



RESOLUTION NO. 20120828-03

RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR/CEO TO EXECUTE A LEASE FOR 123 TEXAS AVENUE TO M2 SERVICES

WHEREAS, TexAmericas Center is a political subdivision of the State of Texas with the powers and authorities specified in Chapter 3503 of the Special District Local Laws Code of the State of Texas; and

WHEREAS, M2 Services contacted TexAmericas Center to seek a lease arrangement for storage space and related facilities at 123 Texas Avenue, New Boston, TX 75570; and

WHEREAS, the parties have come to the attached terms of agreement for said lease.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Directors of TexAmericas Center that the Executive Director/CEO shall be and he is hereby authorized to execute the attached lease; and

BE IT FURTHER RESOLVED, by the Board of Directors of TexAmericas Center that the Center appreciates the collaborative effort of M2 Services to negotiate this lease as well as to continue its business operations, preserve existing jobs and contribute to the tax base in Bowie County, Texas.

PASSED AND APPROVED THIS 28th day of August, 2012.



Denis Washington, Chairman of the Board

ATTEST:



Wayne Cranfill, Secretary-Treasurer

Attached: Lease Agreement

**TEXAMERICAS CENTER
LEASE AGREEMENT
CENTRAL CAMPUS**

TERMS AND DEFINITIONS

Date: August 28, 2012

Landlord: TexAmericas Center

Landlord's Mailing Address:

TexAmericas Center
107 Chapel Lane
New Boston, Bowie County, Texas 75570

Tenant: M2 Services Corporation

Tenant's Mailing Address:

5900 S. Lake Forest Drive
Suite 240
McKinney, TX 75070

Premises, which includes onsite parking areas, are a portion of that certain 765 acre tract described in the Deed Without Warranty dated May 20, 1999, recorded in Volume 3072, Page 237 of the Real Property Records of Bowie County, Texas, and described as follows:

Approximate Square Feet: 8,000

Name of Building: Building 123 Warehouse

Street Address/Suite: 123 Texas Street

City, State, ZIP: New Boston, TX 75570

Base Rent (monthly): \$2,200.00

Term (months): 24 months

Commencement Date: September 1, 2012

Termination Date: August 31, 2014

Security Deposit: \$2,200.00

Ad Valorem Tax Deposit: \$3,500.00

Use: Storage and Maintenance/Repair

Amount of Liability Insurance:

Death/Bodily Injury: \$2,000,000.00

Property Damage: \$1,000,000.00

Guarantor: None

Guarantor's Address: Not Applicable

"Rent" means base rent plus any other sums of money due Landlord by Tenant.

"Landlord" means Landlord and its agents, employees, or licensees.

"Tenant" means Tenant and its agents, employees, invitees, licensees, or visitors.

LEASE CLAUSES AND COVENANTS

A. Unless otherwise provided in other provisions of this Agreement, Tenant agrees to--

1. Lease the Premises for the entire term beginning on the commencement date and ending on the termination date.
2. Accept the Premises in their present condition "**as is**", the Premises being currently suitable for Tenant's intended use.
3. Obey (a) all applicable laws relating to the use, condition, and occupancy of the Premises and Building; (b) any requirements imposed by utility companies serving or insurance companies covering the Premises or Building; and (c) any rules and regulations for the Building and Common Areas adopted by Landlord.
4. Pay monthly, in advance, on the first day of the month, the base rent to Landlord at Landlord's address.
5. Pay, as additional rent, all other sums due under this lease.

6. Pay a late charge of five (5%) percent of any rent not received by Landlord by the tenth day of the month in which it is due.

7. Pay for all utility services used by Tenant. The cost for individual meters for utility services and installation of them will be paid by Tenant if individual meters to the Premises are not in place at the time of the execution of this agreement. The cost of any utilities or services provided by the U.S. Army, shall be subject to reasonable rules and regulations applicable to commercial users of such utilities and to the pricing policy set forth by the U.S. Army. Tenant shall reimburse Landlord for any utility charges, user fees, connection costs and other expenses, if any, incurred by Landlord in providing utility services to the Premises. Tenant agrees to pre-treat at its cost any waste streams which require pre-treatment as determined by Landlord or a utility provider prior to entering the sanitary sewer system.

8. Tenant acknowledges and agrees that it shall be responsible for and pay its proportionate share of the "TexAmericas Center-Central common area charges" based upon the square footage of the Premises as a percentage of the total area of the TexAmericas Center-Central development area (excluding the "common areas"). The common areas are those areas of TexAmericas Center-Central used by and/or for the benefit of all property owners or tenants within TexAmericas Center-Central, including but not limited to parks, recreational facilities, walkways, roadways and public parking areas. "Common area charges" are those property taxes, user charges, payments in lieu of taxes, maintenance, improvement, and betterment charges, and other local, county, TexAmericas Center, or other governmental assessments on or against the common areas. The common area charges, other than taxes, shall not exceed ten cents (\$0.10) per \$100.00 valuation of the Premises based upon the fair market value thereof as determined by the Bowie Central Appraisal District for the year in which the assessment is made. Landlord shall notify Tenant of the amount of the assessment, and Tenant shall pay said assessment within thirty (30) days.

9. Allow Landlord to enter the Premises to perform Landlord's obligations, inspect the Premises, and show the Premises to prospective purchasers or tenants.

10. Repair, replace, and maintain in good condition and repair the Premises.

11. Repair any damage to the Premises caused by Tenant, its employees, customers, invitees, contractors and agents.

12. Keep the sidewalks, service ways, and loading areas adjacent to the Premises clean and unobstructed.

13. Maintain public liability insurance for the Premises and the conduct of Tenant's business, naming Landlord as an additional insured, in the amounts stated in the basic lease terms and definitions.

14. Maintain insurance on Tenant's personal property.

15. Deliver certificates of insurance to Landlord before the commencement date and upon each policy renewal.
16. Indemnify, defend and hold Landlord harmless from any injury (and any resulting or related claim, action, loss, liability, or reasonable expense, including attorney's fees and other fees and Court and other costs) occurring in any portion of the Premises. The indemnity contained in this paragraph (a) is independent of Tenant's insurance, (b) will not be limited by comparative negligence statutes or damages paid under the Workers' Compensation Act or similar employee benefit acts, (c) will survive the end of the term, and (d) will apply even if any injury is caused in whole or in part by the ordinary negligence or strict liability of Landlord but will not apply to the extent an injury is caused by the gross negligence or willful misconduct of Landlord.
17. Pay all costs caused by Tenant's introduction of materials, other than ordinary human waste, into the sanitary sewer system.
18. Vacate the Premises and return all keys to the Premises on termination of this lease.
19. On request, execute an estoppel certificate that states the commencement and termination dates of the lease, identifies any amendments to the lease, describes any rights to extend the lease term or purchase rights, lists defaults by Landlord, and provides any other information reasonably requested.
20. The Tenant (a) shall not use or allow the Premises to be used for the release, storage, use, treatment, disposal or other handling of any hazardous substance, material, waste or oil, as said terms are defined by Section 101 (14) of the Comprehensive Environmental Response, Compensation Liability Act (42 U.S.C. sec. 9601(14)), Section 3001 (a) of the Resource Conservation and Recovery Act (42 U.S.C. §6921 (a)), as amended from time to time, and regulations promulgated pursuant thereto ("Hazardous Substance"), without the prior written consent of the Landlord, and, without the appropriate permits required by all applicable local, state and federal statutes, rules and regulations; (b) shall give prompt written notice to Landlord and all appropriate regulatory authorities of any such release or threatened release of any Hazardous Substances on the Premises, caused by or related to the activity of the Tenant, its agents, employees, contractors or invitees, and (c) at its own expense, shall promptly contain and remediate any such release in accordance with applicable law and regulations.
21. Contract and pay for all janitorial, cleaning, and the regular (not less than once per week) collection and removal of all trash, garbage and scrap materials generated by Tenant's operations on the Premises,
22. Pay all real property taxes assessed on the Premises and Improvements as a result of this Lease Agreement regardless of whether said taxes are assessed upon the fee estate of the property or only the leasehold estate for the period commencing upon the first day of the

term of this Lease and continuing through the end of the calendar year in which the term ends.

23. Pay for all municipal services (Police, Hazardous Spill Response, Emergency Medical Response and Fire Protection) used by Tenant, its employees, guests, invitees, and any and all persons while upon the Premises. Said services shall be furnished by local law enforcement agencies (Police) and by the U.S. Department of the Army (other services) as provided in that certain Municipal Services Agreement between Red River Army Depot and Red River Redevelopment Authority dated the 4th day of February, 1998, as it may be amended from time to time. Tenant shall pay to, or reimburse, Landlord for all municipal services furnished to Tenant or to persons on the Premises within ten (10) days after receipt of an invoice for said services from Landlord. Tenant shall be entitled to receive and shall handle all documentation for reimbursement by insurance companies or other third party benefit plan providers.

24. Upon termination of this lease to restore the premises and all internal and external equipment and systems (except equipment and alterations approved by RRRRA) to substantially the same condition as found at the start of the lease period with the exception of reasonable wear and tear.

25. Install and maintain any dilution tanks, holding tanks, settling tanks, sewer sampling devices, sand traps, grease traps, or other devices required by Landlord or by law for the Permitted Use of the sanitary sewer system.

26. If the Premises are served by rail and if requested by the railroad, enter into a joint maintenance agreement with the railroad and bear Tenant's Pro Rata Share of the cost of maintaining the railroad spur.

B. Tenant agrees not to--

1. Use the Premises for any purpose other than that stated in the basic lease terms and definitions.

2. (a) Create a nuisance, (b) interfere with any other tenant's normal business operations or Landlord's management of the building, (c) permit any waste, or (d) use the Premises in any way that is extra hazardous, would increase insurance premiums, or would void insurance on the building.

3. Change Landlord's lock system without the written consent of Landlord.

4. Alter the Premises without the written consent of Landlord.

5. Allow a lien to be placed on the Premises.

6. Assign this lease or sublease any portion of the Premises without Landlord's written consent.

7. Erect signs of any size upon the Premises without Landlord's prior written approval.

C. Unless otherwise provided in other provisions of this Agreement, Landlord agrees to--

1. Lease to Tenant the Premises for the entire term beginning on the commencement date and ending on the termination date.

2. Provide normal utility-service connections to the property line of the Premises. Industrial waste water connections to the Premises shall be made only by Agreement of Landlord, and if made, at the expense of Tenant.

3. Repair, replace, and maintain the (a) roof, (b) foundation, and (c) Common Areas.

4. Insure the building against all risks of direct physical loss in an amount determined by Landlord in its sole discretion; Tenant will have no claim to any proceeds of Landlord's insurance policy.

5. Return the security and ad valorem tax deposits to Tenant, less itemized deductions, if any, including but not limited to actual ad valorem taxes due, or the estimated amount to become due, within thirty days after the termination of this lease or after the ad valorem taxes are paid, as applicable; provided, Tenant has given to Landlord an address specifically for that purpose.

D. Landlord agrees not to--

1. Interfere with Tenant's possession of the Premises as long as Tenant is not in default.

2. Unreasonably withhold consent to a proposed assignment or sublease.

E. Landlord and tenant agree to the following:

1. **Alterations.** Any physical additions or improvements to the Premises made by Tenant will become the property of Landlord. Landlord may require that Tenant, at termination of this lease and at Tenant's expense, remove any physical additions and improvements, repair any alterations, and restore the Premises to the condition existing at the commencement date, normal wear excepted.

2. **Abatement.** Tenant's covenant to pay rent and Landlord's covenants are independent of each other. Tenant shall not be entitled to abate rent for any reason.

3. **Release of Claims/Subrogation.** Landlord and Tenant release each other from any claim, by subrogation or otherwise, for any damage to the Premises, the building, or personal property within the building, by reason of fire or the elements, regardless of cause, including negligence of Landlord or Tenant. This release applies only to the extent that it is permitted by law, the

damage is covered by insurance proceeds, and the release does not adversely affect any insurance coverage.

4. Notice to Insurance Companies. Landlord and Tenant will notify the issuing insurance companies of the release set forth in the preceding paragraph and will have the insurance policies endorsed, if necessary, to prevent invalidation of the insurance coverage.

5. Casualty/Total or Partial Destruction. (a) If the Premises are damaged by casualty, Landlord has an option to restore or not to restore the Premises. If Landlord chooses not to restore, this lease will terminate. If Landlord chooses to restore, it will notify Tenant of the estimated time to restore and give Tenant an option to terminate this lease by notifying Landlord within ten days. If Tenant does not terminate this lease, it shall continue and Landlord shall restore the Premises as provided in (a) above. (b) To the extent the Premises are untenantable after the casualty and the damage was not caused by Tenant, the rent will be adjusted as may be fair and reasonable.

6. Condemnation/Substantial or Partial Taking. (a) If the Premises cannot be used for the purposes contemplated by this lease because of condemnation or purchase in lieu of condemnation, this lease will terminate. (b) If there is a condemnation or purchase in lieu of condemnation and this lease is not terminated, Landlord will, at Landlord's expense, restore the Premises, and the rent payable during the unexpired portion of the term will be adjusted as may be fair and reasonable. (c) Tenant will have no claim to the condemnation award or proceeds in lieu of condemnation.

7. Uniform Commercial Code. Tenant grants Landlord a security interest in Tenant's personal property now or subsequently located on the Premises. This lease is a security agreement under the Uniform Commercial Code. Landlord may file a copy of this lease as a financing statement. Tenant hereby appoints Landlord as its attorney-in-fact to execute on behalf of and in the name of Tenant such Uniform Commercial Code financing statements as necessary to perfect the security agreement.

8. Default by Landlord/Events. Default by Landlord is failing to comply with any provision of this lease within thirty days after written notice.

9. Default by Landlord/Tenant's Remedies. Tenant's remedies for Landlord's default are to (a) sue for damages, or in the alternative, (b) terminate this lease. The obligations and liability of Landlord shall be binding only upon the Premises but not on any other assets of Landlord. Tenant shall look solely to Landlord's interest in the Premises in pursuit of its remedies. The general assets of Landlord, its directors, officers, employees, agents and representatives shall not be subject to levy, execution, or other enforcement or collection procedures for satisfaction of the remedies of Tenant.

10. Default by Tenant/Events. Defaults by Tenant are (a) failing to pay timely rent, (b) abandoning or vacating more than 25% of the Premises, or (c) failing to comply within

thirty days after written notice with any provision of this lease other than the defaults set forth in (a) and (b) above.

11. Default by Tenant/Landlord's Remedies. Landlord's remedies for Tenant's default are to (a) enter and take possession of the Premises, after which Landlord may relet the Premises on behalf of Tenant and receive the rent directly by reason of the reletting, and Tenant agrees to reimburse Landlord for any expenditures made in order to relet and any deficiency after reletting; (b) enter the Premises and perform Tenant's obligations in which event Tenant shall reimburse Landlord for all costs and expenses incurred by Landlord together with interest upon said sums at an annual rate equal to nine (9) percent per annum payable on demand and recoverable as additional rent; or (c) terminate this lease by written notice and sue for damages. Landlord may enter and take possession of the Premises by self-help, by picking or changing locks if necessary, and may lock out Tenant or any other person who may be occupying the Premises, until the default is cured, without being liable for damages.

12. Default/Waiver/Mitigation. It is not a waiver of default if the nondefaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this lease does not preclude pursuit of other remedies in this lease or provided by law. Landlord and Tenant have a duty to mitigate damages.

13. Security-Ad Valorem Tax Deposit.

A. If Tenant defaults, Landlord may use the security deposit to pay arrears of rent, to repair any damage or injury, or to pay any expense or liability incurred by Landlord as a result of the default. It is specifically provided however that Tenant shall not be entitled to any portion of the Security Deposit as a refund unless Tenant gives Landlord sixty (60) days notice of surrendering the premises.

B. Upon execution of this Lease, Tenant shall deposit with Landlord the Ad Valorem Tax Deposit. Said deposit shall not accrue interest. Landlord may upon expiration or termination of this Lease use the deposit to pay the actually due, or hold for payment of estimated ad valorem taxes due or to become due upon the leased premises and for which Tenant is responsible under the Terms of this Lease. Provided Tenant pays all ad valorem taxes for which Tenant is responsible under this Lease, the deposit shall be refunded to Tenant at the address Tenant has given to Landlord for this specific purpose. If taxes have not been assessed and levied for the year in which this Lease expires or is terminated, Landlord may hold the deposit until said taxes have been determined; and, if Tenant does not pay said taxes at least 30 days before delinquency, Landlord may apply the deposit to the taxes due. Nothing in this subsection shall relieve Tenant of its obligation to pay ad valorem taxes upon the leased premises prior to delinquency as provided elsewhere in this Lease.

14. Holdover. If Tenant does not vacate the Premises following termination of this lease, Tenant shall be a tenant at will and shall vacate the Premises on receipt of notice from

Landlord. No holding over by Tenant, whether with or without the consent of Landlord, will extend the term. The rent during any holdover period shall be two times the Base Rent.

15. **Alternative Dispute Resolution.** Landlord and Tenant shall submit in good faith to mediation before filing a suit for damages. Each party shall pay its own counsel fees and one-half of the mediators charges.

16. **Attorney's Fees.** If either party retains an attorney to enforce this lease, the prevailing party is entitled to recover reasonable attorney's fees.

17. **Choice of Law; Venue.** This agreement shall be governed, construed and enforced in accordance with the laws of the State of Texas. Venue is in the county in which the Premises are located.

18. **Entire Agreement.** This lease, together with the attached exhibits and riders, if any, is the entire agreement of the parties, and there are no oral representations, warranties, agreements, or promises pertaining to this lease or to the expressly mentioned exhibits and riders not incorporated in writing in this lease.

19. **Amendment of Lease.** This lease may be amended only by an instrument in writing signed by Landlord and Tenant.

20. **Limitation of Warranties.** THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY OF FITNESS FOR A PARTICULAR PURPOSE, OR OF ANY OTHER KIND ARISING OUT OF THIS LEASE, AND THERE ARE NO WARRANTIES THAT EXTEND BEYOND THOSE EXPRESSLY STATED IN THIS LEASE.

21. **Notices.** Any notice required by this lease shall be deemed to be delivered (whether or not actually received) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to Landlord or Tenant at their addresses.

22. **Abandoned Property.** Landlord may retain, destroy, or dispose of any property left on the Premises at the end of the term by its expiration or termination as provided herein, without liability to Tenant for loss or damage.

23. **Subordination.** Landlord subordinates its security interest and liens to purchase-money security interests in Tenant's personal property.

24. **Extension Option.** Tenant shall have the option to extend the term as provided below.

Landlord grants Tenant an option to extend the term for the period from N/A to N/A (the "additional term") at a monthly rental of \$N/A.

Tenant's rights under this option shall terminate if (1) the lease or Tenant's right to possession of the Premises is terminated, (2) Tenant assigns its interest in the lease or sublets any portion of the Premises without Landlord's written consent, (3) Tenant fails to timely exercise the option, or (4) default exists at the time Tenant seeks to exercise the option.

Landlord and Tenant agree to the following:

1. During the additional term the lease shall continue as written, except as provided in this paragraph.
 2. The option to extend for the additional term shall be exercised by a written notice delivered to Landlord not more than 180 days and not less than ninety days before the termination date.
25. **Force Majeure.** In the event that performance by Landlord of any of its obligations under the terms of this agreement shall be interrupted or delayed by an act of God, by acts of war, riot, or civil commotion, by an act of State, by strikes, fire, flood, by any act of any branch of the United States Armed Forces, the Department of Defense, the Department of Homeland Security or any subordinate agencies, or by the occurrence of any other event beyond the control of the parties hereto, Landlord shall be excused from such performance for such period of time as is reasonably necessary after such occurrence abates for the effects thereof to have dissipated and for Landlord to perform such obligations.

26. Special Provisions:

- a. This Lease Agreement is made subject to, and Tenant agrees to be bound by those certain exceptions, limitations, covenants, conditions and reservations made by and in favor of the United States of America, acting by and through the Secretary of the Army in that certain Lease in Futherance of Conveyance Under Base Realignment and Closure (BRAC) dated May 18, 1999, and recorded in Volume 3504, Page 268 of the Real Property Records of Bowie County, Texas, and in that certain Deed Without Warranty dated the 20th day of May, 1999, and recorded in Volume 3072, Page 237 of the Real Property Records of Bowie County, Texas, to the extent either or both apply to the Premises.
- b. Landlord reserves the right to include the Premises including the easement locations, if any, together with other adjoining property owned by Landlord in a subdivision plat and subject the property described in said platted subdivision to utility easements and common restrictive covenants; provided, however, that said restrictive covenants and easements shall no interfere unreasonably with Tenant's use and related uses. It shall not be necessary or required that Tenant join in the execution of any such plat dedication or declaration of restrictive covenants and easements.

LANDLORD


TEXAMERICAS CENTER

BY: 

William V. Cork, Executive Director/CEO

TENANT

M2 Services Corporation


BY: _____
Michael Moreno, President