

RESOLUTION NO. 463

A RESOLUTION AUTHORIZING THE MAYOR TO SIGN THE CONSENT FOR USE AGREEMENT WITH BAE SYSTEMS ORDNANCE SYSTEMS, INC.

WHEREAS, the Board of Mayor and Aldermen of the Town of Mount Carmel has agreed to enter into the Consent for Use Agreement with BAE Systems Ordnance Systems, Inc.; and

WHEREAS, Mount Carmel Municipal Code §1-202 authorizes the Mayor to enter into contract; and

WHEREAS, it is in the best interest of the citizens of the Town of Mount Carmel, Tennessee, to enter into such an agreement;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN OF THE TOWN OF MOUNT CARMEL, TENNESSEE, as follows:

Section I. The Mayor for the Town of Mount Carmel, Tennessee, is authorized to execute on behalf of the Town the Consent for Use Agreement with BAE Systems Ordnance Systems, Inc. attached hereto as Exhibit A; and

Section II. This Resolution shall take effect upon its passage the public welfare requiring it.

Duly passed and approved this the 25th day of January, 2011.


GARY W. LAWSON, Mayor

ATTEST:


MARIAN SANDIDGE, City Recorder



APPROVED AS TO FORM:


LAW OFFICE OF MAY & COUP

FIRST READING	AYES	NAYS	OTHER
Vice Mayor William Blakely			absent
Alderman Eugene Christian	x		
Alderman Leann DeBord	x		
Alderman Frances Frost	x		
Alderman Kathy Roberts	x		
Alderman Carl Wolfe	x		
Mayor Gary Lawson	x		
TOTALS	6	0	1

PASSED: January 25, 2011

CONSENT FOR USE AGREEMENT

BETWEEN

**BAE SYSTEMS Ordnance Systems Inc.
&
Town of Mount Carmel**

This Agreement is entered into this ____ day of _____ 2011, by and between BAE SYSTEMS Ordnance Systems Inc. ("Owner's Representative) for the U.S. Army, JOINT MUNITIONS COMMAND, (JMC), ("Owner") and Town of Mount Carmel, and is granted subject to the following conditions.

I. PROPERTY DESCRIPTION & CONDITION

- A. Owner's Representative agrees to allow Town of Mount Carmel Wastewater access to that part of the Holston Army Ammunition Plant (HSAAP) property identified in Attachment 1.
- B. Owner's Representative agrees to allow Town of Mount Carmel Wastewater access to that part of the Holston Army Ammunition Plant property, as located on Attachment 1 for the purpose(s) described in paragraph C.
- C. Town of Mount Carmel Wastewater is hereby authorized to construct, erect, install, place, operate, maintain, meter readings, inspect, repair, renew, remove, add to the number of, and relocate at will, sewer trunk lines, sewer laterals, manholes, risers, pads, fixtures, and metering devices (hereinafter called "Mt. Carmel Wastewater Facilities"), and bring in proper equipment to maintain said lines and manholes, adding thereto from time to time, in, on, along, over, through, across and under the above referred to premises; the right to cut down, trim clear and/or otherwise control, and at Town of Mount Carmel Wastewater option, remove from said premises, any trees, shrubs, roots, brush, undergrowth, or other obstructions which may endanger the safety of, or interfere with the use of Town of Mount Carmel Wastewater Facilities; the right to disturb the surface of said premises and to excavate thereon; and the right of ingress and egress to and over said above referred to premises, and any of the adjoining lands of the Owner at any and all times, for the purpose of exercising and enjoying the rights herein granted, and for doing anything necessary or useful or convenient in connection therewith; with the consent of the Owner's Representative.

II. CONSIDERATION

No consideration is required for wastewater services being provided to OWNER'S REPRESENTATIVE covered under this agreement.

III. TERM

- A. The term of this Agreement shall be from the ____ day of September 2011 to the 31st day of September, 2024. Town of Mount Carmel shall have the right to extend this agreement subject to mutual agreement as to the term and consideration amount. Town of Mount Carmel shall evidence its intent to exercise the option to extend by giving Owner's Representative written notice not less than 120 days prior to the expiration of the term of this Agreement. Such notice shall be directed to 4509 West Stone Drive, Kingsport, Tennessee 37660.
- B. At the expiration of this Agreement and any extensions thereof, Town of Mount Carmel Wastewater must leave the property and surrounding premises in good condition with respect to cleanliness, fixtures and state of repair at owner's expense.
 - 1. This Agreement shall not be assigned, including by operation of law, nor the land identified above be sublet.
- C. Town of Mount Carmel shall have consent from the Owner's Representative for use of the Property.

IV. TOWN OF MOUNT CARMEL OBLIGATIONS

- A. Neither Owner nor Owner's Representative shall be responsible for damages to property or injuries to persons which may arise from or be incident to the use and occupation of the Property by Town of Mount Carmel Wastewater, or for damages to property of Town of Mount Carmel Wastewater, or for injuries to the person(s) of Town of Mount Carmel Wastewater, or for damages to the property or injuries to the persons of Town of Mount Carmel Wastewater officers, agents, servants, or employees, or others who may be on said premises at their invitation or the invitation of one of them, except to the extent such damages are caused by the negligence or willful misconduct of Owner or Owner's Representative.

- B. Town of Mount Carmel Wastewater shall at all times exercise due diligence in the protection of the Property against damage or destruction by fire or other causes.

V. GENERAL TERMS AND CONDITIONS

- A. **APPLICABLE LAWS:** Town of Mount Carmel Wastewater shall comply with all applicable local, state, and federal laws, ordinances, and regulations with regard to construction, sanitation, licenses, and permits to do business, environmental and all other matters.
- B. **INSURANCE:** shall carry and keep in effect all required insurance coverages and provide Owner's Representative proof of coverages.
- C. Owner's responsibility upon notification from Town of Mount Carmel Wastewater of anything entering Mt. Carmel Wastewater system that is upsetting to Mt. Carmel treating capabilities will be corrected as soon as possible. If need to be Town of Mount Carmel may stop any flow received from this facility has been located and until correction has been made and placed within compliance of Town of Mount Carmel Sewer Use Ordinance and State Guidelines.

VI. TERMS OF ACCESS

- A. Town of Mount Carmel Wastewater is expected to follow the most direct route when traveling to and from the Facilities. Access to other areas of Holston Army Ammunition Plant (HSAAP) is strictly prohibited.
- B. HSAAP is a Tobacco Free Site; use of tobacco in any form on the premises is prohibited.
- C. Town of Mount Carmel Wastewater employees and visitors will observe and obey all posted rules and regulation in force at HSAAP (including but not limited to all Security, Health, Safety and Environmental laws and regulations).
- D. Alcohol and illegal drugs are not allowed.

VII. SUCCESSOR OWNER REPRESENTATIVE

A. Representative has been granted authorization to enter into this Town of Mount Carmel Consent to use Agreement for the above described property and facilities under Facility Use Contract No. DAAA09-99-E-0006. In the event that the Facility Use Contract is terminated for any reason by either the U.S. Army Joint Munitions Command or by BAE SYSTEMS Ordnance Systems Inc., the obligations of the Owner's Representative will transfer to and be assumed by:

1. The U.S. Government, or at the Government's option,
2. A substitute owner's representative as directed by the Government.

In the event of such transfer, the Owner's Representative shall be released from any further duty, obligation or liability under this Agreement.

B. Pursuant to the demand of the Government, the Owner's Representative may terminate this Agreement or portions thereof at any time by giving thirty (30) days written notice to Town of Mount Carmel if the following occurs;

Any national emergency or mobilization declared by the President or the Congress of the United States provided it is determined by the Army that this particular tract of land is needed in furtherance of such emergency or mobilization.

In the event of any termination under this Section VII.B, a termination settlement shall be negotiated by the Owner's Representative with the Government in accordance with FAR Part 31 and FAR Part 49 on behalf of and in cooperation with Town of Mount Carmel establishing appropriate termination settlement costs to be paid to Town of Mount Carmel. All responsibilities, liabilities, and obligations of the Owner's Representative for a termination of the Agreement under this Section VII.B. shall be satisfied by the equitable adjustment made by the Government.

VIII. INSURANCE

The following insurance coverage shall be maintained by Town of Mount Carmel throughout the term of this Agreement. This requirement shall meet all State Tennessee, *Tenn. Code Anno.* §29-20-403 The Governmental Tort Liability Act not diminish or enlarge any liability or responsibility which Town of Mount Carmel otherwise may have under this Agreement for loss, damage or destruction of Government/Owner Property or Owner Equipment furnished under this Agreement or other liability of Town of Mount Carmel as provided for herein.

Promptly following the Effective Date, Town of Mount Carmel shall provide Owner's Representative with a certificate of insurance evidencing the required coverage set out below, and Town of Mount Carmel shall provide at least thirty (30) days written notice to the Owner prior to any cancellation or material change in the policy coverage.

Tenn. Code Anno. § 29-20-403 states:

"(4) Minimum limits of not less than three hundred thousand dollars (\$300,000) for bodily injury or death of any one (1) person in any one (1) accident, occurrence or act, and not less than seven hundred thousand dollars (\$700,000) for bodily injury or death of all persons in any one (1) accident, occurrence or act, and one hundred thousand dollars (\$100,000) for injury or destruction of property of others in any one (1) accident, occurrence or act."

IX. CHANGES AND ADHERENCE

This document represents the entire agreement between the parties hereto concerning this subject matter, and supersedes all other understandings, commitments, and agreements, whether oral or in writing. This agreement shall be amended only in writing executed by authorized individuals of both parties. No waiver of the terms and conditions hereof at any time or instance shall constitute general waiver or preclude subsequent or prior enforcement.

**For: BAE SYSTEMS
Ordnance Systems Inc.**

Name: Glenn M. Blackard

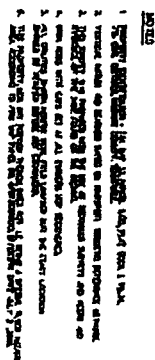
Title: Senior Manager, Contracts

For: Town of Mount Carmel



Name: Gary Lawson

Title: Mayor, Town of Mount Carmel

[illegible][illegible]

W.D. - 100%
M.B. - 100%
H.C. - 100%
R.D. - 100%

[illegible]

1 of 1

BOUNDARY SURVEY
TENNESSEE ARMORY NATIONAL GUARD
7th CIVIL DISTRICT
HAWKINS COUNTY, TENNESSEE



BWSC

BAUER
WASSERKUNST
BAUER &
CO. INC.

License No. DACA01-3-09-655
Holston Army Ammunition Plant, TN

EXHIBIT A

TENNESSEE ARMORY NATIONAL GUARD
PROPERTY DESCRIPTION

Being a portion of a parcel of property, said property lying situate in the 7th Civil District of Hawkins County, and being recorded in the Hawkins County Register of Deeds as Parcel 6.00, Tax Map 33, and being more particularly described as follows:

Starting at an existing Corp of Engineers monument set on the northerly sideline of H.A.A.P. service road; thence south $67^{\circ}20'00''$ west 379.91 feet to a existing Corp of Engineers monument, said monument being the Point of Beginning; thence south $76^{\circ}28'10''$ west 518.73 feet to a Corp of Engineers monument; thence north $87^{\circ}26'38''$ west 289.77 feet to an iron rod now set; thence south $03^{\circ}59'00''$ west 108.00 feet to an iron rod now set approximately 30 feet north of H.A.A.P. service road; thence the following two courses with said service road: north $86^{\circ}01'01''$ west 825.23 feet; thence north $87^{\circ}38'39''$ west 389.85 feet; thence leaving said H.A.A.P. service road north $27^{\circ}06'49''$ west 141.33 feet to a corner post on the southerly right-of-way of Highway 11W; thence the following seven courses with aforementioned Highway 11W: north $63^{\circ}54'30''$ east 44.71 feet to a Corp of Engineers monument; thence north $63^{\circ}26'07''$ east 443.44 feet to a Corp of Engineers monument; thence north $59^{\circ}31'20''$ east 170.50 feet to a Corp of Engineers monument; thence north $55^{\circ}50'34''$ east 97.30 feet to an existing TDOT right-of-way monument; thence north $50^{\circ}08'58''$ east 211.08 feet to an existing TDOT right-of-way monument; thence north $37^{\circ}38'50''$ east 208.18 feet to an existing TDOT right-of-way monument; thence north $48^{\circ}03'07''$ east 383.65 feet to an iron rod old, said rod being a common corner for land dedicated to the Town of Mount Carmel; thence the following two courses with said Mount Carmel land: south $38^{\circ}19'21''$ east 374.36 feet to an iron rod old; thence north $65^{\circ}13'16''$ east 875.20 feet to an existing Corp of Engineers monument, said monument being a corner to Liberty Hill Cemetery; thence the following five courses through the lands of H.A.A.P.: south $08^{\circ}28'21''$ west 257.63 feet to a 30-inch cedar tree; thence south $04^{\circ}01'52''$ west 95.31 feet to a 24-inch cedar tree; thence south $05^{\circ}34'31''$ west 51.18 feet to a 30-inch sycamore tree; thence south $11^{\circ}16'18''$ west 370.18 feet to a 24-inch cedar tree; thence south $29^{\circ}35'14''$ west 207.27 feet to the Point of Beginning.

Said parcel containing 33.22 acre or 1,446,932 square feet, more or less, as shown on plot by Borge Waggoner Sumner & Cannon, Inc., titled Boundary Survey, Tennessee Armory National Guard, signed by Tennessee Registered Land Surveyor Nelson Elam, License #1842. The bearings of the preceding description are based on Kingsport Geodetic Reference Network.



Town of Mount Carmel

GARY LAWSON, MAYOR

100 East Main Street, P.O. Box 1421

Mount Carmel, Tennessee 37645

Phone (423) 357-7311 Fax (423) 357-7710

E-Mail mcch@chartertn.net

January 28, 2011

Glenn M. Blackard
4509 West Stone Drive
Kingsport, Tennessee 37660

RE: Consent for Use Agreement Between BAE Systems & Mount Carmel

Dear Mr. Blackard:

Please find enclosed two original executed Consent For Use Agreements between BAE Systems Ordnance Systems. I have also enclosed a copy of the Resolution approving said contract. Once both Agreements are signed, I would appreciate you returning one of the Agreements to me in the enclosed self-addressed stamped envelope. The other Agreement is for your records. Should you have any questions, please do not hesitate to contact me.

Thank you for your kind attention in this regard.

Sincerely,
TOWN OF MOUNT CARMEL

Marian Sandidge
Marian Sandidge, City Recorder

:mls
Enclosures