

2259

EXPIRES
6/14/2020

LICENSE AGREEMENT

This License Agreement ("License" or "Agreement") is made this ¹⁵ day of June, 2019, and is made effective as of the 1 (the "Agreement Date") by and between **PHILADELPHIA AUTHORITY FOR INDUSTRIAL DEVELOPMENT** (hereinafter "PAID") and **PHILADELPHIA REGIONAL PORT AUTHORITY** (hereinafter "Licensee").

BACKGROUND

A. PAID is the owner of certain streets within the Navy Yard, specifically portions of South Broad Street, League Island Boulevard, and Kitty Hawk Avenue, located in Philadelphia, Pennsylvania, 19112, as shown in Exhibit "A" (the "Property").

B. Licensee desires to enter onto the Property and/or cause its agents, employees, representatives, advisors, consultants, professionals, contractors and subcontractors (collectively referred to as "Licensee's Agents") to enter onto the Property exclusively for the purpose of providing construction vehicle access to the Southport Marine Terminal Complex (the "Permitted Use").

C. PAID is willing to grant Licensee and Licensee's Agents the right to enter the Property, subject to the terms and conditions set forth in this Agreement.

Therefore, in consideration of the mutual promises set forth in this Agreement, PAID and Licensee, intending to be legally bound, by this Agreement, agree as follows:

1. Incorporation

The above background is hereby incorporated into this Agreement.

2. License

(a) Subject to the terms and conditions of this Agreement, PAID grants to Licensee and Licensee's Agents a temporary, non-exclusive, revocable and non-assignable license, for the Term (as defined in Section 4), to use the Property solely for the Permitted Use. Licensee shall not enter the Property or use the Property for any additional purpose(s) without the prior written approval of PAID, which may be granted or withheld in PAID's sole discretion.

(b) No legal title, leasehold or other interest in the Property or premises or appurtenances thereto shall be deemed or construed to have been created or vested in Licensee by anything contained in this Agreement.

(c) Licensee and Licensee's Agents must access the Property via South Broad Street and the gate on League Island Boulevard. Licensee and/or Licensee's Agents must notify PAID with 48 hours' notice to bring a permitted load onto the Property.

(d) Licensee and Licensee's Agents may bring regulated fill through the Property provided that:

(i) any and all trucks carrying regulated fill must have paperwork stating that such fill is regulated;

(ii) every truck carrying such fill shall have a placard notifying security that such fill is in the truck;

(iii) one week's notice is provided to PAID or PAID's security company prior to Licensee or Licensee's Agents bringing fill into the Property; and

(iv) Licensee shall cause any road or street to be cleaned of any fill falling out of trucks.

3. Condition of Property

(a) Licensee agrees that its exercise of the License granted herein is subject to the "AS IS" condition of the Property, including all defects latent and patent; PAID makes no representation as to the condition of the Property. Licensee agrees that any and all precautions required by Licensee for the safe exercise of its license shall be performed by Licensee at no cost to PAID. **PAID, PIDC (as defined in Section 6) and CBRE (as defined in Section 6) disclaim any and all warranties of fitness, merchantability, suitability for intended purpose, and habitability.**

4. Term

The term of this Agreement shall commence on June 15, 2019 and terminate on June 14, 2020, except that it shall be automatically revoked if Licensee uses the Property for any other purpose other than the Permitted Use or if the Property becomes unsafe for any reason, whether or not such unsafe condition is created by Licensee (the "Term"). **Licensee is required to return the Property in the condition it was given, immediately prior to the Term, reasonable wear and tear excepted.**

5. Insurance

(a) Licensee shall, or cause Licensee's Agents to, procure and maintain insurance for the Property of the types and minimum limits of coverage specified below throughout the Term. All insurance shall be procured from reputable insurers who are acceptable to PAID and authorized to do business in the Commonwealth of Pennsylvania. All insurance required herein shall be written on an "occurrence" basis and not a "claims-made" basis.

- (i) Workers Compensation & Employers' Liability
 - (A) Workers' Compensation - Statutory limit;
 - (B) Employers' Liability:
\$500,000.00 Each Accident-Bodily

Injury by Accident
\$500,000.00 Each Employee-Bodily
Injury by Disease.
\$500,000.00 Policy Limit-Bodily
Injury by Disease.

(ii) General Liability Insurance

- (A) Limit of Liability:
\$2,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability.
\$1,000,000 personal and advertising injury;
\$2,000,000 general aggregate and \$2,000,000 aggregate for products and completed operations.
- (B) Coverage:
Premises operations;
Blanket contractual liability;
Personal injury liability (employee exclusion deleted);
Products and completed operations; Independent contractors;
Employees as additional insureds;
Cross liability;
Broad form property damage liability (including completed operations and loss of use) liability and explosion, collapse, and underground hazards, care custody and control exemption excluded.

(iii) Automobile Liability

- (A) Limit of Liability:
\$2,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability.
- (B) Coverage:
Owned, non-owned and hired vehicles.

(b) PAID, PIDC, CBRE, and their respective officers, directors, members, employees, representatives and agents must be named on the certificate, as well as on an attached endorsement. **With respect to the insurance listed in Section 5, "PAID, PIDC, CBRE, and their respective officers, directors, members, employees, representatives and agents" shall all be Additional Named Insureds without restriction in comparison with the coverage provided to the primary named insured.**

(c) Certificates of insurance, together with evidence of endorsement or policy record, of the required coverage for Licensee, shall be submitted to PAID, c/o PIDC, The Navy Yard, Building 101, 4747 South Broad Street, Suite 120, Philadelphia, PA 19112, on the execution date of this Agreement. Licensee shall furnish certified copies of the original policies of all

insurance required under this Agreement at any time within ten (10) days after written request by PAID.

(d) In the event coverage is materially changed, canceled or not renewed, the Licensee shall provide to PAID written notice at least thirty (30) days prior and at least ten (10) days prior to the expiration of each policy. Licensee shall deliver to PAID a certificate or certificates evidencing a replacement policy to become effective immediately upon the termination of the previous policy.

(e) Licensee shall furnish PAID with proof that the premiums for all insurance required hereunder have been paid in full. Such proof shall be provided in writing at the time of the delivery of the certificates of insurance.

(f) In the event Licensee fail's to cause such insurance to be maintained, PAID shall not be limited in the proof of any damages which PAID may claim against Licensee (or any other person or entity) to the amount of the insurance premium or premiums not paid or incurred and which would have been payable upon such insurance, but PAID shall also be entitled to recover as damages for such breach the uninsured amount of any loss, damages and expenses of suit and costs, including without limitation reasonable cancellation fees, suffered or incurred during any period when Licensee shall have failed or neglected to provide insurance as required herein.

(g) The insurance requirements set forth herein shall in no way be intended to modify, limit or reduce the indemnifications made in this Agreement by Licensee and/or Licensee's Agents to PAID or to limit Licensee's or Licensee's Agents' liability under this Agreement to the limits of the policies of insurance required to be maintained by Licensee's Agents hereunder.

6. Indemnification

(a) For purposes of this Section 6, the term "PAID" shall mean the Philadelphia Authority for Industrial Development, its officers, board, agents, employees, representatives, successors and assigns; the term "PIDC" shall mean the Philadelphia Industrial Development Corporation, its officers, board, agents, employees, representatives, successors and assigns; the term "CBRE" shall mean CBRE, Inc., its officers, board, agents, employees, representatives, successors and assigns (PAID, PIDC and CBRE) are collectively, the "Indemnitees"); and the term "Licensee" shall include Licensee, Licensee's Agents and their respective, officers, directors, shareholders, partners, members, agents, representatives, employees, invitees, contractors, subcontractors and their successors and assigns.

(b) Licensee shall cause any and all contractors and subcontractors to indemnify, defend, and hold harmless the Indemnitees from and against any and all losses, claims, suits, administrative or enforcement actions, public or private cost recovery actions, demands, liabilities, damages and/or expenses (including but not limited to reasonable attorneys' fees and litigation costs), in law or in equity, arising out of or related to this Agreement, including but not limited to those in connection with loss of life, bodily and personal injury, or damage to property

(real or personal regardless of ownership), which may be imposed upon or incurred by or asserted against the Indemnitees by reason, in whole or in part, of (i) any act or omission of Licensee; (ii) Licensee's use of the Property; (iii) any failure on the part of Licensee to comply with this Agreement; (iv) any violation or alleged violation by Licensee of any Applicable Law (defined below), including but not limited to Environmental Laws (defined below) and all laws governing or regulating the use, presence and/or disposal of Hazardous Substances (defined below); (v) any contamination in, on, or about the Licensed Property, or the discharge, spill, escape, leakage, or other release of Hazardous Substances from the Property caused or exacerbated by Licensee; (vi) the condition of the Property or any part(s) thereof whether or not caused by Licensee; (vii) any act or omission by or on behalf of an Indemnitee. Licensee acknowledges that it shall cause any and all contractors, subcontractors, and sublicensees to indemnify the Indemnitees for their own negligence; however this indemnity shall not extend to an Indemnitees' gross negligence or willful misconduct. Licensee's obligations set forth in this Section 6 are not and shall not be limited to the provisions of any insurance policy maintained by or on behalf of Licensee or any Applicable law, including without limitation, the Pennsylvania Worker's Compensation Act, as amended and currently codified at 77 P.S. § 1 *et seq.*

(c) Licensee shall include the following language in any agreement it enters into relating to this Agreement: "In the event any action or proceeding is brought against the Indemnitees relating to any matter for which contractor has indemnified the Indemnitees, contractor shall, upon written notice from PAID, resist or defend such claim at contractor's sole cost and expense (including without limitation, counsel fees, experts' fees, and court costs) by counsel approved by PAID in writing which approval shall not be unreasonably withheld, provided that no approval of counsel shall be required in each and every instance where the claim is resisted or defended by counsel of an insurance carrier obligated to so resist or defend such claim, and provided also that PAID, PIDC or CBRE may, if they so desire, engage at its sole cost and expense their own counsel to participate in the defense of any such claim."

(d) The provisions of this Section 6 shall survive the expiration or the earlier termination of this Agreement.

7. Compliance with Laws

Licensee shall and shall cause Licensee's Agents to comply with all Applicable Laws. "Applicable Law" shall mean all generally applicable present and future laws (including applicable constitutions), ordinances, charters, codes, rules, regulations, statutes, orders and all other applicable governmental requirements applicable to the Permitted Use including but not limited to the following: (a) the Americans With Disabilities Act of 1990" P.L. Section 101-336, generally codified at 42 U.S.C. § 1201 *et seq.*, (b) all laws governing or regulating the use, presence and/or disposal of "Hazardous Substances" (defined below), (c) The "Fair Practices Ordinance" (codified in the Philadelphia Code at Chapter 9-1100) and (d) the Philadelphia Code. For purposes of this License the term "Hazardous Substances" shall mean the following: (i) asbestos, flammables, volatile hydrocarbons, petroleum products, natural gas and synthetic gas and shall include but not be limited to, substances defined as "hazardous substances," "hazardous wastes," "toxic substances," "pollutants," or "contaminants," as those terms are used in any applicable law; (ii) any and all materials or substances that any governmental agency or unit having appropriate

jurisdiction shall determine from time to time are harmful, toxic, or dangerous, or otherwise required to be removed, cleaned up, or remediated. This Agreement shall not be construed to constitute an approval or permit required to be given by PAID or the City of Philadelphia.

8. No Assignment, Subcontracting; Binding Agreement

Licensee may not transfer or assign or sublicense all or any part of its interest under this Agreement without the prior written consent of PAID. Subject to the preceding sentence, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

9. Termination

Both PAID and Licensee shall have the right to terminate this Agreement at any time, with or without cause, with no liability on either the part of PAID or Licensee by providing thirty (30) days' written notice.

10. Release

In consideration of PAID's permission extended to Licensee to enter the Property for the Permitted Use, Licensee does hereby remise, quitclaim, release and forever discharge, and by these presents does for Licensee's heirs, successors, personal representatives, executors and assigns, and Licensee's Agents, employees, contractors, subcontractors, sublicensees, officers, directors, shareholders and partners, and any person claiming under or through any of them, hereby remise, quitclaim, release and forever discharge the Indemnitees from any and all, and all manner of, actions and causes of action, suits, claims and demands whatsoever in law or in equity which Licensee or any of them may have against the Indemnitees, relating in any way whatsoever to any condition on the Property during the Term, the entry onto the Property by or the presence on the Property during the Term, the entry onto the Property by or the presence on the Property of Licensee, Licensee's Agents, and their respective employees, officers, directors, shareholders, members, or partners during the Term or relating in any way to the exercise of any rights or performance of any obligations under this Agreement.

11. No Indulgences

No extensions or indulgences granted to Licensee shall operate as a waiver of any of the Indemnitees' rights under this Agreement. Any remedy set forth in this Agreement shall be in addition to all other remedies otherwise available in law or equity.

12. Entire Agreement

This Agreement sets forth all agreements and understandings between the parties hereto and there are no collateral or oral agreements or understandings other than as are set forth in this Agreement. This Agreement shall not be modified in any manner except by an instrument in writing executed by the parties to this Agreement. No oral representations, whenever made, by any PAID, PIDC and/or CBRE or employee, agent or representative shall be effective to modify the provisions of this Agreement.

13. Survival

Any and all agreements set forth in this Agreement which, by its or their nature, would reasonably be expected to be performed after the expiration or earlier termination of this Agreement shall survive and be enforceable after the expiration or earlier termination of this Agreement. Any and all liabilities, actual or contingent, which shall have arisen during the Term, shall survive the expiration or any termination of this Agreement.

14. Notices

All notices from either party to the other shall be in writing and sent by United States registered or certified mail, return receipt requested, postage prepaid, electronic mail, or by hand delivery with receipt obtained, addressed to PAID at:

c/o PIDC
4747 South Broad Street
Building 101, Suite 120
Philadelphia, PA 19112
Attn: Senior Vice President, Navy Yard Planning &
Development
pgupta@PIDCphila.com

with a copy to:

c/o PIDC
1500 Market Street, Suite 2600 West
Philadelphia, PA 19102-2126
Attn: Senior Vice President, General Counsel
iburak@PIDCphila.com

and addressed to Licensee at:

Collette A. Pete, Esquire
General Counsel
PhilaPort
3460 N. Delaware Avenue, 2nd Floor
Philadelphia, PA 19134
215-423-3534
cpete@philaport.com

15. Headings

The headings in this Agreement are for convenience only and are not a part of this Agreement. The headings do not in any way define, limit, describe, or amplify the provisions of this Agreement or the scope of intent thereof.

16. Governing Law

This Agreement shall be governed in accordance with the laws of the Commonwealth of Pennsylvania. The parties to this Agreement agree to submit to the jurisdiction of courts, whether federal or state, located in Philadelphia, Pennsylvania.

17. Certificate of Non-Indebtedness

Licensee hereby certifies and represents that Licensee is not as of the execution and delivery of this Agreement in default of the terms of any indebtedness to the City for or on account of any delinquent Taxes (defined below), liens, judgments, fees or other debts for which no written agreement or payment plan satisfactory to the City has been established. Licensee acknowledges that any breach by Licensee of this certification may, at the option of PAID, result in PAID's exercising its rights and remedies as provided in this Agreement. "Taxes" shall mean all taxes, including not limited to taxes collected by the City on behalf of the School District of Philadelphia, amusement taxes, assessments and similar generally applicable and uniform charges which, at any time during the Term may be imposed upon the Licensee.

18. Limitation of Liability

Notwithstanding anything to the contrary contained herein, Licensee acknowledges and agrees (i) that neither this Agreement nor any of the documents incorporated herein, referenced herein, or otherwise contemplated hereby shall create any personal liability of any officer, director, employee, agent, or representative of PAID, (ii) in the event of a default by PAID hereunder or as a result of any action or inaction of PAID relating to this Agreement or the Property giving rise to liability, Licensee shall be entitled to satisfy any liability of the PAID solely through the equity, if any, of PAID in the Property (but only the Property), and (iii) such exculpation of PAID and such limitation on Licensee's recourse against the PAID shall be absolute, complete, and unconditional.

19. License Fee

In consideration for this Agreement, Licensee shall pay to PAID a one-time flat rate fee ("License Fee") of Fifty-Two Thousand, Nine Hundred Dollars and No Cents (\$52,900.00) made payable to PAID-Philadelphia Authority for Industrial Development. License Fee is due at signing of this Agreement.

20. Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall be binding

when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected on this Agreement as the signatories. Delivery of an executed counterpart of this Agreement by facsimile or electronic mail shall not have the same binding effect as delivery of an executed original.

{Signature Page Follows}

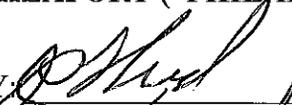
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed, under seal, as of the date first above written, and LICENSEE AFFIRMS ITS VOLUNTARY RELEASE CONTAINED IN PARAGRAPH 10 OF THIS AGREEMENT.

PHILADELPHIA AUTHORITY FOR INDUSTRIAL DEVELOPMENT

By: 
Name: Evelyn Smalls
Title: Chair Person

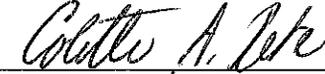
Approved as to Legality and Form:

PHILADELPHIA REGIONAL PORT PHILAPORT ("PHILAPORT")

BY: 
Name: Sheard 6/13/19
Title: CEO & Executive Director

Approved as to Budgetary Appropriateness & Fiscal Responsibility

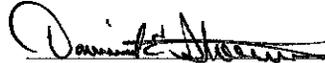
PHILADELPHIA REGIONAL PORT PHILAPORT

By: 
Name: Collette A. Pock 6/13/19
Title: Chief Counsel

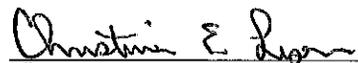
PHILADELPHIA REGIONAL PORT PHILAPORT

By: 
Name: 6-13-19
Title: Director of Finance & Capital Funding

OFFICE OF ATTORNEY GENERAL

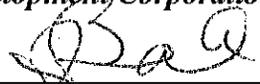
By: 
Name: DAVID E. STOVER
Title: Deputy Attorney General

OFFICE OF THE BUDGET

By:  7-17-19
Name: Christine E. Lynn
Title: Comptroller

Approved As To Form:

Philadelphia Industrial Development Corporation

By: 
Ilene Burak, Esq.

Date: _____

Insurance Certificate Received:

Philadelphia Industrial Development Corporation

By: _____

Date: _____

Exhibit "A"

Exhibit "A"

