

## **LEASE AGREEMENT**

This LEASE AGREEMENT (hereinafter referred to as "Lease") dated effective September 7, 2021, by and between Village of Romeoville, an Illinois home rule municipal corporation ("Lessor"), and Harbour Contractors, Inc. ("Lessee").

### **1. EQUIPMENT LEASED.**

Subject to the terms and conditions hereinafter set forth in this Lease, Lessor hereby rents, demises and lets to Lessee, and Lessee shall rent from Lessor, a 100 KW CAT generator, bearing serial number 122 458/01, (hereinafter collectively referred to as the "Equipment" or the "Unit").

### **2. TERM.**

The term of this Lease shall commence on September 7, 2021 (hereinafter referred to as the "Commencement Date") and shall continue for a period of four (4) months thereafter until January 7, 2022 (the said January 7, 2022 being hereinafter referred to as the "Termination Date").

### **3. RENT.**

The monthly rent payable by Lessee for the Equipment shall be that amount equal to the costs incurred by the Village during a given month during this Lease for fuel to operate the Equipment. Lessee shall pay to Lessor, as rental for the Equipment, the Monthly Rent per month, which Monthly Rent shall be payable in arrears within five (5) days after the end of the month to which the Monthly Rent pertains, subject to the Lessor's provision of an invoice therefor to Lessee. Any payments of rent which are not paid within five (5) days of their due date shall be payable on demand and shall bear interest on such amount at the lesser of 1.5% per month or the maximum allowable rate of interest permitted by law. All Rent and other sums due hereunder shall be paid at the address of Lessor set forth below or at such other place as Lessor shall designate in writing, or, if to an assignee of Lessor, at such place as such assignee shall designate in writing. Lessee's obligation to pay the Monthly Rental shall survive the termination or expiration of this Lease.

### **4. TAXES.**

During the term of this Lease, Lessee shall promptly pay when due or reimburse and indemnify and hold Lessor harmless from and against all Taxes, as hereinafter defined. The term "Taxes" as used herein shall mean all taxes, fees or other charges of any nature whatsoever (together with any related interest or penalties not arising from the negligence on the part of Lessor) now or hereafter imposed or assessed during the term of this Lease against Lessor, Lessee or the Equipment by any Federal, state, county or local governmental authority upon or with respect to the Equipment or upon the ownership, delivery, leasing, possession, use, operation, or return thereof (excepting only Federal, state and local taxes based on or measured by the net income of Lessor). Notwithstanding the foregoing, unless otherwise specified in the Lease, Lessee shall be responsible for the filing and paying of all personal property taxes with respect to the Equipment.

## **6. WARRANTIES.**

LESSEE ACKNOWLEDGES THAT LESSOR HAS MADE NO REPRESENTATION OR WARRANTIES OF ANY KIND, EXPRESSED OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITH OUT LIMITATION, THE DESIGN, PERFORMANCE, OR CONDITION OF THE EQUIPMENT, ITS MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. LESSOR SHALL HAVE NO LIABILITY TO LESSEE FOR ANY CLAIM, LOSS OR DAMAGE CAUSED BY OR ARISING IN ANY WAY IN CONNECTION WITH THE EQUIPMENT. NOR SHALL THERE BE ANY ABATEMENT OF RENT, EXCEPT AS OTHERWISE SET FORTH IN THIS AGREEMENT, FOR ANY REASON INCLUDING CLAIMS ARISING OUT OF OR IN CONNECTION WITH ANY DEFICIENCY OR DEFECT IN THE EQUIPMENT, THE USE OR PERFORMANCE OF THE EQUIPMENT, OR ANY LOSS OF BUSINESS OR OTHER CONSEQUENTIAL LOSS OR DAMAGE WHETHER OR NOT RESULTING FROM ANY OF THE FOREGOING.

## **7. TITLE AND ASSIGNMENT.**

(a) Nothing contained in any Lease shall give or convey to Lessee any right, title or interest in or to the Equipment, except as a Lessee as set forth herein, and Lessee represents and agrees that Lessee shall hold the Equipment subject and subordinate to the rights of Lessor, Lessor's assignee or transferee, or Lessor's secured lender (hereinafter referred to as "Secured Party"). Lessee shall execute and immediately deliver such documentation, including Uniform Commercial Code financing statements, as are requested by Lessor for such purpose. Lessee shall, at its expense, protect and defend Lessor's title as well as the interest of any assignee or transferee of Lessor or any Secured Party against all persons claiming against or through Lessee and shall at all times keep the Equipment free and clear from any legal process, liens or encumbrances whatsoever (except any placed thereon by Lessor) and shall give Lessor immediate written notice thereof and shall indemnify and hold Lessor, any Assignee and any Secured Party harmless from and against any loss caused thereby.

(b) Lessee shall keep the Equipment free from any marking or labeling which might be interpreted as a claim of ownership thereof by Lessee or any party other than Lessor or any Assignee. Upon the request of Lessor, Lessee shall at reasonable times during business hours make the Equipment available to Lessor for inspection at the place where it is normally located.

(c) Lessor may assign to a successor lessor, lender or purchaser, and Lessee hereby consents to the assignment of, all or any part of the Lessor's right, title and interest in and to the Lease and the Equipment. After such assignments, the term Lessor shall mean, as the case may be, such Assignee and any Secured Party. Notwithstanding the foregoing, any assignment by Lessor shall not relieve Lessor of its obligations to Lessee hereunder. Lessee, upon receipt of notice of any such assignment or assignments and instructions from Lessor (provided however, in the event of a collateral assignment to secured party no instructions from Lessor shall be required), shall pay and perform its obligations hereunder to such Assignee and any Secured Party and acknowledge that the Assignee and any Secured Party shall have and be entitled to exercise any and all discretions, rights and powers of Lessor under the terms of this Lease, provided, however, that such Assignee or Secured Party shall take no action to interfere with Lessee's quiet enjoyment and use of the Equipment in accordance with the terms of the Lease

hereof so long as Lessee is not in default of any of the provisions hereof and such Assignee or Secured Party continues to receive all amounts of Monthly Rent payable under such Lease.

## **8. USE AND RETURN OF EQUIPMENT.**

(a) Lessee shall, at all times during the term of the Lease, be entitled to the use of the Equipment for the sole and limited purpose of supplying electrical power to a construction trailer to be used by Lessee in connection with the provision of construction management services in connection with the Lessor's ongoing Aquatic Center project. Lessee will comply with all laws, regulations, and ordinances, and all applicable requirements and operating procedures which relate or apply to the physical possession, use, operation, condition, and maintenance of the Equipment.

(b) Lessee may, only upon receipt of prior express written consent of Lessor referencing this Section 8(b), at its own expense, make alterations in or add attachments to the Equipment (the "Upgrade"), provided such Upgrade does not interfere with the normal operation or maintenance of the Equipment. All Upgrades shall be the property of Lessor. No liens, encumbrances or interests may be granted by Lessee in such Upgrades which impair Lessor's rights, title and interest in the Equipment. Notwithstanding the forgoing, at the request of Lessor, Lessee shall, upon expiration or termination of the Lease, remove any such Upgrade and restore the Equipment to its original condition (ordinary wear and tear excepted), all at Lessee's expense, prior to returning the Equipment to Lessor.

(c) Except as otherwise provided herein, upon the termination (by expiration or otherwise) of the Lease, Lessee shall, pursuant to Lessor's instructions and at Lessee's full expense, return the Equipment to Lessor in the same operating order, repair, condition and appearance as when received on the Commencement Date, reasonable wear and tear excepted. Except as otherwise provided herein, until the return of the Equipment to Lessor, Lessee shall be obligated to pay the Monthly Rental and all other sums due hereunder.

## **9. MAINTENANCE AND REPAIR.**

During the term of the Lease, Lessee shall be responsible at its cost to protect the Equipment from loss or damage resulting from causes including but not limited to theft, vandalism, inclement weather, fire, Acts of God, or other casualty, provided that the foregoing obligation shall not limit or modify Lessee's obligations under Section 13 hereof. Lessee shall not use or permit the Equipment to be used for any purpose for which the Equipment is not designed or intended or for any other purpose not expressly permitted by the terms of this Lease. Lessor shall be responsible through its personnel to provide the appropriate connection between the Equipment and Lessee's construction trailer, and to provide refueling services for the Equipment as needed from time to time, subject to Lessee's obligation to pay Monthly Rent as hereinabove set forth.

## **10. REPRESENTATIONS AND WARRANTIES OF LESSEE.**

Lessee hereby represents, warrants and covenants the following with respect to the Lease: (i) the execution, delivery and performance thereof by the Lessee have been duly authorized by all necessary corporate action, (ii) the Lease will be in full force and effect and constitute a valid

obligation binding upon and enforceable against Lessee in accordance with its terms, and (iii) the Equipment covered by the Lease is accurately described in the Lease and all documents relating thereto.

#### **11. QUIET ENJOYMENT.**

Lessor covenants that so long as Lessee is not in default, and keeps and performs each and every covenant, condition and agreement hereunder, Lessee will quietly possess the Equipment subject to and in accordance with the provisions of the Lease.

#### **12. INDEMNITY.**

Lessee hereby agrees to assume liability for, and does hereby agree to indemnify, protect and hold Lessor and its directors, officers and employees, any Assignee and any Secured Party harmless from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, or expenses (including legal fees and expenses), arising out of the operation, control, use, maintenance, and return of the Equipment by Lessee or Lessee's agent(s). Notwithstanding the foregoing, Lessee shall not be responsible under the terms of this Section 12 to a party indemnified hereunder for any claims, costs, expenses, damages and liabilities caused by the gross negligence or willful misconduct of such indemnified party. At the request of Lessor, Lessee shall undertake to defend at Lessee's expense, Lessor, any Assignee and any Secured Party, in any claim, action or suit covered by this Section 12. Lessee's obligations under this Section 12 shall survive any termination or expiration of this Lease.

#### **13. RISK OF LOSS, INSURANCE.**

(a) Lessee hereby assumes and shall bear the entire risk of loss and damage, of the Equipment from any and every cause whatsoever as of the Commencement Date and throughout the Term of this Lease. No loss or damage to the Equipment or any part thereof shall impair any obligation of Lessee under this Lease, which shall continue in full force and effect.

(b) During the term of the Lease, Lessee, at its own expense, shall insure the Equipment against all risks and in such amounts as Lessor shall reasonably require (but not less than the Casualty Value of the Equipment) with carriers acceptable to Lessor. Such insurance shall also provide for loss payable endorsement to Lessor, any Assignee, and any Secured Party. Lessee shall also maintain comprehensive public liability insurance satisfactory to Lessor. All such insurance shall name Lessor, its directors and officers, any assignee, if applicable, and any Secured Party. All such policies shall provide that they may not be terminated or modified without at least 30 days' prior written notice to Lessor, or Assignee, or any Secured Party.

(c) Lessor shall have no responsibility of any nature or kind with respect to damage to Lessee's construction trailer or personal property located therein resulting from or in any way relating to the use of the Equipment hereunder, or the failure of the Equipment to function or operate as contemplated by this Lease, and Lessee hereby expressly waives and releases Lessor from any and all liability of any kind relating to or pertaining to any such damage, and covenants not to sue Lessor regarding the same.

#### **14. DEFAULT, REMEDIES.**

(a) The occurrence of any one or more of the following events (hereinafter referred to as "Events of Default") shall constitute default under a Lease:

(i) Lessee fails to pay any installment of Monthly Rent or other charge payable by Lessee under such Lease as and when the same becomes due and payable and such default continues for a period of ten (10) days; or

(ii) Lessee fails to observe or perform any of the other obligations required to be observed or performed by Lessee of such Lease or the inaccuracy in any material respect of any representation or warranty made by the Lessee in such Lease or in any document or certificate furnished to the Lessor in connection therewith, which default or inaccuracy shall continue for a period of fifteen (15) days after notice; or

(iii) Lessee makes an assignment for the benefit of creditors; admits in writing its inability to pay its debts as they become due; files a voluntary petition in bankruptcy; is adjudicated as bankrupt; files a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future statute, law or regulation, or files any answer admitting, or fails to deny the material allegations of a petition filed against it for any such relief; consents to or acquiesces in the appointment of a trustee, receiver, or liquidator of it or of all or any substantial part of its assets or properties, or if it or its shareholders shall take any action to effect its dissolution or liquidation; or

(iv) The failure by Lessee, within thirty (30) days after the commencement of any proceeding against Lessee seeking any reorganization, arrangement composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, to obtain the dismissal of such proceeding, or if within thirty (30) days after the appointment without Lessee's consent or acquiescence of any trustee, receiver or liquidator of Lessee or of all or any substantial part of its assets and properties, such appointment shall not be vacated; or

(b) Upon the occurrence of any one or more Events of Default, Lessor, at its option, may (1) proceed by appropriate court action or actions either at law or in equity to enforce performance by Lessee of the applicable covenants and terms of the applicable Lease, or to recover from Lessee any and all damages or expenses, including reasonably attorney's fees, which Lessor shall have sustained by reason of Lessee's default on account of Lessor's enforcement of its remedies thereunder, or (2) Lessor may declare this Lease Agreement in default, such declaration shall be by written notice to Lessee. Lessee hereby authorizes Lessor at any time thereafter to enter with or without legal process any premises where Equipment may be and take possession thereof without notice, and without being liable to Lessee therefor, except that Lessor shall be liable for damages resulting from the fault or negligence of Lessor, any Assignee, any Secured Party, or their respective agents and representatives in any such entry or repossession. Lessee shall, without further demand, forthwith pay Lessor an amount which is equal to any unpaid amount due on or before Lessor declaring the Lease to be in default, together with interest (computed at the lesser of 1.5% per month or the maximum allowable rate of interest permitted by law), plus all attorney and court costs incurred by Lessor relating to the enforcement of its rights under this Lease. After such noticed default, at the request of Lessor and to the extent requested by Lessor, Lessee shall immediately comply with the provisions of

Section 8(c) of this Lease. Lessor may sell the Equipment at private or public sale, in bulk or in parcels, with or without notice, without having the Equipment present at the place of sale; or Lessor may lease, otherwise dispose of or keep idle all or part of the Equipment subject, however, to its obligation to mitigate damages. The proceeds of sale, lease or other disposition, if any, of the Equipment shall be applied (1) to all Lessor's costs, charges and expenses incurred in taking, removing, holding, repairing and selling, leasing or otherwise disposing of Equipment including attorney fees; then (2) to the extent not previously paid by Lessee, to pay Lessor the Casualty Value for Equipment and all other sums owed by Lessee under the Lease, including any unpaid rent and indemnification then remaining unpaid hereon; then (3) any surplus shall be retained by Lessor. The exercise of any of the foregoing remedies by Lessor shall not constitute a termination of this Lease unless Lessor so notifies Lessee in writing.

**15. INTENTIONALLY OMITTED.**

**16. MISCELLANEOUS.**

(a) This Lease has been made, executed and delivered in the State of Illinois and shall be governed and construed for all purposes under and in accordance with the laws of such state.

(b) Lessor and Lessee acknowledge that there are no agreements or understandings, written or oral, between Lessor and Lessee with respect to the Equipment, other than as set forth herein and that this Lease contains the entire agreement between Lessor and Lessee with respect thereto.

(c) This Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns (as may be permitted hereunder).

(d) All notices, consents or requests desired or required to be given hereunder shall be in writing and shall be deemed received upon the earlier of receipt or three days after mailing if mailed postage prepaid by regular or airmail to either party, as the case may be, at the address for such party set forth in the Lease or at such changed address as may be subsequently submitted by written notice of either party.

(e) All consents required to be contained in any lease shall set forth facts as Lessor may require and the consent of Lessor shall not be unreasonably withheld.

**IN WITNESS WHEREOF**, the parties have executed this Lease Agreement on the date first written above.

LESSEE:

**HARBOUR CONTRACTORS, INC.**

LESSOR:

**VILLAGE OF ROMEOVILLE**  
an Illinois home rule municipal corporation

By: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_