves the right to assess a reasonable charge for such employee parking facilities. Such charge for Lessee parking use shall not exceed that which is charged to other commercial tenants in the Terminal Building.

XII. Signs:

Lessee shall not permit signs, logos, or advertising displays placed or erected in any manner upon the Leased Premises, or in or on any improvements or additions on the Leased Premises, without the prior written approval of the Airport Director. Signs identifying USO shall conform to reasonable standards established by the City, with respect to type, size, design, condition and location.

XIII. Assignment:

Any assignment or sublet of this Lease is prohibited and shall be null and void and of no effect.

XIV. No Waiver by City:

A failure by City to take any action with respect to any default or violation by Lessee of any of the terms, covenants, or conditions of this Lease shall not in any respect limit, prejudice, diminish or constitute a waiver of any rights or remedies of City to act with respect to any prior, contemporaneous, or subsequent violation or default or with respect to any continuation or repetition of the original violation or default. The acceptance by City of payment for any period or periods after a default or violation of any of the terms, conditions, and covenants of this Lease shall not constitute a waiver or diminution of, nor create any limitation upon any right of City pursuant to this Lease to terminate this Lease for subsequent violation or default, or for continuation or repetition of the original violation or default.

XV. Surrender Upon Termination:

Upon the expiration or termination of this Lease, for any reason whatsoever, Lessee shall peaceably surrender to the City possession of the Leased Premises. Lessee warrants to City that any and all improvements, alterations, or fixtures previously constructed by Lessee shall remain free and clear of any claims or interests of Lessee, Lessee's contractors or subcontractors, creditors, invitees, or any other third party. Should Lessee violate this provision, without waiver of other action by City for City's own benefit, Lessee shall pay to remove any encumbrance, lien or debt associated with Lessee's occupation of the Leased Premises and hereby warrants that Lessee shall hold the City harmless therefrom.

XVI. Removal of Lessee's Property Upon Termination:

The personal property of Lessee placed or installed at or on the Airport by Lessee, including, but not limited to, trade fixtures and trade equipment, shall remain the property of Lessee and must be removed on or before the expiration of the term or the expiration of any extension or renewal of this Agreement at Lessee's sole risk and expense. Any damage to the assigned areas, the Airport or any portion thereof resulting from such removal shall be paid for by Lessee. In the event of termination of this Agreement, Lessee shall have thirty (30) days after such termination during which to remove such property.

If Lessee's property is not removed as herein provided, City may, at its option, after written notice to Lessee and at Lessee's sole risk and expense, remove such property to a public warehouse for deposit, or retain the same in City's possession and after the expiration of thirty (30) days take ownership of such property without payment by the City to Lessee of any compensation whatsoever, and said property shall thereafter be owned by City free and clear of any claim or interest by Lessee.

XVII. Subordination:

This Lease shall be subordinate to existing and future Airport Bond Resolutions. This Lease shall also be subject to and subordinate to agreements between the City and State and Federal agencies for grants-in-aid and to the provisions of any agreements heretofore made between the City and the United States, relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of federal rights of property to the City for Airport purposes, or to the expenditure of federal funds for the extension, expansion, or development of the Airport, including the expenditure of federal funds for the development of the Airport in accordance with the provisions of the Federal Airport Act of 1958, as it has been amended from time to time. Any agreement hereafter made between the City and the United States will not be inconsistent with rights granted to Lessee herein.

XVIII. Attorney's Fees:

The prevailing Party in any action, claim or proceeding arising out of this Lease shall be entitled to attorney's fees and costs from the losing Party.

XIX. Force Majeure:

Neither the City nor Lessee shall be deemed in violation of this Lease if it is prevented from performing any of the obligations hereunder by any reason of strikes, boycotts, labor disputes, embargoes, shortage of material, acts of God, weather conditions, or for any other circumstance for which it is not responsible or which is not within its control.

XX. Relationship of Parties:

Lessee represents and warrants Lessee is not in any way or for any purpose a partner or joint venturer with or agent of the City. Lessee shall act as an independent contractor in the performance of its duties pursuant to this Lease.

XXI. Notices:

All notices by either party to the other shall be made either by utilizing the registered or certified mail of the United States of America, postage prepaid, or by utilizing any other method of delivery requiring signature for receipt, and such notice shall be deemed to have been delivered and received on the date of such utilization. All notices to the City shall be mailed to:

Airport Director
Pensacola International Airport
2430 Airport Blvd., Suite 225
Pensacola, Florida 32504

With an additional copy to:

City Administrator
City of Pensacola
222 West Main Street
Pensacola, Florida 32502

All notices to USO shall be mailed to:

The parties from time to time may designate in writing changes in the address stated.

XXII. Entire Lease:

This writing, together with all the attached exhibits, constitutes the entire agreement of the parties. This Lease supersedes all prior agreements, if any, between the City and Lessee, and no representations, warranties, inducements, or oral agreements that may have been previously made between the parties shall continue in effect unless stated herein. This Lease shall not be modified except in writing, signed by the City and Lessee.

XXIII. Partial Invalidity:

If any term or condition of this Lease or the application thereof to any person or event shall to any extent be deemed invalid and unenforceable, the remainder of this Lease and the application of such term, covenant, or condition to persons or events other than those to which it is held unenforceable shall not be affected, and each term, covenant and condition of this Lease shall be valid and enforced to the fullest extent permitted by law.

XXIV. Successor:

The provisions, covenants and conditions of this Lease shall bind and inure to the benefit of the legal representatives, successors and assigns of each of the parties.

XXV. Consents and Approvals:

Where this Lease requires approval from the City, prior written approval from the Airport Director shall be considered to fulfill such requirements.

XXVI. Governing Law.

This Lease is governed and construed in accordance with the laws of the State of Florida. The law of the State of Florida shall be the law applied in the resolution of any claim, actions or proceedings arising out of this Lease.

XXVII. Venue.

Venue for any claim, actions or proceedings arising out of this Lease shall be Escambia County, Florida.

XXVIII. Headings:

The headings contained in this Lease are inserted only as matter of convenience and for reference and do not define or limit the scope or intent of any provision of this Lease and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction of said terms and provisions.

XXIX. Public Records Act.

The Parties shall each comply with Florida Public Records laws. The Parties hereby contractually agree that each Party shall allow public access to all documents, papers, letters, or other public records as defined in Chapter 119, Florida Statutes, made or received by either Party in conjunction with this agreement, or related thereto, unless statutory exemption from disclosure exists.

IN WITNESS WHEREOF, the parties hereto have signed this instrument the day and year first above written.

Attest:

City of Pensacola,
a Florida municipal corporation

Ericka Burnett, City Clerk

By _____
Ashton J. Hayward III, Mayor

United Services Organization

Attest:

By: _____
Printed Name _____
Title _____

Corporate Secretary

Approved As To Form and Execution:

Approved As To Content:

By _____
City Attorney

By _____
Airport Director

EXHIBIT A
LEASED PREMISES

