

LEASE AGREEMENT

Lease Agreement made as of the _____ day of _____, 2017, by and between THE UNITED STATES OF AMERICA (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 located at 2401 S. Lincoln Memorial Drive. The property, located on the South Harbor Tract of the City of Milwaukee, and more particularly described in Exhibit A, which is affixed hereto and incorporated herein, hereinafter referred to as the "Property."

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

1. **Term**. Tenant shall have the right to have and to hold the Property, or any portion thereof, for the period beginning 1 January 2017 through 31 December 2017. The Tenant shall have the right to renew this Lease from year to year or for a lesser period, under the same terms, conditions and considerations provided herein, not to exceed two years. The Tenant shall provide written notice to the City of the Tenant's intent to renew this Lease prior to the expiration date of the current term, provided further that the renewal of this Lease be subject to adequate appropriations being made available from year to year for the payment of rentals. If Tenant does not provide written notice to the City of the Tenant's intent to renew this Lease prior to the expiration date of the current Lease term, this Lease will expire, with no further notice being required from Tenant, at the end of the current Lease term.

2. **Rent**. The Tenant shall pay rent to the City at Three Thousand One Hundred Twenty-Five and 00/100th Dollars (\$3,125) per month. Rent for a lesser period shall be prorated. Payment shall be made in arrears by the Finance and Accounting Office, by written invoice from the City showing the facility used. Invoice is to be sent to:

Attn: CELRE-CO-TR
US Army Engineer District Detroit
477 Michigan Avenue, Detroit, MI 48231-1027

3. **Ownership**. The City warrants that it is the rightful and legal owner of the property and has the legal right to enter into this Lease. If the title of the City shall fail, or it be discovered that the City did not have authority to lease the property, the Lease shall terminate.

The City, the City's heirs, executors, administrators, successors, or assigns agree to indemnify the Tenant by reason of such failure and to refund all rentals paid. Tenant shall not conduct business for profit within the Property without specific approval and availability of records pertaining to business for profit.

4. **Property Usage.**

A) Tenant shall use the Property for Government purposes, consisting of stone storage and any other improvements as required for project purposes as determined by Tenant. Additional uses of the Property are not permitted without the prior written approval of the Municipal Port Director. Tenant acknowledges the suitability of the Property for its intended uses and accepts the site "as is."

EXCLUSIVE USE:

B) The City shall not interfere with or restrict the Tenant, or its representatives in the use and enjoyment of the Property, nor shall the City erect any fence, wall, partition or any construction upon the Property except as otherwise agreed to in writing by the Tenant.

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

6. **Vacation.**

A) **Vacation Date.** Tenant shall vacate the Property on or before the expiration of this Lease. Tenant shall return the Property to the City as level base ground 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; and (2) upon mutual agreement, assess and recover against the Tenant costs of such vacation and any damages sustained by the City as a consequence of the Tenant's failure to timely vacate the Property subject to availability of Federal appropriations.

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 the event that Tenant fails to vacate the Property in the prescribed state of clearance, after thirty (30) 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.

7. Termination.

A) The Tenant may terminate this Lease at any time in whole or in part, by giving thirty (30) days' written notice to the City and no rental shall be due for payment after the effective date of termination. Said notice shall be the day after the date of mailing, or hand delivery. The monthly rental shall be adjusted in proportion with the reduction of space on a Partial Termination and shall be calculated pro-rata unit of measure for the remaining lease area premises.

B) Termination in whole or in part shall be effective upon written notice, however, the parties may enter into a supplemental agreement to resolve certain issues arising from the tenancy and its termination, in whole or in part.

8. **Default.** The occurrence of one or more of the following events shall be considered events of default under the terms of this Lease:

A) Tenant shall abandon the Property for a period of thirty (30) days; or

B) Tenant shall be delinquent in any rental or other payments due under this Lease and such delinquency shall continue for thirty (30) days after notice thereof in writing to Tenant; or

C) 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 thirty (30) days after notice thereof in writing to Tenant; or

D) 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 Lease ended, and to recover possession of the Property. 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 thirty (30) days, and if notice thereof in writing shall have been given to Tenant, and if Tenant prior to the expiration of said thirty (30) 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 Lease 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 Lease ended and terminated, and to enforce all of City's rights and remedies hereunder for any other default not so cured.

9. **Maintenance and Housekeeping.**

A) Repairs & Maintenance. Tenant will maintain the access road as necessary to allow access to the site.

B) Tenant's Repairs & Maintenance. Tenant shall keep the Property and any dock area servicing the Property in a clean and sanitary condition, and shall keep the common parking areas, driveways and loading docks free of Tenant's debris, and shall control weeds and maintain landscaping. Tenant shall not store materials, waste or pallets outside of the Property, and shall timely arrange for the removal and/or disposal of all pallets, crates and refuse owned by Tenant, which cannot be disposed of in the dumpster(s) servicing the Property.

Tenant shall at all times keep the Property and all improvements thereon in a clean, neat, orderly, and well-maintained appearance. Tenant shall, without limitation by reason of enumeration, undertake the following measures throughout the term of this Lease in furtherance of these objectives: The Tenant will provide all necessary fenders to allow the dock to be used without damage to the dock or vessels using the dock, provide all fencing and gates necessary to delineate the site and provide access, and the use of the dock and loading area shall be shared as necessary to accommodate other users of the area.

If any action of the Tenant's employees or agents in the exercise of this Lease results in damage to the real property, the Tenant will, at its option, either repair such damage or make an appropriate settlement with the City. In no event shall such repair or settlement exceed the fair market value of the fee interest of the real Property at the time immediately preceding such damage. The Tenant's liability under this clause may not exceed the appropriations available for such payment and nothing contained in this Lease may be considered as implying that Congress will at a later date appropriate funds sufficient to meet deficiencies. The provisions of this clause are without prejudice to any rights the City may have to make a claim under applicable laws for any other damages than those provided for herein.

The Tenant shall not be responsible for combat or war related damages to the Property. The Tenant shall be liable only for damage resulting from negligence or misconduct of Tenant's personnel. The Tenant shall not be liable for any loss, destruction or damage to the Property beyond the control and without the fault or negligence of the Tenant, including, but not limited to

acts of nature, fire, lightning, floods, or severe weather. The parties agree that any settlement of damages by the Tenant, if any, shall be done at termination of the Lease subject to availability of federal appropriations.

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

11. **Assignment and Subleasing**. Tenant shall not assign or sublet the Property 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 Section, the transfer of any majority interest in any corporation or partnership shall be deemed an assignment of this Lease. 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 Lease.

12. **Liability and Claims**. Tenant's employees, while located on the Property depicted on Exhibit A, will be covered through the Federal Tort Claims Act for tort claims and/or the Federal Employees Compensation Act for workers compensation claims.

13. **Insurance**. Both parties agree that the Tenant is self-insured. The Tenant shall cause all Tenant contractors engaging in any activities on the lands depicted on Exhibit A to name the City of Milwaukee as an additional insured on all insurance policies providing coverage for any claims for injury to persons or property as may be made related to the Tenants' contractor's activities under this Lease and shall provide the City a copy of the Certificate of Insurance evidencing the same prior to any on-site work being performed. In the event the Tenant does not require adequate insurance from any of its contractors, the City may require such insurance be provided and, if adequate insurance is not provided, the City may terminate this Lease by giving written notice to the Tenant.

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.

14. **Taxes.** The City accepts full and sole responsibility for the payment of all taxes which may arise in connection with this Lease or which may be assessed against the City's property and/or Leased Premises. This includes registration of the Lease and payment of related charges.

15. **Alterations and Improvements.** Tenant shall not make any alterations, additions, buildings or improvements to the 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 in accordance with project requirements. In compliance with all applicable laws, ordinances and regulations, 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 Lease, Tenant shall remove all trade fixtures and any other alterations, additions, buildings or improvements installed by Tenant within the Property; and, upon such removal, Tenant shall restore the Property to a condition substantially similar to that condition when received by Tenant. In no event shall City have any right to any of Tenant's trade fixtures; and, except as otherwise set forth in this Lease.

Tenant or its contractors agree to properly secure all necessary permits and licenses required by any state, federal or local departments or agencies for the construction and operation of Tenant's business and improvements. A copy of each such permit or license shall be sent to the Port of Milwaukee for its record file.

16. **Destruction.** If the improvements upon the Property are damaged in whole or in part by casualty so as to render the Property un-tenantable, and if the damages cannot be repaired within one hundred eighty (180) days from the date of said casualty, this Lease shall terminate as of the date of such casualty. If the damages can be repaired within said one hundred eighty (180) days, and City does not elect within sixty-(60) days after the date of such casualty to repair same, then either party may terminate this Lease by written notice served upon the other. In the event of any such termination, the parties shall have no further obligations to the other, except for those obligations accrued through the effective date of such termination; and, upon such termination, Tenant shall immediately surrender possession of the Property to City. Should City elect to make such repairs, this Lease shall remain in full force and effect, and City shall proceed with all due diligence to repair and restore the improvements to a condition substantially similar to that

condition which existed prior to such casualty. In the event the repair and restoration of the Property extends beyond one hundred eighty (180) days after the date of such casualty due to causes beyond the control of City, this Lease shall remain in full force and effect, and City shall not be liable therefore; but City shall continue to complete such repairs and restoration with all due diligence. Tenant shall not be required to pay any rent for any period in which the Property is un-tenantable. In the event only a portion of the Property is un-tenantable, Tenant's rent shall be equitably abated in proportion to that portion of the Property, which is so unfit. However, there shall be no rent abatement if said damage is due to fault or negligence of Tenant or Tenant's agents, employees or invitees.

17. **Site Development Agreements.** In the event that City and Tenant agree to a plan for the future development of the Property, said plan shall be embodied in a Site Development Agreement which shall be appended to this Lease as an Addendum and shall be incorporated into this Lease 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 Lease.

18. **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, to the extent such laws do not conflict with federal law.

19. **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.

“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.”

20. **Environmental Compliance Obligations.**

A) Compliance with Environmental Regulations. Tenant shall fully comply with all environmental laws, including 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) Environmental Laws. The term "Environmental Laws" shall mean and include (a) the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901-6987, as amended by the Hazardous and Solid Waste Amendments of 1984; (b) the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 9601-9657; (c) the Hazardous Materials Transportation Act of 1975, 49 U.S.C. § 1801-1812; (d) the Toxic Substances Control Act, 15 U.S.C. § 2601, et. seq.; (e) the Clean Air Act, 42 U.S.C. § 7401, et. seq.; (f) the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136, et. seq.; (g) Chapters 280-299 of Wisconsin Code; and all similar federal, state, or local environmental laws, ordinances, rules, codes and regulations, and as any of the foregoing may have been amended, supplemented, or supplanted and any other federal, state or local laws, ordinances, rules, codes and regulations now existing relating to the environment or the regulation or control or imposing liability or standards of conduct concerning toxic or hazardous waste, substances or materials, to the extent those laws do not conflict with federal law.

C) 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, other than those substances and materials required for project purposes. 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.

D) Nothing in this Lease shall be deemed to be or constitute a waiver by the City of any defense available to it as a governmental entity pursuant to 42 U.S.C. § 9601 (35) (A) (ii) and § 9607 (b) (3) or Wis. Stat. § 292.11(9)(e), 292.23(2), 292.24(2) and 292.26.

21. **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 Lease.

22. **Waiver.** One or more waivers by any party of any covenant or condition of this Lease 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.

23. **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 Lease. Each person signing this Lease warrants that this is the full, entire and complete Lease between the parties; that the terms of this Lease 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 Lease; and that no promise or inducement not expressed in this Lease has been made or exists to cause or influence each such person to execute this Lease. Each person signing this Lease warrants their ability to bind the party on whose behalf each signs.

24. **Notice.** Any notice provided for herein or given pursuant to this Lease, 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:

U.S. Army Corps of Engineers
Attn: 7th Floor Real Estate
477 Michigan Ave
Detroit, MI, 48226

25. **Governing Law.** This Lease shall be governed by the laws of the State of Wisconsin, to the extent those laws do not conflict with Federal law. If any term or provision of this Lease 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 Lease 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 Lease shall be valid and be enforced to the fullest extent permitted by applicable law.

Both parties understand that the City is bound by the Wisconsin Public Records Law, and as such, all of the terms of this Lease are subject to and conditioned on the provisions of Wis. Stat. §19.21, et seq. Tenant acknowledges that it is obligated to assist the City in retaining and producing records that are subject to Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of this Lease. Except as otherwise authorized, those records shall be maintained for a period of seven years after receipt of final payment under this Lease.

26. **Authorization.** The undersigned signatories to this instrument represent that they are duly authorized to contract on behalf of their respective entities.

27. **No Slavery of Affidavit.** The Tenant shall execute the Affidavit of Compliance attached hereto as Exhibit B contemporaneously with its execution of this Lease.

28. **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.

29. **Counterparts.** This Lease 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 Lease. 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.

30. **Covenant Against Contingent Fees.** The City and Tenant warrant that no person or selling agency has been employed or retained to solicit or secure this Lease upon an agreement or understanding for a commission, percentage, brokerage, or a contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the City for the purpose of securing business. For breach or violation of this warranty, the Tenant shall have the right to annul this Lease without liability or in its discretion to deduct from the Lease price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

31. **Officials Note To Benefit.** No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this Lease or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this Lease if made with a corporation for its general benefit.

32. **Gratuities.**

A) The Tenant may, by written notice to the City, terminate the right of the City to proceed under this Lease if it is found, after notice and hearing, by the Secretary of the Army or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the City, or any agent or representative of the City, to any officer, or employee of the Tenant with a view toward securing a lease or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing, of such lease; provided, that the existence of facts upon which the Secretary of the Army or his duly authorized representative makes such findings shall be in issue and may be reviewed in any competent court.

B) In the event this Lease is terminated as provided in paragraph (a) hereof, the Tenant shall be entitled (i) to pursue the same remedies against the City as it could pursue in the event of a breach of the Lease by the City, and (ii) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the

Secretary of the Army or his duly authorized representative) which shall be not less than three nor more than ten times the costs incurred by the City in providing any such gratuities to an such officer or employee.

C) The rights and remedies of the Tenant provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Lease.

33. **Approval.** IT IS FURTHER AGREED AND UNDERSTOOD that this Lease 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 Lease under seal as of the day and year first above written.

In the Presence of:

CITY OF MILWAUKEE

Tom Barrett, Mayor

Jim Owczarski, City Clerk

COUNTERSIGNED:

Martin Matson, Comptroller

BOARD OF HARBOR COMMISSIONERS

Timothy K. Hoelter, President

Paul Vornholt, Secretary

UNITED STATES OF AMERICA

Andrew Shelton
Chief, Real Estate Great Lakes Region

STATE OF _____
_____ COUNTY

Personally came before me this _____ day of _____, 2017
_____, the _____, 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 _____

PLEASE NOTE: TENANTS MUST COMPLETE THE FOLLOWING:

(Note: Someone other than the individual who executed this Lease must certify the following):

CERTIFICATE RE: CORPORATION

I, _____ certify that I am the _____ of the above
(print name) (print title)

TENANT named herein; that _____, who executed this Lease on behalf of
(print signator of tenant)

the above TENANT was then _____ of said corporation, and in said
(official capacity of signator)

capacity, duly signed said Lease for and on behalf of said corporation, being duly authorized so to do under its bylaws or is authorized so to do by action of its duly constituted board, all of which is within the scope of its corporate powers.

Dated at _____ this _____ day of _____ 20 ____
(location)

(signature)

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

Assistant City Attorney

LEASE AGREEMENT

Between

THE BOARD OF HARBOR COMMISSIONERS/
CITY OF MILWAUKEE

And

THE UNITED STATES OF AMERICA
U.S. ARMY CORPS OF ENGINEERS

Location: 2401 S. Lincoln Memorial Drive

Term: January 1, 2017 - December 31, 2017

(Tenant shall have the right to renew this Lease from year to year thereafter or for a lesser period of time under the same terms, conditions and considerations provided herein, not to exceed two years)