

LEASE AGREEMENT
Between
EDWARD E. GILLEN COMPANY
and the
BOARD OF HARBOR COMMISSIONERS
City of Milwaukee

For 7.615 acres of bare ground located in the northeast
corner of the Port's Grand Trunk Property

Term: Retroactive from 3/1/05 to 12/31/07

LEASE AGREEMENT

Lease Agreement made as of the ____ day of _____, 20____, by and between Edward E. Gillen Company, a Wisconsin corporation, (hereinafter referred to as "Tenant"), and the CITY OF MILWAUKEE, a Wisconsin corporation, by and through its Board of Harbor Commissioners (hereinafter collectively referred to as the "City").

WITNESSETH :

City hereby leases, demises and lets unto Tenant the real property comprised of approximately 7.615 acres (hereinafter referred to as the "Property"), located on the Grand Trunk Property of the City of Milwaukee. The Property is more particularly described in Exhibit A, which is affixed hereto and incorporated into this document by this reference.

This Agreement is entered into by the parties under the following terms and conditions:

1. Term. The term of this Lease is retroactive to March 1, 2005 and runs until December 31, 2007. This Lease replaces a temporary, short term operating agreement between the City and Tenant dated January 5, 2005.

2. Purpose of Agreement. For Tenant to operate a dockside reception and load out facility for stone rip rap and other common construction aggregate materials. Also, Tenant will use the Property to fulfill subcontract agreements for the Intake Water Tunnel at the Elm Road (Oak Creek) Generating Station for marine construction work through 2007. No hazardous materials are to be handled on the Property. Other operations may be performed provided the express written consent for said operations is obtained from the Director of the Port of Milwaukee.

Parcels A and B as shown in Exhibit A will be used by Tenant continuously for the full Term of this Lease. Parcel C will be used four times during the term of the Lease for a total duration of about six months for the mobilization and demobilization of the offshore drilling equipment.

It is understood by Tenant, that the Port cannot guarantee that Parcel C will always be available to Tenant at their scheduled convenience or that Tenant will have exclusive use of the dockwall and property adjoining the dockwall. During the term of the Lease, Port may locate other short-term cargo or other operations on the Grand Trunk Property that may require access

to the dockwall. Tenant agrees to cooperate with any such shared operations and to mutually agree on scheduled use of the dock area.

3. **Rent.**

A) For Parcels A and B (totaling 4.8 acres) Tenant shall pay to City a base rental figure of Three Thousand Four Hundred and 00/100th Dollars (\$3,400) per month payable in advance.

For Parcel C (totaling 2.8 acres) Tenant shall pay to City a base rental figure of Two Thousand and 00/100th Dollars (\$2,000) per month in advance.

Tenant will declare to City when it elects to use its option to start occupying this parcel and when it has ceased to occupy the parcel. Rent will be charged in monthly increments, not to be prorated, only for those months Tenant actually elects to use Parcel C, and will pay City in arrears at the conclusion of each use period.

B) **Throughput on stone products:** Tenant further agrees to pay City a throughput charge of thirty five cents (\$.35) per metric ton (2,204 pounds) of material, as described in Paragraph 2 above, that is received unto the Property. Tenant agrees to throughput a minimum tonnage of 7,500 metric tons per year during the term of this Lease.

Wharfage on Intake Water tunnel Cargo: Tenant agrees to pay City the wharfage fee based upon the appropriate provision of the Municipal Port Tariff (Item 215) in effect at the time of the cargo movement.

C) **Escalation:** The annual fair rental value of the Property shall be increased on January 1, 2006 and on January 1, 2007 by an amount determined by applying the percentage increase, if any, in the "All Commodities" line of the "Producer Price Index" published by the United States Bureau of Labor Statistics (or its successor organization) (1982=100) for the one-year period prior to these dates; provided, however, that in no event shall the new base rental, as adjusted, be less than that paid in the prior year rental period.

4. **Occupancy Subject to Existing Easements and Restrictions.** Tenant's occupancy of the Property is subject to any recorded easements and restrictions of record.

5. **Termination and Vacation; Default.**

A) **Termination and Vacation Date.** Tenant shall vacate the Property on or before the expiration of this Agreement. The Property shall be returned to City by Tenant in substantially

the same condition in which it was received. In the event that Tenant fails to vacate the Property in a timely fashion, City shall have the option to do any or all of the following: (1) cause the Property to be vacated; (2) charge Tenant twice (2x) the rent set forth in Paragraph 2 of this Agreement for all periods subsequent to the date of expiration of this Agreement or of any agreed extension thereof; and (3) to assess and recover against the Tenant the actual costs of such vacation and any damages sustained by the City as a consequence of the Tenant's failure to timely vacate the Property.

B) Property to be Vacated Clear of all Materials. Tenant shall vacate the Property free and clear of all materials and equipment and of all improvements in accordance with Paragraph 14. In the event that Tenant fails to vacate the Property in the prescribed state of clearance, as determined by City, after ten (10) days' written notice to Tenant, City shall have the option to have such clearance and clean-up conducted as in its reasonable judgment is necessary in order to bring the Property to the prescribed state of clearance and to assess the costs of such action against Tenant.

6. Default. The occurrence of one or more of the following events shall be considered events of default under the terms of this Agreement:

A) Tenant shall be adjudged a bankrupt, or a decree or order, approving as properly filed, a petition or answer asking reorganization of Tenant under Federal Bankruptcy Laws as now or hereafter amended, or under the laws of this State, shall be entered, and any such decree, judgment or order shall not have been vacated, stayed or set aside within sixty (60) days from the date of the entry or granting thereof; or

B) Tenant shall file or admit the jurisdiction of the court and the material allegations contained in any petition in bankruptcy or any petition pursuant or purporting to be pursuant to the Federal Bankruptcy Laws as now or hereafter amended, or Tenant shall institute any proceedings or shall give its consent to the institution of any proceedings for any relief of Tenant under any bankruptcy or insolvency laws or any laws relating to the relief of debtors, readjustment of indebtedness, or reorganization; or

C) Tenant shall make an assignment for the benefit of creditors or shall apply for or consent to the appointment of a receiver for Tenant; or

D) Tenant shall abandon the Property for a period of thirty (30) days.

E) Tenant shall be delinquent in any rental or other payments due under this Agreement and such delinquency shall continue for five (5) days after notice thereof in writing to Tenant; or

F) Tenant shall default in any of the other covenants or agreements herein contained to be kept, observed and performed by Tenant, and such default shall continue for ten (10) days after notice thereof in writing to Tenant; or

G) Tenant shall make any assignment, sublease, transfer, conveyance or other disposition of its interest in the Property without the express written consent of City.

Upon occurrence of any one or more of such events of default, it shall be lawful for City, at its election in the manner and terms herein provided, to declare this Agreement ended, and to recover possession of the Property, either with or without process of law, to enter and to expel, and remove Tenant and all agents, employees and representatives of Tenant engaged in operating the Property or occupying the Property, using such force as may be necessary in so doing. If default shall be made in any covenants, agreements, conditions or undertakings herein contained, to be observed and performed by Tenant, which cannot with due diligence be cured within a period of ten (10) days, and if notice thereof in writing shall have been given to Tenant, and if Tenant prior to the expiration of said ten (10) days from and after the giving of such notice, commences to eliminate the cause of such default and proceeds diligently and with dispatch to take all steps and do all work required to cure such default and thereafter does so cure such default, then City shall not have the right to declare the term of the Agreement as ended; however, that the curing of any default in such manner shall not be construed to limit or restrict the right of City to declare this Agreement ended and terminated, and to enforce all of City's rights and remedies hereunder for any other default not so cured.

7. **Maintenance and Housekeeping**. All improvements currently situated upon the Property have been erected by the Tenant for its own use. Tenant agrees to maintain these improvements and any other improvements that it may hereafter erect upon the Property in a reasonable and appropriate state of cleanliness and repair. Routine maintenance and housekeeping shall be the sole responsibility of Tenant. City retains the right to have any of its officers, agents, or employees inspect the Property at all reasonable times and Tenant shall be

required to grant full access to the Property at such times. City shall endeavor to give prior notice of such inspections to Tenant.

8. Utilities. Tenant shall be solely responsible for the installation and purchase of all utility services required by Tenant during the term of this Agreement.

9. Assignment and Subleasing. Tenant shall not assign or sublet the Premises or any portion thereof, nor allow the same to be used or occupied by any other person or for any other use than herein specified, without the prior written consent of City. For purposes of this Paragraph, the transfer of any majority interest in any corporation or partnership shall be deemed to be an assignment of this Agreement. In the event City consents to any sublease or assignment, the same shall not constitute a release of Tenant from the full performance of Tenant's obligations under this Agreement. Further, in the event of any such sublease or assignment, Tenant shall reimburse City for all reasonable attorneys' fees in connection with reviewing and/or drafting any appropriate documents to effect such transfer of Tenant's interests. Further, Tenant shall pay to City as Additional Rent under this Agreement, 50% of any profit, rental or other compensation received in excess of the rental specified in Paragraph 2 of this Agreement by Tenant as a consequence of any assignment or sublease hereunder.

10. Indemnification. Tenant hereby agrees to indemnify and save harmless City from and against all liabilities, claims, demands, judgments, losses and all suits at law or in equity, costs and expenses, including reasonable attorney's fees, for injury to and/or death of any person or persons and/or loss and/or damage to the property of any person, firm or corporation whomsoever, including both parties hereto and their employees, arising from the construction, maintenance or operation of Tenant's improvements and equipment, or in the carrying on of its business as hereinbefore set forth, except when such liability, claim, demand, judgment or loss arises solely from a negligent act of the City, its agents, contractors or employees.

11. Insurance. Tenant shall maintain in full force and effect throughout the currency of this Agreement, the following insurance covering any and all liability or obligations which may result from operations by Tenant, Tenant's employees, agents, contractors or subcontractors as aforesaid in this Agreement.

A) Property insurance coverage protecting against physical damage (including but not limited to fire, lightning, extended coverage perils, vandalism, sprinkler leakage, water damage, collapse and other special extended perils) to the extent of the replacement cost of Tenant's personal property and improvements as well as goods or property in Tenant's care, custody and/or control.

B) Comprehensive General Liability Insurance (including but not limited to Products and Completed Operations and Contractual Liability, as applicable to Tenant's obligations under this Agreement) with limits not less than:

Each Occurrence Limit:	\$2,000,000
Products/Completed Operations Aggregate:	\$2,000,000
General Policy Aggregate:	\$2,000,000

C) Automotive Liability Insurance with Limits not less than:

Bodily Injury and Property Damage Combined Single Limit:	\$1,000,000 per occurrence
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D) Worker's Compensation Insurance in accordance with Chapter 102, Wisconsin Statutes and any applicable Federal law.

E) Umbrella Coverage: \$10,000,000 in aggregate

All such policies shall be of a form and content satisfactory to City. In addition, the Board of Harbor Commissioners of the City of Milwaukee and the City of Milwaukee will be designated on the General Liability, Property Insurance, Automobile and Umbrella policies as Additional Named Insureds. All policies shall be with companies licensed to do business in the State of Wisconsin and rated A or better in the most current issue of Best's Key Rating Guide. Tenant shall furnish City with certificates of insurance for all policies showing that insurance has been written as required. Such evidence shall be provided by Tenant at least thirty (30) days prior to occupancy; and further, such policies shall provide that no less than thirty (30) days written notice be given to City before any such policies are cancelled or substantially changed to reduce the insurance provided thereby. Said certificates of insurance shall remain in effect for the duration of this Agreement. Tenant shall not act in any manner that may make void or voidable any insurance required herein. Upon written demand, Tenant shall provide City full, complete and accurate copies of the insurance policies required by this Agreement. Once in

every three (3)- year period during the term of this Agreement, City shall review the extent and limits of the insurance coverage required herein. After said review, should City determine an increase in the extent and/or limits of insurance coverage is required, Tenant shall be so notified in writing and Tenant shall cause such increases to be placed in effect within thirty (30) days of receiving such notice. In no event shall the extent and limits of insurance coverage be reduced from the amounts shown herein.

The attorney in fact or agent of any insurance company furnishing any policy of insurance shall sign and furnish an affidavit setting forth that no City official or employee has any interest, direct or indirect, or has received any premium, commission, fee or other thing of value on account of furnishing said policy of insurance.

12. Taxes. Tenant shall pay and discharge when due all taxes, if any, assessments, levies and other charges, general and special, that are or may be during the term hereof levied, assessed, imposed or charged on the Property or the improvements thereon or hereafter placed thereon.

13. Alterations & Improvements. Tenant shall not make any alterations, additions, buildings or improvements to the Premises or Property without the prior written consent of City. Notwithstanding the aforesaid, Tenant, at Tenant's sole cost and expense, may install such trade fixtures as Tenant may deem necessary. All such trade fixtures shall be constructed and/or installed by contractors approved by City, in a good and workmanlike manner, and in compliance with all applicable governmental and quasi- governmental laws, ordinances and regulations, as well as all requirements of City's insurance carrier, if any. Tenant shall furnish, upon City's request, plans, specifications, drawings and/or renderings of any proposed alterations, additions, buildings or improvements.

On or before the date of the expiration or earlier termination of this Agreement, Tenant shall remove all trade fixtures and any other alterations, additions, buildings or improvements installed by Tenant within the Premises; and, upon such removal, Tenant shall restore the Premises to a condition substantially similar to that condition when received by Tenant. However, notwithstanding the aforesaid, upon City's written election, such alterations, additions, buildings and improvements shall revert to City and shall remain within the Premises. In no event shall City have any right to any of Tenant's trade fixtures; and, except as otherwise set

forth in this Agreement, Tenant may remove such trade fixtures upon the termination of this Agreement, provided Tenant repairs any damage caused by such removal.

14. Site Development Agreements. In the event that City and Tenant agree to a plan for the future development of the Premises, said plan shall be embodied in a Site Development Agreement which shall be appended to this Agreement as an Addendum and shall be incorporated into this Agreement as though an integral part thereof. Tenant agrees to fully and continuously comply with all terms and condition of the Site Development Agreement and further agrees that any non- compliance on its part with any of these terms and conditions shall constitute an event of default under this Agreement.

15. Compliance with Laws and Orders. Tenant agrees to observe fully and to comply with any laws, statutes, regulations, ordinances, rules, requirements or directives now in force or which shall emanate from any state, federal or local departments or agencies having jurisdiction. Tenant also agrees to be fully bound and to observe the provisions of the Municipal Port Tariff in effect as of the date of commencement of this Agreement and of any successor or equivalent document issued by the Board of Harbor Commissioners of the City of Milwaukee during the term of this Agreement.

16. Security Compliance. Tenant agrees to conform to all national security requirements imposed be the U.S. Department of Homeland Security, the Marine Transportation Security Act and its implementing regulations, as well as any applicable state and local security rules and regulations.

Tenant also agrees to comply with any measures and obligations imposed by a Port of Milwaukee tenant consortium formed to administer security requirements. Tenant will become a member of any such consortium and pay any fees or levies imposed by that consortium or by the Port of Milwaukee to cover security costs.

“Security,” as that term is used herein shall mean “Measures designed to safeguard personnel; to prevent unauthorized access to equipment, property, buildings, harbor facilities, installations, materials, and documents; and to safeguard against espionage, sabotage, damage, and theft, or to prevent persons or organizations from engaging in any activity or using Port properties, equipment and material in a manner that would aid an effort to harm vital interests of the City of Milwaukee, the State of Wisconsin or the United States of America.”

17. Environmental Compliance and Obligations.

A) Compliance with Environmental Regulations. Tenant shall fully comply with all statutes, regulations, or other applicable requirements imposed by any federal, state, or municipal agency with respect to the environmental condition of the Property and/or with respect to any activities or operations that Tenant may conduct upon the Property (hereinafter referred to as "Environmental Requirements"). Tenant shall not cause, permit or suffer the existence or commission by Tenant, its agents, employees, contractors or invitees, or by any other person of any violation of any Environmental Requirements upon, about or beneath the Property or any portion thereof.

B) Hazardous Material; Environmental Liens. Except to the extent commonly used in the day-to-day operation of the Property, and in strict compliance with all Environmental Requirements (including those relating to storage, use and disposal), Tenant shall not cause, permit or suffer any "hazardous material" or "hazardous substance" (as defined by applicable Federal or State statutes or regulations) to be brought upon, treated, kept, stored, disposed of, discharged, released, produced, manufactured, generated, refined, or used upon, about, or beneath the Property or any portion thereof by Tenant, its agents, employees, contractors, tenants or invitees, or any other person without the prior written consent of the City. Any request by Tenant for such consent by the City shall be in writing and shall demonstrate to the reasonable satisfaction of the City that such "hazardous material" or "hazardous substances" is necessary to the conduct of the business of Tenant and will be stored, used, and disposed of in a manner that complies with all applicable Environmental Requirements. Tenant shall not create or suffer to exist with respect to the Property any lien, security interest, or other charge or encumbrance of any kind relating to the environmental condition of the Property, including (without limitation) any lien imposed pursuant to Sec. 107(f) of the Superfund Amendments and Reauthorization Act 1986 (42 U.S.C. § 9607(L)) or any similar State Statute.

C) Obligation to Investigate and/or Remediate. Tenant shall, upon demand of the City, and at its sole cost and expense, promptly take all actions to investigate and/or remediate the environmental condition of the Property which may be required by any federal, state or local governmental agency or political subdivision which remediation is necessitated from, or attributable to, the presence upon, about, or beneath the Property of any "hazardous material" or

"hazardous substances" or any violation of Environmental Requirements caused by the Presence of and/or activities or operations conducted by the Tenant upon the Property. Any such investigation and/or remediation shall be performed by and under the direction of a qualified environmental consulting or engineering firm approved by City in advance of the commencement of the work. Tenant agrees to allow entry upon the Property by the City, or agents, contractors or employees of the City for purposes of conducting environmental audits and/or other tests for the purpose of determining the impact of Tenant's presence and/or activities or operations upon or with respect to the Property upon the environmental condition thereof. In the event that Tenant performs any such environmental audit and/or test on its own behalf, it shall promptly provide to the City full and complete copies of any results and/or reports that are generated in connection with the above activities.

D) Survival of Obligations. Tenant's obligations with respect to the environmental condition of the Property (as more fully set forth in subparagraph (A) through (C) above) shall survive the expiration or termination of this Agreement.

18. Liens. Tenant shall not mortgage or otherwise encumber or allow to be encumbered its interest herein without obtaining the prior written consent of City. Should Tenant cause any mortgage, lien or other encumbrance (hereinafter singularly or collectively referred to as "Encumbrance") to be filed, against the Premises or the Property, Tenant shall dismiss or bond against same within fifteen (15) days after the filing thereof. If Tenant fails to remove said Encumbrance within said fifteen (15) days, City shall have the absolute right to remove said Encumbrance by whatever measures City shall deem convenient including, without limitation, payment of such Encumbrance, in which event Tenant shall reimburse City, as Additional Rent, all costs expended by City, including reasonable attorney's fees, in removing said Encumbrance. All of the aforesaid rights of City shall be in addition to any remedies which either City or Tenant may have available to them at law or in equity.

19. Time of the Essence. It is expressly understood and agreed to by the parties hereto that time is of the essence for each term and provision of this Agreement.

20. Waiver. One or more waivers by any party of any covenant or condition of this Agreement shall not be construed as a waiver of a subsequent breach of the same or of any other covenant or condition. The consent or approval given by any party with respect to any act by the

other party requiring such consent or approval shall not be deemed to waive or render unnecessary further consent or approval of any subsequent similar act by such party.

21. Sole Agreement and Amendment. This shall be binding upon the parties hereto and their respective successors and assigns, and may not be modified orally or in any other manner other than by agreement, in writing, signed by each of the parties to this Agreement. Each person signing this Agreement warrants that this is the full, entire and complete agreement between the parties; that the terms of this agreement supersede and nullify any and all prior discussion, negotiations or agreements between the parties and/or any of the parties' respective officers, employees or agents relating in any manner to the subject matter of this Agreement; and that no promise or inducement not expressed in this Agreement has been made or exists to cause or influence each such person to execute this Agreement. Each person signing this Agreement warrants their ability to bind the party on whose behalf each signs.

22. Notice. Any notice provided for herein or given pursuant to this Agreement, shall be deemed in compliance herewith if in writing and sent by United States certified or registered mail, postage prepaid, return receipt requested, or by receipted personal delivery to the parties as follows:

To the City:

BOARD OF HARBOR COMMISSIONERS
2323 S. Lincoln Memorial Drive
Milwaukee, WI 53207
Attention: Municipal Port Director

To The Tenant:

Mr. Gary Jackson
Edward E. Gillen Co.
218 W. Becher Street
Milwaukee, WI 53207-1190

23. Governing Law. This Agreement shall be governed by the internal laws of the State of Wisconsin. If any term or provision of this Agreement or any exhibits hereto, or the application thereof to any person or circumstance, shall to any extent be declared invalid or unenforceable, then the remainder of this Agreement and exhibits, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or

unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by applicable law.

24. Nondiscrimination. Tenant hereby agrees that in its use of the Property and in its activities undertaken pursuant hereto it shall not discriminate, permit discrimination or restriction on the basis of race, sexual orientation, creed, ethnic origin or identity, color, gender, religion, marital status, age, handicap or national origin.

25. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute an original and all of which shall constitute one and the same Agreement. The terms "Board of Harbor Commissioner" and "City" whenever used herein shall mean and include the Board of Harbor Commissioners of the City of Milwaukee and/or its successors and assigns in authority, as the context may require.

26. Approval. IT IS FURTHER AGREED AND UNDERSTOOD that this Agreement must be submitted to the Common Council of the City of Milwaukee and that the same must be approved by the Common Council and its execution authorized.

IN WITNESS WHEREOF, the parties hereto have by their duly authorized officers executed this Agreement under seal as of the day and year first above written.

In the Presence of:

CITY OF MILWAUKEE

Thomas A. Barrett , Mayor

Ronald D. Leonhardt, City Clerk

COUNTERSIGNED:

W. Martin Morics, City Comptroller

In the Presence of:

BOARD OF HARBOR COMMISSIONERS

Daniel J. Steininger, President

Donna Luty, Secretary

In the Presence of:

EDWARD E. GILLEN COMPANY

Mr. Gary Jackson, CEO

**STATE OF WISCONSIN
MILWAUKEE COUNTY**

Personally came before me this ____ day of _____, 20____, Thomas A. Barrett, Mayor of the above-named municipal corporation, who by its authority and on its behalf executed the foregoing instrument and acknowledged the same.

NOTARY PUBLIC, State of Wisconsin
My Commission Expires _____

**STATE OF WISCONSIN
MILWAUKEE COUNTY**

Personally came before me this ____ day of _____, 20____, Ronald D. Leonhardt, the City Clerk of the above-named municipal corporation, who by its authority and on its behalf executed the foregoing instrument and acknowledged the same.

NOTARY PUBLIC, State of Wisconsin
My Commission Expires _____

**STATE OF WISCONSIN
MILWAUKEE COUNTY**

Personally came before me this ____ day of _____, 20____, W. Martin Morics the City Comptroller of the above-named municipal corporation, who by its authority and on its behalf executed the foregoing and acknowledged the same.

NOTARY PUBLIC, State of Wisconsin
My Commission Expires _____

**STATE OF WISCONSIN
MILWAUKEE COUNTY**

Personally came before me this _____ day of _____, 20____, Daniel J. Steininger, President, and Donna Luty, Secretary of the Board of Harbor Commissioners, who by its authority and on its behalf executed the foregoing instrument and acknowledged the same.

NOTARY PUBLIC, State of Wisconsin
My Commission Expires _____

**STATE OF WISCONSIN
MILWAUKEE COUNTY**

Personally came before me this _____ day of _____, 20____, Mr. Gary Jackson, the CEO of Edward E. Gillen Company, and _____, the _____, who by its authority and on its behalf executed the foregoing instrument and acknowledged the same.

NOTARY PUBLIC, State of Wisconsin
My Commission Expires _____

APPROVED as to Form and Execution this
_____ day of _____, 20____

Assistant City Attorney

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