

**LEASE AGREEMENT BETWEEN THE
JUDICIARY OF GUAM
AND
CM, INC.**

THIS AGREEMENT is made this 16 day of February, 2005 by and between the Judiciary of Guam located at 120 West O'Brien Drive, Hagatna, Guam 96910 (hereinafter called Lessee), by its Administrator of the Courts and CM, Inc., (hereinafter called the Lessor) whose business address is 231 Ypao Road, Suite 201, Tamuning, Guam 96913.

WHEREAS, the Judiciary of Guam intends to engage the services of the Lessor to provide parking lot services located on lot number 1509-R1NEW, Municipality of Hagatna. This lot is adjacent, North East of the Guam Judicial Center, 120 West O'Brien Drive, Hagatna, Guam; and

WHEREAS, the parties intend to enter into a ten (10) year Lease Agreement with an option to renew annually thereafter. An option to purchase is not offered at this time. However, the Lessor will give the Lessee the right of first refusal as long as the lease agreement is in effect when and if it decides to sell after the tenth year at fair market value which shall only be exercised by Lessee if it has been determined by the Lessee to be in the best public interest; and

WHEREAS, the Purchasing Officer has provided adequate public announcement of the need for such services through Request for Proposal No. 04-03 describing the type of services required and specifying the type of information and data required of each offeror and the relative importance of particular qualifications; and

WHEREAS, the Lessor has submitted a statement of interest in providing such service; and

WHEREAS, the award of this contract to the Lessor has been made pursuant to a written finding by the Purchasing Officer that the Lessor is the best qualified offeror based upon evaluation factors set forth in Request for Proposal No. 04-03, and that through negotiations compensation has been determined to be fair and reasonable;

WITNESSETH, the Lessee and the Lessor, in consideration of mutual covenant hereinafter set forth, agree as follows:

SECTION I. PURPOSE:

To provide "Parking Lot Services" to the Lessee.

SECTION II. SCOPE OF SERVICES - TYPE OF SERVICES TO BE PROVIDED:

The Lessor agrees to provide its best efforts in the performance of the duties and responsibilities as outlined below in accordance with federal laws, laws of Guam and the rules, regulations, and policies of the Lessee. Additionally, the Lessor is required to secure any and all necessary permits applicable to the project.

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The Lessor agrees to perform all of the services in connection with the Parking Lot Services.

1. The Lessor will provide parking lot facility to the Lessee. At its own expense, the Lessor will construct an asphalt parking lot facility with not less than 135 parking stalls.
2. The parking lot facility will be ready for use no later than 210 days after signing of this Lease Agreement. Upon acceptance of the parking lot facility, the Lessee will be responsible for regular maintenance and repair of the parking facility for the duration of the contract period.
3. The Lessor, at its own expense, will provide and install ten (10) light poles with light fixtures for security reasons and for the safety of Lessee patrons.
4. The Lessor shall ensure that the parking lot facility has adequate drainage to prevent flooding.
5. The Lessor will ensure adequate liability insurance coverage and is responsible for its gross receipts and real property taxes..

SECTION III. LEASE TERM:

Subject to Section XIII, the term of this Lease Agreement shall commence upon occupancy of the leased premises and continue for a period of 10 years at which time it may be extended annually thereafter.

SECTION IV. LESSOR'S COMPENSATION FOR SERVICES:

1. The Lessee will pay the Lessor the total sum of one hundred and two thousand dollars and zero cents (**\$102,000.00**) annually during the first five (5) years divided into twelve equal monthly installments, and one hundred and eight thousand dollars and zero cents (**\$ 108,000.00**) annually for the remaining five (5) years of the ten (10) year contract divided into twelve equal monthly installments.
2. Payment shall be made within fifteen(15) days upon presentation of a written monthly invoice from the Lessor. Invoices shall be prepared by the Lessor and submitted in quadruplicate prior to payment and one (1) copy shall be marked "original." The Lessee may require that all invoice information be presented in

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an electronic format as well as a hard copy. Upon receipt of a proper invoice, a late payment penalty fee in the amount of \$100.00 will be assessed against the Lessee if payment is not made after 30 days from the Lessee's receipt of the invoice. And, that the same penalty shall be assessed for any periods meeting the conditions stated herein. Invoices shall be certified "true and correct" and shall contain the following information:

- a. Lease Agreement number;
- b. Line item description of services rendered;
- c. Amount of payments to be made by the Lessee and;
- d. Any other relevant information required by the Lessee;

SECTION V. LESSOR AGREES:

1. That there shall be no employee benefits occurring from this Lease Agreement, such as:
 - a. Insurance coverage provided by the Lessee;
 - b. Accumulations of vacation leave, or sick leave.
2. That the Lessee shall not pay for the Lessor's gross receipt tax, liability insurance premium or real property tax.
3. That there shall be no withholding of taxes by the Government of Guam.
4. That it will, within thirty (30) days after any claim accrues arising out of or in connection with this Lease Agreement, give written notice to the Lessee of such claim, setting forth in detail all the facts relating thereto and the basis for such claim; and that it will not institute any suit or action against the Lessee in any court or tribunal in any jurisdiction based on any such claim later than one (1) year after such written notice. Any action or suit on any claim shall not include any item or matter not specifically mentioned in the written notice above specified. It is agreed that if such action or suit is instituted, proof by the Lessor of its compliance with the provisions of this paragraph shall be a condition precedent to any recovery.

SECTION VI. LESSEE AGREES TO THE FOLLOWING:

1. It will pay for the parking lot facility compensation contemplated in Section IV.
2. It will provide all reasonable labor supplies necessary for regular maintenance and repair to the parking lot facility for the duration of the lease period.

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- 3 At its own expense apply for electrical power and pay monthly power consumption for parking lot lighting.
4. At its own expense, it will remove abandoned cars from the parking lot facility within a reasonable period of time.
5. It will undertake responsibility for compliance with the Americans with Disabilities Act in so far as providing adequate parking stalls within the Judicial Building's parking facilities for persons with disabilities.

SECTION VII. SCOPE OF LEASE AGREEMENT:

This Lease Agreement supercedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the retainment of Lessor by the Lessee for parking lot services and contains all of the covenants and agreements between the parties with respect to such retainment in any manner whatsoever. Each party to this Lease Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promise not contained in this Lease Agreement shall be valid or binding. Any modification of this Lease Agreement will be effective only if it is in writing signed by the party to be charged. For the purposes of this paragraph and of the entire Lease Agreement the signature of the Administrator of the Courts is the only signature that will bind the Lessee.

SECTION VIII. RESPONSIBILITY OF LESSOR:

The Lessor shall be responsible for all the services, work and materials necessary to perform the agreed services as described in Request for Proposal No. 04-03 which is hereby incorporated as part of this Lease Agreement.

The Lessee's review, approval, acceptance of, and payment of fees for services required under this Lease Agreement shall not be construed to operate as a waiver of any rights under this Lease Agreement or of any cause of action arising out of the Lessor's failure to fulfill performance of this Lease Agreement and the Lessor shall be and remain liable to the Lessee for all costs of any kind which may be incurred by the Lessee as a result of the Lessor's deficient or negligent performance of any of the services performed under this Lease Agreement.

SECTION IX. ASSIGNMENT OF LEASE AGREEMENT:

The Lessor may not assign this Lease Agreement, or any sum becoming due to the Lessor under the provisions of this Lease Agreement, without the prior written consent of the Lessee, which consent shall not be unreasonably withheld. The Lessor shall require any approved subcontractor to agree, as to the portion subcontracted, to fulfill all obligations of the Lessor as specified in this Lease Agreement. Notwithstanding Lessee approval of any such subcontractor, the Lessor shall remain obligated for full performance hereunder, and the Lessee shall incur no obligations other than its obligations to the Lessor hereunder.

SECTION X. GENERAL COMPLIANCE WITH LAWS:

The Lessor shall be required to comply with all applicable federal and Guam laws and ordinances. The Lessor shall attach a copy of appropriate business license or a statement of exemption pursuant to Title 11 GCA § 70126.

SECTION XI. INDEMNITY:

The Lessor agrees to indemnify, save and hold harmless the Lessee, its officers, agents, representatives, successors and assigns for any and all suits or actions of every nature and kind, which may be brought for or on account of any injury, death, or damage arising or growing out of gross negligence or intentional acts of omission of the Lessor, Lessor's officers, agents, servants, employees or subcontractors under this Lease Agreement. And, that the Lessee shall agree to indemnify Lessor in the same manner.

SECTION XII. CHANGES:

The Lessee may at any time, by written order, make any reasonable change in the services to be performed hereunder. If such changes cause an increase or decrease in the costs of doing the work under this Lease Agreement, or in the time required for the performance, an equitable adjustment shall be made and the Lease Agreement shall be modified in writing accordingly. That any change(s) affecting any part or parts of Sections VI.2-5 of this agreement shall only be made by mutual agreement between the Lessor and Lessee.

SECTION XIII. TERMINATION:

This Lease Agreement may be terminated at any time by mutual written consent of both parties. The Lessee may terminate this Lease Agreement effective upon delivery of written notice to the Lessor, or at such later date as may be established by the Lessee, under any of the following conditions:

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1. If Lessee's funding from federal, local, or other sources is materially reduced to a degree not providing for purchase of the indicated services. However, the Lease Agreement may be modified to accommodate such material reduction of funds.
2. If federal or local laws, regulations or guidelines are modified, changed or interpreted by a court of competent jurisdiction in such a way that the services are no longer allowable or appropriate for purchase under this Lease Agreement or the Lessee is no longer eligible for the funding proposed for payment as authorized by this Lease Agreement.
3. If any license or certificate required by law or regulation to be held by the Lessor to provide the services required by this Lease Agreement is for any reason denied, revoked, or not renewed.
4. If Lessor fails to perform the services as specified by the Lessee in this Lease Agreement.
5. If Lessor fails to comply in a material manner with any requirement of this Lease Agreement.

Any termination above shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

SECTION XIV. SEVERABLE PROVISIONS:

If any provision of this Lease Agreement shall be deemed by a court of competent jurisdiction to be invalid, then such provision shall be deemed stricken from the Lease Agreement and the Lease Agreement shall be enforced according to its valid and subsisting terms and provisions.

SECTION XV. GOVERNING LAW:

The validity of this Lease Agreement and of any of its terms or provisions, as well as the rights and duties of the parties of this Lease Agreement, shall be governed by the Judicial Council of Guam Procurement Regulations adopted on March 19, 2004 and the applicable laws of Guam.

SECTION XVI. EFFECTIVE DATE OF LEASE AGREEMENT:


This Lease Agreement shall take effect upon the date it is signed by the Administrator of the Courts.

SECTION XVII. LESSEE NOT LIABLE:

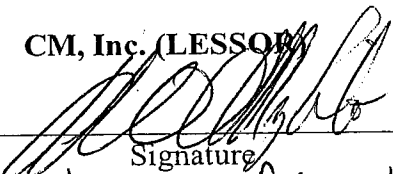
1. The Lessee assumes no liability for any accident or injury that may occur to the Lessor, his or her agents, dependents, subcontractors or personal property of any of them in their performance of this Lease Agreement.
2. The Lessee shall not be liable to the Lessor for any work performed by the Lessor prior to the approval of this Lease Agreement by the Administrator of the Courts and Lessor hereby expressly waives any and all claims for service performed in expectation of this Lease Agreement prior to its effective date.

IN WITNESS WHEREOF, the parties have entered into this Lease Agreement on the dates indicated by their respective names.


JUDICIARY OF GUAM (LESSEE)

BY: 
PERRY C. TAITANO
Administrator of the Courts
Date: 2/16/05

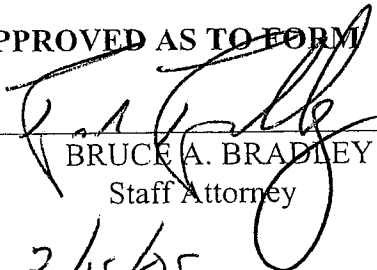
CM, Inc. (LESSOR)

BY: 
Signature
N. Oscar Miyashiro
Print Name
Vice President
Title
February 14 2005
Date

CERTIFIED FUNDS AVAILABLE

BY: 
ANTHONY A. MENO
Controller
Date: 2/15/05

APPROVED AS TO FORM

BY: 
BRUCE A. BRADLEY
Staff Attorney
Date: 2/15/05

