

**AGREEMENT BY AND BETWEEN THE
HARBOR COMMISSION
OF THE
CITY OF WASHBURN
AND**

THIS NONEXCLUSIVE AGREEMENT (hereinafter referred to as *Agreement*) by and between the Harbor Commission of the City of Washburn, Bayfield County, Wisconsin (hereafter referred to as *Commission*) and _____ (hereafter referred to as *Lessee*) is hereby made effective on _____, 2009.

W I T N E S S E T H:

WHEREAS, the Commission has available a Dock at the Port of Washburn for the transloading and storage of bulk materials; and,

WHEREAS, the Commission, with the assistance of a professional engineer, has divided the Dock into several storage areas for the purpose of protecting the integrity of the Dock and limiting the area to be occupied by any one Lessee; and

WHEREAS, the Lessee desires to lease a portion of the Commission's Dock; and

WHEREAS, this Agreement is intended to provide for certain duties and responsibilities of the Commission and Lessee for use of the Dock by the Lessee.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties hereby agree as follows:

**ARTICLE 1
COMMISSION COVENANTS**

The Commission hereby covenants and agrees that it will:

Section 1.1 Use. Give the Lessee free and unrestricted use of that portion of the Dock leased by Lessee within the conditions, covenants, requirements, and responsibilities of this Agreement.

Section 1.2 Access. Give the Lessee vehicle access to the Dock, contingent upon applicable local street, road and highway load limits, however, the Commission and City will have the authority to determine the local roads the Lessee shall be permitted to utilize to access the Dock.

ARTICLE II

LESSEE COVENANTS

The Lessee hereby covenants and agrees as follows:

Section 2.1 Responsibilities. It will abide by the restrictions and responsibilities established by this Agreement.

Section 2.2 Cooperation. It will cooperate fully with the Commission in the Commission's lease of portions of the Dock to other parties by insuring access and not unnecessarily blocking entry and access of others to portions of the Dock not leased by the Lessee.

Section 2.3 Insurance. It will provide the Commission with a certificate of liability insurance in amounts acceptable to the Commission at the time of signing of this Agreement and maintain such insurance coverage for the term of the lease. Lessee agrees that at no time will materials be stored on the Dock prior to the Commission's receipt of the required certificate of insurance.

Section 2.4 Material Removal. It will remove all materials from the leased area of the Dock at the conclusion of the lease term. In the event that weight restrictions remain on local and county streets, roads and highways at the conclusion of the lease term, Lessee shall remove said materials not less than two weeks after the removal of weight restrictions by the Bayfield County Highway Commissioner. If the material remains on the dock two weeks after expiration of the lease, or two weeks after the removal of weight restrictions pursuant to the preceding paragraph, the Commission, at its option, shall have the right to either (a) claim the material as its own, forfeiting any and all interest that the Lessee may have in said materials, or (b) remove and dispose of the material at the Lessee's expense. If option (b) is exercised, then the Commission shall offset against the costs of removal any revenue generated by the disposition of the materials.

Section 2.5 Lawful Storage. It will not place materials on the Dock in any unlawful, or disreputable manner or in a condition which would be considered hazardous by the Commission. In the event materials are stored in a hazardous manner, the Lessee agrees that it shall take immediate steps, upon notification of the Commission, to eliminate any unlawful, disreputable or hazardous condition.

Section 2.6 Hazardous Materials. It will not store any hazardous or toxic materials on the Dock.

Section 2.7 Permits. It will comply with all local, state and federal regulations related to the storage, transportation, sale and distribution of said storage materials referred to herein and shall be responsible to obtain all licenses and permits necessary for the storage and transportation of said materials. Any violation by Lessee of any permit or license or violation for failure to obtain said permit or license shall be grounds for termination of this Lease in accordance with Article III. The Lessee agrees that it alone has responsibility to acquire the necessary licenses and permits to carry on its activities on the leased premises of the Commission and that it shall hold the Commission and City harmless in the event said licenses and permits are not obtained by the Lessee.

Section 2.8 Post Lease Condition. It will, upon removal of stored materials on the Dock, leave the Dock surface and structure in as good or better condition than before the storage took place on said Dock. Further, if the Dock or the storage area is damaged by the Lessee, the Lessee agrees to be responsible for the costs of any repairs incurred by the City to the Dock caused by the Lessee.

Section 2.9 Dock Access. It will follow the local roads designated by the Commission and City for access to the Dock and abide by local load and weight restrictions imposed by the Commission and City for local roads and city streets. The Lessee agrees to be responsible for the costs of any repairs to any street or alley damaged by hauling to or from the dock.

Section 2.10 Nuisance Creation. It will not conduct any operation within the leased area or in the course of transporting materials to or from the leased area that will create excessive noise, odors, smoke, dust, vibration, industrial waste, toxic matter or other excessive measurable external nuisances in violation of any municipal ordinance or applicable Wisconsin law or regulation. It will transport materials to and from the dock only during the hours specified by the Commission. It will conduct operations on the Dock only during the hours specified by the Commission. The Lessee shall not allow any materials of any sort to fall onto any street or alley of the City or any property adjacent thereto from any truck on its way to or from the Dock, and if any material does so fall, shall remove it immediately, and if it does not remove it immediately shall be liable for the cost to the City for its removal.

Section 2.11 Reports. It will provide reports on the quantities of materials stored on the Leased premises within 15 calendar days of a request submitted to it by the Commission.

Section 2.12 Third-party hauling. It will be responsible for compliance with the provisions of this Article II, whether or not any activities undertaken pursuant to this Agreement are undertaken by the Lessee, or by a subcontractor, vendor, purchaser or other.

ARTICLE III TERM, RENEWAL & TERMINATION

Section 3.1 Term. The term of this Agreement shall be for a period of 12 months commencing on _____ and terminating at midnight on _____.

Section 3.2 Renewal. All outstanding fees due the Commission shall be paid prior to the Renewal of this Agreement.

Section 3.3 Termination for Non Payment. Should the Lessee fail to remit payments as required in this Agreement, the Commission may at its option, immediately terminate this Agreement and order any materials stored on the Dock at the time of termination immediately removed at the sole expense of the Lessee.

Section 3.4 Notice to Terminate. It is understood by both parties that termination of this Agreement for any reason other than Non-Payment requires a written *Notice to Terminate* issued by the

terminating party a minimum of thirty days in advance of the effective date of termination.

A. If such *Notice of Termination* should be issued by the Commission, a prorated refund of the *Storage Fee* shall be returned to the Lessee.

B. If such *Notice of Termination* should be issued by the Lessee, the Commission shall not be obligated to return any portion of the lease fee paid by the Lessee to the Commission.

ARTICLE IV LEASED AREA

Section 4.1 Divisions of Dock. The Harbor Commission, on the recommendation of its engineer and for the purpose of limiting potential damage to the dock walls from the storage of weighty materials, has divided the commercial dock into four storage areas. The four storage areas are identified on Exhibit A.

Section 4.2 Limitations of Lessee. The area subject to this lease is described on Exhibit B and Lessee's use shall be limited to Section A, as shown on the Exhibit, only. Should materials extend over the boundary of one Storage Area into another, the lessee shall be charged an additional Annual Storage Area Fee for each additional Storage Area that materials may extend into.

ARTICLE V ANNUAL LEASE PAYMENT

Section 5.1 Annual Storage Area Fee. The Annual Storage Area Fee for use of the dock shall be a \$5,000.00 non-refundable fee per Storage Area occupied, for up to 5,000 cubic yards of storage per section, plus 20 cents for each additional cubic yard. The Annual Fee shall be paid at the time of signing of this Agreement and this Agreement shall not be valid until receipt of the Annual Storage Area Fee by the Commission.

Section 5.2 Storage Fee After Expiration of Lease. The Lessee shall pay to the Commission a sum equal to \$0.40 per ton on all materials remaining on the Dock at the conclusion of the lease term if an extended storage period or renewal of the lease has not been entered into.

**ARTICLE VI
SUBLEASING**

The parties further agree that there shall be no assignment or sublease of this contract or the rights conveyed herein without written consent of the City's Harbor Commission.

**ARTICLE VII
INDEMNITY**

The Lessee hereby agrees to indemnify and hold the City, its Commissions, Authorities, Boards, Committees, officers agents, and employees harmless from and against any and all liabilities, obligations, claims damages, injuries, penalties, causes of action, judgments, costs and expenses (including, but not limited to, reasonable attorney's fees) imposed upon, incurred by or asserted against the Commission or City during or with respect to the term hereof, arising from the Lessee's use of the Dock or any failure of the Commission or City to duly and fully perform or comply with each and all of the terms of this Agreement arising out of acts of God, theft, accident, intentional vandalism, etc.

**ARTICLE VIII
NOTICES**

Section 8.1 For the City: All notices and issues involving the terms of this Agreement and payments required of this Agreement shall be directed, on behalf of the City, to:

Scott J. Kluver
City Administrator
City of Washburn
P.O. Box 638
Washburn, Wisconsin 54891
715-373-6160 Extension 4
Fax: 715-373-6148

The City's contact person for issues involving the use of the commercial (coal) dock shall be the office of Public Works Director:

Public Works Director

City of Washburn
P.O. Box 638
Washburn, Wisconsin 54891
715-373-6171
Fax: 715-373-6148

Section 8.2 For Lessee: All notices to the Lessee shall be directed to:

(Insert)

ARTICLE IX MISCELLANEOUS

Section 8.1 Amendments. Neither this Agreement nor any of the terms, covenants, or conditions herein may be modified or amended except by an agreement in writing approved and executed by the Commission and Lessee.

Section 8.2 Severability. If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable under applicable law, then the remainder of the Agreement shall not be affected.

Section 8.3 Construction. The headings of the paragraphs and subparagraphs of this Agreement are for convenience only and shall in no way affect the construction or effect of any of the terms, covenants, or conditions hereof.

Section 8.4 Interpretation. This Agreement shall be interpreted and applied in accordance with the laws of the State of Wisconsin.

Section 8.5 Binding Effect. This Agreement shall inure to the benefit of, and shall be binding upon the Commission and Lessee and their respective successors and assigns.

IN WITNESS WHEREOF, THE HARBOR COMMISSION OF THE CITY OF WASHBURN has caused this Agreement to be signed by Josie Lupa-Fleig, its president and countersigned by Vicki E. Swanson, Clerk-Treasurer of the City of Washburn, Wisconsin this _____ day of _____, 2009.

Josie Lupa-Fleig, Commission President

Vicki E. Swanson, Clerk-Treasurer

LESSEE:
By:

(Signature)

Date

Draft Approved by Harbor Commission on 021809