

**U.S. ARMY CORPS OF ENGINEERS
OMAHA DISTRICT
SUPPLEMENTAL LEASE
AGREEMENT**

SUPPLEMENTAL
AGREEMENT

DATE

NO. 2

TO LEASE NO.

DACA45-5-79-00482

ADDRESS OF PREMISES: 993 Third Street
Menasha, WI 54952-3235 (Winnebago County)

THIS AGREEMENT, made and entered into this date by and between: **THE CITY OF MENASHA, WISCONSIN**, for itself, its heirs, administrators, successors, and assigns, hereinafter called the Lessor, and **THE UNITED STATES OF AMERICA**, hereinafter called the Government; and

WHEREAS, the City of Menasha and the United States of America have entered into a series of lease agreements, the last of which was dated April 18, 1979 (hereinafter referred to as the "Lease"), for approximately 2.48 acres of real property located at 993 Third Street in the city of Menasha (hereinafter referred to as the "Property"), which was utilized by the United States Army for military related purposes; and

WHEREAS, it is the desire of the Lessor and the Government to terminate the lease by mutual agreement, effective ____ August 2013; and

WHEREAS, neither the Lessor nor the Government have a further requirement for the improvements made by the Government on the property and the Lessor gave notice to the Government that the improvements must be removed in accordance with the terms and conditions of the lease; and

WHEREAS, it is advantageous and in the best interest of the Government to modify the said lease to provide payment for the restoration of the leased premises improved by the Government:

NOW THEREFORE, effective ____ August 2013, in consideration of the premises, this lease is amended in the following particulars, but in no others:

a. In accordance with Paragraph 9 the city is willing to accept and remove the improvements on their own accord through a mutually acceptable cash settlement for the sum of One Hundred Forty Thousand Dollars & no/100 (\$140,000.00) in lieu of performance of the Governments obligations to restore the property.

b. The LESSOR hereby releases and forever discharges the Government, its officers, agents and employees from all claims for damages or for restoration, and from any and all liability that may arise out of said lease and occupation of the property by the Government, including but not limited to, asbestos abatement and/or remediation, since its occupation of the property dating back to the year 1954 .

IN WITNESS WHEREOF, the parties subscribed their names as of the above date.

LESSOR: THE CITY OF MENASHA, WISCONSIN,

By _____
CITY OF MENASHA MAYOR: DONALD MERKES
(Signature)

IN PRESENCE OF:

(Signature)

(Title)

Fund Cite:

UNITED STATES OF AMERICA

BY _____
Dewayne S. Prince
Chief, Real Estate Division
Real Estate Contracting Officer



MEMORANDUM

To: Common Council and Mayor Merkes

From: PRD Tungate *BT*

Date: August 23, 2013

RE: Army Reserve Building Demolition

The City was recently contacted by the Army Corps of Engineers (ACOE) regarding the possible demolition of the Army Reserve Building. We were told the demolition could occur much sooner if the city agreed to accept a sum sufficient to demolish the building on its own rather than continue waiting for the Federal government to take action. We were also informed that due to Federal budget considerations, there was a very short window of opportunity for the funds to be encumbered for the demolition. This is why a special Common Council meeting was called.

A copy of the supplemental lease agreement and a letter sent by CA Captain explaining the Common Council's previous action requesting the lease be terminated and the buildings demolished are attached. Both the ACOE and City staff have solicited quotes for the cost of asbestos abatement, demolition including site restoration and staff is confident that \$140,000 is enough to cover the entire demolition project. Should there be a surplus of funds, the plan is to place this money into the Parkland Dedication Fund (209-0000-466.00-00).



MEMORANDUM

Date: August 23, 2013

To: Common Council
From: Pamela A. Captain, City Attorney

RE: Supplemental Lease Agreement (to April 18, 1979 Land Lease between the City of Menasha, Wisconsin and The United States of America for the Army Reserve at Jefferson Park)

On October 15, 2012 the Common Council approved terminating the April 18, 1979 Land Lease between the City of Menasha, Wisconsin and The United States of America (for the Army Reserve at Jefferson Park)(AGREEMENT). The minutes are copied below for your convenience:

“Moved by Ald. Sevenich, seconded by Ald. Benner to approve Consent Agenda item 5, Terminating the Lease and accepting the Army Reserve property with following conditions:

- The building is demolished by the Army and returned to its previous state per the lease agreement, to include removal of any underground footings, utilities, storage tanks, pavement or other structures, and grading and seeding the site.
- The Army demonstrates that there's no contamination resulting from their use of the property.

PRD Tungate explained the Park & Recreation Board has reviewed the building and made the recommendation to the Plan Commission and the same recommendation was made to the Council. CA/HRD Captain explained the lease with the Army Corp of Engineers allows for the City to request the U.S. Army demolishes the building and returns the property to the pre-lease condition. Motion carried on roll call 7-0.”

On October 19, 2012, written notice of the common council's lease termination action was provided to the Corps of Engineers, the lease contact for the United States. Director Tungate has been the City's contact and has been working with the United States to effectuate the lease termination and subsequent demolition of the Army Reserve Building.

The United States has exercised its option under paragraph 9 of the AGREEMENT to offer a cash settlement with the Lessor (the City) in lieu of

performance of its obligation to restore the property to the condition existing at the time of entering under the AGREEMENT, reasonable wear and tear excepted.

The City may, but is not obligated to, accept the cash settlement. In accepting the cash settlement, the City agrees to take the property back "as is" and perform the demolition and asbestos removal at its own cost. We are not aware of any other environmental contaminants on the property. United States' contact person, Lisa R. Gulbranson, BRAC Environmental Coordinator, Environmental Protection Specialist, 88th Regional Support Command, provided a copy of a 1994 Underground Storage Tank removal/closure report indicating no petroleum contamination identified during the tank removal. Ms. Gulbranson also reported "There is no known contamination on the Menasha property."

The City is taking a risk in accepting the cash settlement in the event that other unknown contaminants are discovered during demolition. However, there is no indication that there are or that there may be contaminants that were caused by the United States' use of the property.

Staff did negotiate with United States' contact person to secure the funds necessary to pay for the demolition, asbestos removal, administrative costs and expenses.



October 23, 2012

Lon G. Larsen
US Army Corps of Engineers
1616 Capitol Avenue, Suite 9000
Omaha, NE 68102-9000

RE: Renewal of Lease No. DA-11-032-ENG-2281
Omaha District
Lease No. OAGA45-5 79-00482
Using Service: Army Reserve
Land Lease between the City of Menasha, Wisconsin and The United States of America (Land Lease)

Dear Mr. Larson:

Notice is being sent to you that upon recommendations from the Park Board and Plan Commission, the City of Menasha Common Council took action at its last meeting relative to the above-mentioned Land Lease. The United States' buildings have not used for many years and are deteriorating and the City of Menasha desires to begin planning for the future use of the waterfront property upon which the buildings exist.

Please be advised that on October 15, 2012, the City of Menasha Common Council voted: (1) to terminate the Land Lease; and (2) send notice to the United States of America requiring the buildings to be demolished and a return of the premises to its previous state per the Land Lease, to include removal of any underground footings, utilities, storage tanks, pavement or other structures, grading and seeding the site and a demonstration by the United States that there is no environmental contamination resulting from its use of the property.

Paragraph 9 of the lease agreement provides that the United States, ". . . upon the expiration or termination of this lease and, if required by the Lessor, shall within 90 days thereafter, or within such additional time as may be mutually agreed upon, return the premises in as good condition as that existing at the time of entering upon the same under this lease, . . ."

Thank you for your attention to this matter. I look forward to working with you on this project.

Very truly yours,

Pamela A. Captain
Pamela A. Captain 

CC: Lewis Nabity

C: PRD Tungate
Deborah Galeazzi, Clerk