

## LICENSE AGREEMENT

*J. W. Westcott*

This LICENSE AGREEMENT (“Agreement”) is entered into by and between the **CITY OF DETROIT**, a Michigan municipal corporation,” acting by and through its General Services Department and Parks and Recreation Division, located at 115 Erskine, Detroit, Michigan 48201 (the “City”), and the **J. W. WESTCOTT COMPANY**, a Michigan corporation, located at 12 24<sup>th</sup> Street, Detroit, Michigan 48222 (the “Licensee”). City and Licensee may each be referred to herein as a “Party” or collectively as the “Parties” to this Agreement, as applicable.

### WITNESSETH:

WHEREAS, City is the owner of a certain real property, improvements, and one multipurpose commercial and storage building (the “**Westcott Building**”) located at the common address of 12 24<sup>th</sup> Street, Detroit, Michigan 48222, as more specifically described and depicted on EXHIBIT A attached hereto and incorporated herein by reference (together with the Westcott Building, the “**Premises**”);

WHEREAS, City and Licensee desire to replace the long-expired lease and short-term occupancy agreements with this Agreement, wherein the Licensee will continue to operate and potentially expand the Licensee’s business operations; and

WHEREAS, the City has agreed to license the Premises to Licensee, consistent with the terms and conditions herein, and for the welfare and benefit of the general public.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby severally acknowledged, City and Licensee hereby agree as follows:

### ARTICLE I

#### *Definitions*

1.01 Capitalized terms used in this Agreement are defined as follows:

- (a) “**Affiliate Consent**” shall have the meaning ascribed to it in Article X, Section 10.05.
- (b) “**Affiliate Notice**” shall have the meaning ascribed to it in Article X, Section 10.05.
- (c) “**Agreement**” means this License Agreement.
- (d) “**Amendment**” shall have the meaning ascribed to it in Article XI, Section 11.01.

- (e) “**Associates**” means the agents, officers, directors, employees, volunteers, and contractors of, as well as other entities or persons associated with, affiliated with, or subsidiary to either Party, whether now existing or hereafter created.
- (f) “**Cause Notice**” shall have the meaning ascribed to it in Article III, Section 3.03.
- (g) “**City**” means the City of Detroit, a Michigan municipal corporation.
- (h) “**City Council**” means the legislative body of the City of Detroit.
- (i) “**Claim**” means any action, liability, obligation, damage, penalty, cost, charge, demand, lawsuit, unfair labor practice charge, complaint, loss, or expense (including but not limited to fees and expenses for attorneys, expert witnesses, and other consultants).
- (j) “**Default**” shall have the meaning ascribed to it in Article III, Section 3.03.
- (k) “**Due Date**” shall the meaning ascribed to it in Article V, Section 5.02.
- (l) “**Effective Date**” means the date that this Agreement has been approved by the City Council, as described in Article III, Section 3.01.
- (m) “**Fees**” shall have the meaning ascribed to it in Article V, Section 5.01.
- (n) “**Force Majeure Event**” means any event or circumstance that is beyond the reasonable control of that party, absent such party’s fault or negligence, and which by its nature could not have been foreseen by such party, or, if it could have been foreseen, was unavoidable, including but not necessarily limited to, any Act of God or the public enemy, strikes, lockouts, wars, acts of domestic or international terrorism, riots, epidemics, pandemics, explosions, sabotage, the binding order of any governmental authority, or any other cause, whether the kind herein enumerated or otherwise, which is not within the control of a party. Licensee’s economic hardship and changes in the market conditions are not considered a Force Majeure Event. In the event of a dispute between the parties regarding what constitutes a Force Majeure Event, the City’s reasonable determination shall be controlling.
- (o) “**Hazardous Materials**” means any of the following as defined by the relevant local, state, and federal environmental laws: hazardous wastes; solid wastes; toxic or hazardous substances, wastes, or contaminants (including but not limited to polychlorinated biphenyls, paint containing lead, and urea formaldehyde foam insulation); and discharges of sewerage, or effluent.
- (p) “**Licensee**” shall mean the J. W. Westscott Company, a Michigan corporation, located at 12 24th Street, Detroit, Michigan 48222.

- (q) “**Major Alterations**” shall mean any improvements or alterations to the Premises by Licensee which the actual or projected aggregate costs exceed Ten Thousand Dollars (\$10,000.00), excepting the Uses already approved by this Agreement.
- (r) “**Mediation**” means a confidential, non-binding, private process outside of any court setting where a neutral third party is identified and contracted by the Parties in good faith, and where such mediator adheres to the methods proffered by the American Arbitration Association and facilitates disputes between the Parties that cannot first be resolved through negotiation, and where the Parties agree to participate in good faith and with best efforts.
- (s) “**Notices**” shall have the meaning ascribed to it in Article XII, Section 12.01.
- (t) “**Notice and Cure Period**” shall have the meaning ascribed to it in Article III, Section 3.03.
- (u) “**Parking Areas**” shall have the meaning ascribed to it in Article VI, Section 6.03.
- (v) “**Records**” means the books, files, records, ledgers, journals, accounts, documents, and other collected data (whether on paper, computer, computer disk, tape, USB, or other storage media) presently existing, kept, and/or related to the operations of the Premises to fulfill this Agreement.
- (w) “**Statement of Political Contributions and Expenditures**” shall have the meaning ascribed to it in Article II, Section 2.03(e).
- (x) “**Term**” shall have the meaning ascribed to it in Article III, Section 3.01.
- (y) “**Uses**” shall have the meaning ascribed to it in Article IV, Section 4.01.

## ARTICLE II

### *Licensee’s Representations and Warranties*

- 2.01 In order to induce City to enter into this Agreement, Licensee hereby makes, and City hereby relies upon, the following representations and warranties described here in this Article.
- 2.02 Licensee represents and warrants the following in relation to its legal status and capacity:
  - (a) Licensee is authorized to do business under the laws of the State of Michigan and is duly qualified to perform the Uses outlined in this Agreement.
  - (b) Licensee possesses the legal capacity to enter this Agreement, and the engagement described herein is within Licensee’s corporate purposes.

- (c) Licensee has the personnel with the skill, experience, and expertise to perform the obligations under this Agreement.
- (d) Licensee is not party to any agreement or understanding which would prevent, limit, or hinder in any material manner its performance of either the Uses or any of its obligations under this Agreement
- (e) Licensee represents and warrants that, as of the date of this Agreement, no litigation or administrative proceeding before any court or administrative body is presently pending, nor, to its knowledge, is any such litigation or proceeding presently threatened, against it or any of its property, that, if adversely determined would or could materially affect its ability to perform its obligations under this Agreement.
- (f) Licensee represents and warrants that, as of the date of this Agreement, it is not in default to City, as outlined and defined in Section 2-113 of the City's 2012 Charter.
- (g) Licensee represents and warrants that neither the execution, delivery, and performance of this Agreement nor the consummation by Licensee of the transactions contemplated herein will:
  - (1) conflict with, violate, or result in a breach of any of the terms, conditions or provisions of any law, regulation, order, writ, injunction, decree, permit, license, determination, or award of any court, governmental department, municipality, board, agency, instrumentality, or arbitrator; or
  - (2) require any consent, authorization or approval of any person or entity not a Party hereto.
- (h) Licensee will provide evidence of all the foregoing, as applicable, prior to the commencement of the Agreement, and from time to time thereafter as reasonably requested by City, including at any extension or amendment of the Term.

2.03 Licensee represents and warrants the following in relation to issues pertaining to conflicts of interest:

- (a) Licensee covenants that it presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of the Uses under this Agreement. Licensee further covenants that in the performance of this Agreement no person having any such interest shall be employed by it.
- (b) Licensee further covenants that no officer, agent, or employee of the City and no other public official who exercises any functions or responsibilities in the review or approval of the undertaking or performance of this Agreement has any personal or financial interest, direct or indirect, in this Agreement or in its proceeds, whether such interest arises by way of a corporate entity, partnership, or otherwise.

- (c) Licensee warrants that it has not employed and will not employ any person to solicit or secure this Agreement upon any agreement or arrangement for payment of a commission, percentage, brokerage fee, or contingent fee, other than bona fide employees working solely for Licensee either directly or indirectly, and that if this warranty is breached, the City may, at its option, terminate this Agreement without penalty, liability or obligation.
- (d) Licensee covenants not to employ an officer, agent, or employee of the City, or any other public official who exercised any function or responsibility in the review or approval of the undertaking or performance of this Agreement for a period of one (1) year after the date of termination of this Agreement, or the termination of such person's employment relationship with the City, without the prior written approval from City.
- (e) Licensee shall provide a statement listing all political contributions and expenditures ("**Statement of Political Contributions and Expenditures**"), as defined by the Michigan Campaign Finance Act, MCL 169.201, et seq., made by Licensee, its affiliates, subsidiaries, principals, officers, owners, directors, agents or assigns, to elective City officials within the previous four (4) years. Individuals affiliated in any way with Licensee shall also list any contributions or expenditures from their spouses. The Statement of Political Contributions and Expenditures, which is attached hereto as EXHIBIT D and incorporated herein by reference and shall be filed by Licensee on an annual basis for the duration of this Agreement, shall be current up to and including the date of its filing, and shall also be filed with all contract renewals and change orders, if any.
- (f) Licensee shall maintain a best-in-class, internal conflict of interest policy that requires all of its directors, officers, and key employees to complete and execute annual disclosures of any such conflicts outlined in this Article and shall provide to City completed copies of such annual disclosures on at least an annual basis.

2.04 All of the representations and warranties contained in this Article or pursuant hereto shall remain in full force and effect for the duration of the Term and for a period of three (3) years thereafter. City may, in its discretion, at any time prior to the expiration of the Term require Licensee to:

- (a) execute a document reaffirming the continuing validity of any or all of these representations and warranties;
- (b) provide such documentation as is or may be required under this Agreement; and
- (c) provide such other documentation, including but not limited to business and financial records, as City may request.

**ARTICLE III**  
***Term and Termination***

- 3.01 The term of this Agreement shall commence on the date the City Council approves this Agreement (the “**Effective Date**”) and shall expire on December 31, 2054 (the “**Term**”) unless otherwise terminated pursuant to the provisions of this Agreement.
- 3.02 City and Licensee each have the right to terminate this Agreement immediately, for any reason, by providing Licensee with at least three hundred sixty (360) days written notice.
- 3.03 City has the right to revoke this Agreement for cause by providing Licensee with written notice (the “**Cause Notice**”). The Cause Notice shall identify and set forth City’s grounds for terminating the Agreement due to Licensee’s noncompliance and/or failure to perform under the Agreement (the “**Default**”). Licensee shall have thirty (30) business days from its receipt of the Cause Notice to cure the Default (the “**Notice and Cure Period**”).
- (a) If Licensee cures the Default within the Notice and Cure Period, as determined in City’s sole and reasonable discretion, City shall withdraw its Cause Notice, and the Agreement shall remain in effect for the Term unless otherwise terminated pursuant to the provisions of this Agreement.
  - (b) If Licensee fails to cure the Default within the Notice and Cure Period, as determined in City’s sole and reasonable discretion, and City has not provided Licensee with a notice that grants Licensee additional time to cure the Default, then the Agreement shall terminate immediately upon the expiration of the Notice and Cure Period.
  - (c) At any time during the Notice and Cure Period, or any extension thereof as outlined in this Agreement, City may withdraw its Cause Notice.
- 3.04 Upon the expiration or earlier termination of this Agreement:
- (a) Licensee shall deliver to City the possession, custody, and control of the Premises in broom-clean condition and in no worse state than the Premises was at the Effective Date, allowing for normal wear and tear which could not be prevented with the exercise of reasonable care;
  - (b) Licensee shall return to City the possession all other assets owned by the City and used by Licensee in the performance of this Agreement remaining at the Premises and that are not otherwise personal property of Licensee or its Associates , (such as Licensee’s motor vehicles, watercraft, office furniture, kitchen appliances, computer systems, televisions, tools, supplies for its business, lift truck, lawn equipment, security system and other miscellaneous items) or held on behalf of one or more third parties in the orderly course of Licensee’s Use, as presented by Licensee and determined by City in City’s sole and reasonable discretion, with the burden of demonstrating ownership resting on Licensee; and

- (c) the Parties shall both resolve in good faith, and make payment for, any obligations outstanding under this Agreement as of the date of expiration or earlier termination of this Agreement.
- 3.05 Should a dispute arise between or among the Parties that cannot otherwise be resolved through negotiations or other means, the Parties shall use their good faith and best efforts to resolve such disputes through Mediation. Neither Party shall pursue formal litigation unless and until such disputes have first been engaged through Mediation, and that engagement did not result in resolution of the dispute.

#### ARTICLE IV

##### *Use*

- 4.01 During the Term, Licensee's uses of the Premises shall be limited to the purposes of providing mailboat, workboat, and other related marine services to commercial vessels traveling on the Detroit River; host indoor and outdoor public and private gatherings; offering public and private tours of the Westcott Building and the Detroit River; providing water taxi and ferry services; and providing commercial food and beverage services to the general public, pending all City approvals, all defined more specifically in the EXHIBIT B attached hereto and incorporated herein by reference (the "Uses"), and for related purposes which are incidental to and necessary for these Uses of the Premises.
- 4.02 City makes no implied or express representations or warranties as to either the Premises or the Premises' fitness for any purpose whatsoever, including but not limited to the Uses set forth herein. By executing this Agreement, Licensee acknowledges that it has received and accepted the Premises "as is" and is satisfied with the Premises' condition.
- 4.03 Licensee's Uses of the Premises is subject to the City's exercise of its police powers, including but not limited to the right to access, block, restrict, divert, or re-route traffic, or limit access to the Premises as the City deems appropriate, and that the City's exercise of such powers shall not constitute a breach of this Agreement or otherwise give rise to any claim, liability, or cause of action against the City. The City will make reasonable efforts to notify Licensee of any exercise thereby.
- 4.04 Licensee shall remain solely responsible for applying for and obtaining any and all permits, licenses, and other approvals required to perform its business in the ordinance course of its Uses at the Premises. City may request in writing documentation or proof of these approvals, and Licensee shall deliver such proof to City upon receipt of City's written request.
- 4.05 Licensee shall remain solely responsible for safeguarding the property and materials used at the Premises, including Licensee's own properties and materials, while performing under this Agreement.

- 4.06 Licensee may install and maintain, at its sole cost, fender systems and mooring cleats that are necessary for its operations. Additionally, Licensee may install and maintain, at its sole cost and expense, water, sewerage, and electrical facilities, as well as waste management containers for the removal of trash and debris. Such modifications to the Premises are considered Major Alterations, as defined herein, and shall require City's prior written approval.

**ARTICLE V**  
***Fees, Taxes, and Utilities***

- 5.01 Licensee agrees to pay City monthly fee payments for the Uses of the Premises in accordance with the payment schedule and other instructions set forth on EXHIBIT C attached hereto and incorporated herein by reference (the "Fees").
- 5.02 Licensee shall pay all Fees when due on the first of the month, or as determined by City in writing (the "Due Date").
- 5.03 If Licensee fails to pay the Fees, or any other amount due hereunder to City, within five (5) days of the Due Date, then Licensee shall pay to City a late fee equal to ten (10) percent of the total Fees currently outstanding and still owed to City.
- 5.04 Licensee shall also deliver to City, upon the City's request, an annual financial statement due June 1 of each calendar year. Each such statement shall consist of (i) a detailed income statement detailing all expenses and revenues received and organized by category, and (ii) a standard balance sheet.
- 5.05 Licensee shall be responsible for payment of all gas, water, electrical, sewerage, drainage, and other utilities at the Premises, including, but not limited to, the cost of connection thereof. This includes all utility use charges, as well as any required utility infrastructure improvements or maintenance charges necessitated by the construction, operation, and/or maintenance of the Premises pursuant to this Agreement.
- 5.06 Licensee shall pay all taxes, operating expenses, and all costs associated with its Uses of the Premises and its operation of any business or activities conducted on the Premises.
- 5.07 Notwithstanding the foregoing, should Licensee become in arrears to the City for any unpaid Fees—including any excessive utility charges owed hereunder, any unpaid taxes to the City, or any other applicable financial obligation— City shall have the right to terminate the Agreement.

**ARTICLE VI**  
***Maintenance and Repairs***

- 6.01 Licensee shall at all times and at its own expense keep and maintain the Premises in a clean, sanitary, and safe condition, subject to customary wear and tear of a similarly situated operation. This obligation applies to the Premises' structures, lawn, and operating systems,

and entails that the Licensee ensure each remain in good order, maintenance, and repair, both generally and as necessary to fulfill this obligation and comply with all applicable laws, ordinances, regulations and rules as applied against or enforced to Licensee and/or the Premises after the Commencement Date. For the avoidance of doubt, the Licensee is not obligated to repair and/or replace the Premises' seawall pursuant to this Section 5.01.

- 6.02 Notwithstanding the forgoing, Licensee shall not make neither any structural improvements nor alterations of any kind to the Premises or the Premises, including any Major Alterations, without having first obtained the prior written consent of City.
- 6.03 City shall provide custodial service to all common, public areas of the Premises, including the designated parking areas located at the Premises, as indicated on EXHIBIT A, attached hereto and incorporated herein by reference (the "**Parking Areas**").
- 6.04 Licensee shall be responsible for any and all damage to the Premises arising out of Licensee's Uses of the Premises, and shall notify the City of such damage and its intended plan to repair. Licensee shall take great care to protect the seawall and Premises from any damage from Licensee's vessels or otherwise. Licensee shall be obligated to repair immediately any and all damage to the Premises, excepting the seawall....
- 6.05 In occupying and maintaining the Premises, Licensee shall comply with all applicable federal, state, and local laws, rules, and regulations as related to Licensee's Uses and its occupancy of the Premises, including all governmental permits, certificates, approvals, and other policies of public liability with respect to the Premises.

**ARTICLE VII**  
***Signage and Parking***

- 7.01 Licensee may install signs at the Premises, but at its sole cost and expense, and subject to the prior review and written approval of City. Upon the expiration or earlier termination of this Agreement, all such signage installed by Licensee must be removed, and any damage resulting from such removal shall be promptly repaired by Licensee at Licensee's sole cost and expense.
- 7.02 Licensee may use the Parking Areas for its Associates. Licensee may not make any alterations or improvements to the Parking Areas without the prior written consent of City.

**ARTICLE VIII**  
***Insurance***

- 8.01 During the entire Term, Licensee shall procure and maintain at its sole cost and expense, the following insurance coverages:
  - (a) Longshoreman's coverage pursuant to the Jones Act in such amounts as required by the City.

- (b) Comprehensive General Liability Insurance with minimum limits of \$1,000,000 per occurrence; \$2,000,000 aggregate for bodily injury, property damage, products and completed operations and blanket contractual liability for all written contracts. The General Liability policy will name the "City of Detroit" as an additional insured.
  - (c) Automobile Liability Insurance covering all owned, non-owned, and hired automobiles with a minimum combined single limit of \$1,000,000. Such insurance will comply with the provisions of the Michigan No Fault Insurance Law. The Automobile Liability policy will name the "City of Detroit" as an additional insured.
  - (d) Liquor Liability Insurance with a minimum limit of \$2,000,000 in the event that alcohol is sold on the Premises. The Liquor Liability Insurance policy shall name the City of Detroit as an additional insured.
  - (e) Marine Owners Liability Insurance covering protection and indemnity liability coverage with a minimum limit of \$5,000,000 each occurrence.
- 8.02 If during the Term, changed conditions or other pertinent factors should, in the reasonable judgment of City, render inadequate the insurance limit, or types of coverages required herein. Licensee will furnish on demand and following reasonable written notice from City, such additional coverage as may reasonably be required under the circumstances, in City's sole discretion.
- 8.03 All insurance required herein will be under valid and enforceable policies, issued by insurers of recognized responsibility, registered, and authorized to do business in the State of Michigan, and which are "A" rated or better by national rating organizations and are otherwise acceptable to City.
- 8.04 All insurance policies required by this Agreement will contain an agreement by the insurer that such policies will not be cancelled or materially changed without at least 30 (thirty) days prior notice to City. Certificates of Insurance evidencing such coverage will be submitted to City at the time it executes this Agreement and at least 15 (fifteen) days prior to the expiration dates of expiring policies.
- 8.05 Licensee shall be responsible for payment of all premiums for, and deductibles contained in any insurance required hereunder. The provisions obligating Licensee to carry the insurance required under this Article will not be construed in any manner as waiving or restricting the obligation of Licensee to indemnify the City or any other liability of Licensee under this Agreement.

## ARTICLE IX

### *Assumption of Risk & Indemnification*

- 9.01 Licensee undertakes and assumes all risk of dangerous conditions, if any, on and about the Premises. Licensee, waives and releases any Claims against the City for bodily injury, personal injury or property damage sustained by Licensee or its Associates while on or about the Premises and/or Premises.
- 9.02 Licensee agrees at its own expense to defend, indemnify, save, and hold harmless the City, its officers, employees, and agents against and from any and all liabilities, obligations, damages, penalties, claims, costs, charges, and expenses (including without limitation, fees and expenses of attorneys, expert witnesses and other consultants) which may be imposed upon, incurred by or asserted against the City by reason of or resulting from Licensee's operation and Use of the Premises and/or its performance of this Agreement, including, without limitation, any of the following occurring during the Term:
- (a) any negligent or tortious acts of Licensee or of its Associates, personnel, employees, consultants, agents or subcontractors, customers, guests, or invitees; or
  - (a) any failure by Licensee or any of its Associates, personnel, agents, employees, consultants or subcontractors to perform its obligations, either expressed or implied under this Agreement; or
  - (b) any use or occupancy of the Premises by the Licensee and its Associates, customers, guests, or invitees; or
  - (c) any loss or injuries to or deaths of persons, or damages to the Premises or other property sustained about the Premises or those portions thereof or appurtenances thereto used by the Licensee or its Associates;
  - (c) any act, failure to act or misrepresentation by Licensee or any of its Associates, personnel, employees or agents in connection with this Agreement.
- 9.03 The indemnification obligation under this Article shall not be affected by any limitation on the amount or type of damages, compensation, or benefits payable under worker's compensation acts or other employee benefit acts in effect under state, federal, and/or local law.

## ARTICLE X

### *Assignment, Encumbrances, and Third-Party Beneficiaries*

- 10.01 Licensee shall not assign its rights, interests, or obligations under this Agreement to any other party or entity—whether related or subsidiary to Licensee—without the prior written consent of City not unreasonably withheld, and as evidenced by a resolution of the City Council approving the assignment.

- 10.02 A name change to Licensee, without other changes to Licensee's legal or organizational composition, shall not be considered an assignment under this Article, provided that (i) City receives written notice within ninety (90) days prior to such name change and (ii) City provides its written consent thereto (which consent may not be unreasonably withheld by the City).
- 10.03 Licensee shall not encumber, lease, hypothecate, mortgage, subject to a lien, or otherwise cloud the City's fee interest in the Premises or Premises, including all additions or improvements thereto. Licensee may—consistent with its obligations under this agreement, including and especially the Use—license or permit the Premises to other licensees, permittees, vendors, or operators whose use of the Premises is supportive, ancillary, or otherwise consistent with Licensee's use of the Premises, subject to prior written approval by City.
- 10.04 This Agreement is for the sole benefit of the Parties and their permitted successors and assigns, and no other person shall be deemed to be a third-party beneficiary under or entitled to derive any benefit from this Agreement.
- 10.05 This Licensee may make arrangements to partner with an affiliate entity for services and uses complementary to the Licensee's Uses of the Premise, but only where (i) the majority of the Affiliate is owned by Licensee; (ii) the majority of all net revenue generated by the Affiliate is payable to, and therefore under the direct management and control of, the Licensee; (iii) the Licensee has provided the City with at least sixty (60) days' advanced written Notice of the arrangement with the Affiliate (the "**Affiliate Notice**"); (iv) the City consents to and approves of the arrangement with the Affiliate within thirty (30) days of its receipt of the aforementioned Affiliate Notice (the "**Affiliate Consent**"); and (v) the Affiliate agrees to adhere to the terms of this Agreement hereof. Notwithstanding the foregoing, the Affiliate Consent shall not relieve Licensee of any duty or obligation hereunder, nor shall the Affiliate Consent be characterized as a blanket permission exempting the Licensee from obtaining any of other local, state, or federal permissions.

## **ARTICLE XI**

### ***Amendments***

- 11.01 No amendment to this Agreement shall be effective and binding upon the Parties unless and until it expressly references this Agreement, is in writing, has been signed and acknowledged by duly authorized representatives of both Parties, and has obtained all necessary approvals required by the City of Detroit Charter and/or the Detroit City Code (an "**Amendment**").
- 11.02 Provisions of this Agreement may only be waived by an Amendment, and a waiver by either Party of a breach of any obligation contained in this Agreement shall not constitute a waiver of such obligation respecting any subsequent breach of that obligation.

**ARTICLE XII**

*Notices*

12.01 All notices, consents, approvals, requests, and/or other communications (the “**Notices**”) required or permitted under this Agreement shall be given in writing, and addressed or emailed as follows:

If to LICENSEE:

The J. W. Westcott Co.  
12 24<sup>th</sup> Street  
Detroit, MI 48222  
Attn: James Hogan  
Email: jamesmhogan@hotmail.com

*With a copy to:*

Wayne G. Wegner PC  
23201 Jefferson Ave.  
St. Clair Shores, MI 48080  
Attn: Wayne G. Wegner  
wwegner@wegnerlaw.com

If to CITY:

City of Detroit  
General Services Department  
115 Erskine Street  
Detroit, Michigan 48201  
Attn: Director

Office of the Chief Financial Officer  
2 Woodward Avenue, Suite 1100  
Detroit, Michigan 48226  
Attn: General Services Department Agency Chief Financial Officer

City of Detroit  
Office of Contracting and Procurement  
2 Woodward Avenue, Suite 1008  
Detroit, Michigan  
Attn: Chief Procurement Officer

*With a copy to:*

Corporation Counsel  
City of Detroit Law Department  
2 Woodward Avenue, Suite #500  
Detroit, Michigan 48226  
Attn: Chief Assistant Corporation Counsel/TED

- 12.02 The following methods of delivery are acceptable: hand-delivery; email; delivered or acknowledged with a means to confirm such delivery or otherwise as provided by applicable law; or first-class mail. All Notices shall be deemed given upon proof of delivery or mailing if sent by courier or mail, or upon reception if sent by email on the day of emailed.

**ARTICLE XIII**  
***Office of Inspector General***

- 13.01 In accordance with Section 2-106.6 of the City Charter, this Agreement may be voided or rescinded at the discretion of the Mayor or Inspector General if, at any time during the Term, an Associate who is a party to the Agreement has an interest in the Agreement and fails to disclose such interest.
- 13.02 This Agreement shall also be voidable or rescindable if a lobbyist or employee of the contracting party offers a prohibited gift, gratuity, honoraria or payment to an Associate in relation to the Agreement in the performance hereof.
- 13.03 A fine shall be assessed to Licensee in the event of a violation of Section 2-106.6 of the 2012 City Charter. If applicable, the actions of Licensee, and its representative lobbyist or employee, shall be referred to the appropriate prosecuting authorities.
- 13.04 Pursuant to Section 7.5-306 of the 2012 City Charter, the Inspector General shall investigate any Associate, City agency, program or official act, contractor and subcontractor providing goods and services to the City, business entity seeking contracts or certification of eligibility for City contracts and person seeking certification of eligibility for participation in any City program, either in response to a complaint or on the Inspector General's own initiative in order to detect and prevent waste, abuse, fraud and corruption.
- 13.05 In accordance with Section 7.5-310 of the 2012 City Charter, it shall be the duty of every Public Servant, contractor, subcontractor, and licensee of the City, and every applicant for certification of eligibility for a City contract or program, to cooperate with the Inspector General in any investigation pursuant to Article 7.5, Chapter 3 of the 2012 City Charter.
- 13.06 As set forth in Section 7.5-308 of the 2012 City Charter, the Inspector General has a duty to report illegal acts. If the Inspector General has probable cause to believe that any Public Servant or any person doing or seeking to do business with the City has committed or is committing an illegal act, then the Inspector General shall promptly refer the matter to the

appropriate prosecuting authorities.

- 13.07 In accordance with Section 17-5-351 of the 2019 Detroit City Code, the City shall solicit offers from, award contracts to, consent to subcontracts with, or otherwise to conduct business with, responsible contractors only. To effectuate this policy, the debarment of contractors and subcontractors from current and/or future City work may be undertaken.
- 13.08 It is the responsibility of Licensee to check the list of debarred contractors in the City's website and confirm that any subcontracting company is not listed on the City's debarment list and they will not be using the debarred (sub) contractor(s) to conduct any City business.
- 13.09 Licensee shall report to the Office of Inspector General any improper, unethical or illegal activity or requests made by elected officers of the City, including any Associates in connection with this Agreement.

**ARTICLE XIV**  
***Fair Employment***

- 14.01 Licensee shall hire and employ and supervise such personnel as shall, in its judgment, be required to operate, manage and maintain Licensee in accordance with the provisions of this Agreement. In connection therewith, Licensee shall have the authority and responsibility to determine the personnel policies and practices of the Premises, consistent with Licensee's obligations in this Agreement.
- 14.02 Licensee shall comply with, and shall require any subcontractors to comply with, all federal, state and local laws governing fair employment practices and equal employment opportunities.
- 14.03 Licensee agrees that it shall, at the point in time it solicits any subcontract, that it shall notify the potential subcontractor of their joint obligations relative to non-discrimination under this Agreement and shall include the provisions of this Article in any subcontract, as well as provide City a copy of any subcontract upon request.
- 14.04 To the extent Licensee uses any tests or other selection procedures as a basis for any employment decisions, those tests or selection procedures shall satisfy the requirements of the federal, state, and local laws.

**ARTICLE XV**  
***Compliance with Laws***

- 15.01 Licensee shall comply with all federal, state, and local laws, ordinances, regulations or rules applicable to the Premises, Licensee, and/or Licensee's Uses of the Premises, including without limitation: building, zoning, environmental and fire laws, ordinances, regulations and rules, licensing requirements, and the ADA.

- 15.02 Licensee has obtained and shall retain throughout the Term all necessary permits and licenses required for its business operations to be conducted at the Premises. Any and all obligations, liabilities, claims, costs, fines, losses, and expenses of any kind (including, but not limited to, those arising from injury to or the death of any person, damage to or loss of use or value of real or personal property, and costs of investigation, compliance, and attorneys' and consultants' fees) incurred by City which arise out of or are related to Licensee's failure at any time or from time to time to comply with such laws, ordinances, regulations or rules, including, without limitation, the ADA, shall constitute additional fees and due and immediately payable to City.
- 15.03 Licensee shall not use, handle, generate, treat, store, dispose of, or permit the handling, generation, treatment, storage, or disposal of any Hazardous Materials in, on, under, around, or above the Premises or Premises excepting only the proper handling of oil and fuels incidental and necessary to Licensee's operating of its watercraft. If Licensee discovers any Hazardous Materials in, on, under, around, or above the Premises or the Premises, Licensee shall notify the City's Buildings Safety Engineering and Environmental Department immediately.

**Article XVI**  
**MISCELLANEOUS**

- 16.01 Records. Licensee shall prepare and shall maintain full and complete Records reflecting all operations related to this Agreement and shall maintain such Records at the Premises. Where applicable, the Records shall be kept in accordance with generally accepted accounting principles and maintained for a minimum of ten (10) years, or such other period as required by the City's document retention policies as they may be updated from time to time, after the termination of this Agreement. The City shall have the right to inspect the Records at any time upon reasonable notice provided to Licensee, including an annual audit performed by the City's Auditor General and or his/her designee. From time to time, Licensee shall provide the City with such other information as City may reasonably request to carry out the intent and purpose of this Agreement.
- 16.02 Casualty. Licensee shall promptly notify City if, during the Term, the Premises or Premises is damaged or destroyed by fire or other casualty, in whole or in part, by specifying the date, nature, and extent of such damage or destruction. Licensee shall take whatever steps which may be reasonably necessary to prevent further damage or destruction to the Premises and/or Premises which could result from such fire or other casualty. If the Premises and/or Premises become so damaged by fire or other casualty that they become unusable, and the damage cannot be adequately remediated within one hundred twenty (120) days, as determined in City's sole and reasonable discretion, City shall give Licensee immediate written notice of the Agreement's termination.
- 16.03 Relationship of the Parties. The relationship between the Parties hereto is solely that of City and Licensee, and nothing herein contained shall constitute or be construed as establishing any other relationship between them, including, without limitation, the relationship of principal and agent, employer and employee, or parties engaged in a

partnership or joint venture. Without limiting the foregoing, it is specifically understood that neither Party is the agent of the other, and neither is in any way empowered to bind the other or to use the name of the other in connection with the construction, maintenance, or operation of the Premises.

- 16.04 **Force Majeure**. Neither Party shall be liable for any delay in performance of any obligation under this Agreement (other than the payment of money) or any inability to perform an obligation under this Agreement (other than the payment of money) if and to the extent that such delay in the performance or inability to perform is caused by a Force Majeure Event, so long as the Party claiming the Force Majeure Event is working diligently to terminate the Force Majeure Event. Upon the occurrence of a Force Majeure Event, Licensee shall (i) give prompt written notice to City that the Force Majeure Event has occurred, the anticipated effect on Licensee's performance, and its expected duration; (ii) use all diligent efforts to end the failure or delay of its performance, ensure that the effects of any Force Majeure Event are minimalized; (iii) keep City apprised of Licensee's progress in remediating the effects of the Force Majeure Event; and (iv) promptly resume performance under this Agreement. If a Force Majeure Event prevents Licensee for a continuous period of at least ten (10) business days, City may terminate this Agreement immediately by giving written notice to Licensee as otherwise required under this Agreement.
- 16.05 **Governing Law and Jurisdiction**. This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan, excluding its choice of law rule, and each Party irrevocably submits to the exclusive jurisdiction of the federal courts of the United States of America or the courts of the State of Michigan, with each such case located in the City of Detroit and the County of Wayne.
- 16.06 **Construction of the Agreement**. As used in this Agreement, the singular shall include the plural, the plural shall include the singular, and a reference to either gender shall be applicable to each or both. The headings in this Agreement are for convenience only and shall not affect the Agreement's construction. If any court, agency, commission, legislative body, or other authority of competent jurisdiction declares invalid, illegal, or unenforceable any portion of this Agreement, or its application to any person, that decision shall not affect the validity of the remaining portions of this Agreement. This Agreement supersedes all previous agreements, communications, negotiations and representations, whether oral or written between City and Licensee.
- 16.07 **Entire Agreement**. This Agreement, including the exhibits attached hereto, is the entire agreement between the Parties and supersedes all previous agreements, communications, negotiations, and representations between the Parties, whether oral or written.
- 16.08 **Execution of the Agreement**. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, all of which together shall constitute but one document. Each counterpart may be executed by facsimile or electronic signature, which will be deemed to be an original signature, to the extent permitted by Applicable Laws.

16.09 Authority of the City. Notwithstanding anything in this Agreement, in law, in equity, or otherwise to the contrary, this Agreement shall be of no force or effect and may not in any way be enforced against the City unless and until it has been fully executed by a duly authorized agent of Licensee, a duly authorized agent of City, has been approved by the City of Detroit Law Department, the City's Chief Procurement Officer, and the City Council. Any amendments or modifications of this Agreement shall likewise be fully executed by a duly authorized agent of each Party and obtain all necessary City approvals.

\*\*\*

[Remainder of page intentionally left blank; signature page follows.]

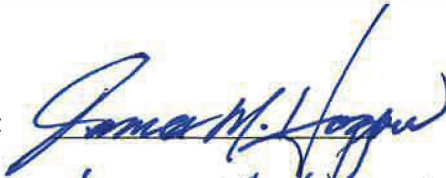
**SIGNATURE PAGE  
TO  
LICENSE AGREEMENT**

IN WITNESS WHEREOF, the City and Licensee, by and through their representatives, have executed this Agreement, to be effective as of the Effective Date.

**CITY OF DETROIT,**  
a Michigan municipal corporation  
acting by and through its General  
Services Department

**THE J. W. WESTCOTT COMPANY,**  
a Michigan corporation

By: DocuSigned by:  
Crystal Perkins  
619D1524D70D44B...  
Name: Crystal Perkins  
Its: Director  
Date: 3/22/2024 | 11:22:42 AM EDT

By:   
Name: James M. Hogan  
By: President  
Date: 3/14/2024

THIS AGREEMENT WAS APPROVED  
BY THE CITY COUNCIL ON:

Date: \_\_\_\_\_

APPROVED BY CORPORATION COUNSEL  
PURSUANT TO SEC. 7.5-206 OF THE 2019  
CHARTER OF THE CITY OF DETROIT

Bruce Goldman May 10, 2024  
C.A. Corporation Counsel Date

**THIS AGREEMENT IS NOT VALID OR AUTHORIZED UNTIL APPROVED BY  
RESOLUTION OF THE CITY COUNCIL.**

**EXHIBIT A**  
*The Premises*

*J.W. Westcott Co.*

**BOUNDARY MAP**

*Approximately –0.25 acre area and 0.17 acre area of parking access*  
*Parcel ID: located within 12000009.000*



**DWSD – DRAINAGE BOUNDARY MAP 2021**

***Facility Footprint – approx. 0.25 acre area and 0.17 acre area of shared parking access  
Estimate of impervious surface area – 0.16 acres to be paid by the operator based on the  
current drainage rate as set by DWSD procedures.***



## **EXHIBIT B**

### *The Use*

#### **J.W. Westcott Company**

The J.W. Westcott Company (the "Licensee") is authorized through this License Agreement to occupy distinct locations within property owned by the City of Detroit Parks and Recreation Division ("DPRD") alongside the Detroit River.

The Licensee operates the building located at 12 24<sup>th</sup> street, Detroit MI, 48222 and is permitted access to the designated shared parking area outlined in EXHIBIT A and the use of the docking area running parallel to the property as shown by the green line and entitled "Docking Area".

*See "Exhibit A" for boundary and location*

#### **Services Category: Mostly Individual Benefit – Tier 1**

*Profit center potential and may be interchangeable with the private sector, providing services outside of DPRD's core mission*

#### **Use of the Licensed Premises**

The Licensee is authorized to use the Licensed Premises only for the following and agrees to:

1. Provide mail service, food and material delivery to traveling vessels, water taxi and ferry services, tours and public and private event space.
2. Provide commercial food and beverage services to the general public, pending all City approvals.
3. Oversee the day-to-day operations of the Licensee.
4. Maintain one sign clearly identifying the Licensee.
5. Maintain consistent hours of operations which are published and considerate of public use.
6. Recruit and maintain qualified personnel to staff the Licensee. Create an organizational chart for transparency of operations and staffing which is shared with both the City of Detroit Legal Department and DPRD. Work with vendors and operators consistent with the terms and obligations outlined within this License Agreement.
7. Monitor and ensure parking is limited to designated areas and ensure the parking lot is kept free of storage outside of the designated storage area. Ensure storage area is kept in orderly condition.
8. Document and report any incidents or property damage caused by others immediately to the DPRD.
9. Monitor and refresh interior and exterior areas, making repairs or replacements as needed to signage, walkways, structures, et al to promote a safe, clean and orderly appearance.
10. The Licensee is responsible for and will notify the City of Detroit GSD of all completed repairs and share copies of all permits, inspections, site plans, surveys, manuals that are a byproduct of any repairs, revisions, additions to premises quarterly.

11. Share all keys with The City of Detroit GSD to maintain shared key access to all structures on site.
12. The Licensee shall assume full responsibility for all utility and inspection costs associated with the facilities.

**EXHIBIT C**  
***The Fee Schedule***

For the Use of the Premises, as defined in the Agreement, Licensee agrees to pay the City the following fees:

| <b>Term Year</b> | <b>Specific Dates</b>            | <b>Monthly Fee</b>  | <b>Annual Fee</b> |
|------------------|----------------------------------|---|-------------------|
| 1                | Effective Date to June 30, 2024  | \$1,000.00  | \$12,000.00       |
| 2                | July 1, 2024 – December 30, 2025 | Rate for the prior year, plus 2.5%, rounded up to the nearest dollar. |                   |

**EXHIBIT D**  
*Statement of Political Contributions*

[attached hereto]

**STATEMENT OF POLITICAL CONTRIBUTIONS AND EXPENDITURES**

City Charter Sec. 4-122: For purposes of conflicts of interest, the City shall require in all of its contractual agreements, including, but not limited to, leases, service and equipment agreements and including contract renewals, that the contractor provide a statement listing all political contributions and expenditures (“Statement of Political Contributions and Expenditures”), as defined by the Michigan Campaign Finance Act, MCL 169.201, et seq., made by the contractor, its affiliates, subsidiaries, principals, officers, owners, directors, agents or assigns to elective city officials within the previous four (4) years. Individuals shall also list any contributions or expenditures from their spouses.”

Instructions: In accordance with Sec. 4-122 of the 2012 Detroit City Charter, please provide the following information. If additional space is needed, please enter “see additional sheet(s)” on the last row and attach additional sheets.

In Column A, enter the name of the person or company that made the contribution or expenditure. If there were no political contributions or expenditures made, enter NONE.

In Column B, enter the relationship of the donor to the contractor or vendor, that is, contractor, affiliate, subsidiary, principal, officer, owner, director, agent, assignee, or spouse of any of the foregoing who are individuals.

In Column C, enter the name of the recipient, an elective city official which under Charter § 3-107, includes only the Mayor, the City Clerk, and members of the City Council and the Board of Police Commissioners.

In Column D, enter the amount of the contribution or expenditure, as defined in the Michigan Campaign Finance Act, 1976 PA 388, MCL 169.204 and MCL 169.206.

In Column E, enter the date of the contribution or expenditure. This statement must include all contributions and expenditures within the previous four years.

| A<br>Donor | B<br>Relationship to Contractor/Vendor | C<br>Recipient | D<br>Amount of Contribution or Expenditure | E<br>Date |
|------------|--|----------------|--|-----------|
|            | NONE                                   | MADE           |  |           |
|            |  | Agent          |  |           |
|            |  |                |  |           |
|            |  |                |  |           |

|  |  |  |  |  |
|--|--|--|--|--|
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |

Except as set forth above, I certify that no contributions or expenditures were made to elective city officials within the previous four (4) years by the contractor, its affiliates, subsidiaries, principals, officers, owners, directors, agents, assigns, and, if any of the foregoing are individuals, their spouses.



Detroit Clearance Unit  
2 Woodward Avenue, Suite 130  
Detroit, Michigan 48226

# City of Detroit Clearance Application Business

## APPLICANT INFORMATION

|   |  |  |            |   |
|---|--|--|------------|---|
| <b>Name of Applying Individual:</b> James M. Hogan                                    |  |  |            |   |
| <b>Title of Applying Individual:</b> President  |  |  |            |   |
| <b>Contact email:</b> jamesmhogan@hotmail.com   |  |  |            |   |
| <b>Business Name:</b> J. W. Westcott Company  |  |  |            |   |
| <b>Business's EIN:</b> 38-1162120   |  |  |            |   |
| <b>Business Type:</b> Corporation (this could be an LLC filed using an EIN)           |  |  |            |   |
| Does the business file <b>Withholding returns</b> under a separate EIN?               |  |  | <b>Yes</b> | <b>No</b> <input checked="" type="checkbox"/> |
| Does the business use a PEO/Co-Employment/Employee Leasing arrangement?               |  |  | <b>Yes</b> | <b>No</b> <input checked="" type="checkbox"/> |
| <b>Withholding Entity Name:</b>   |  |  |            |   |
| <b>Withholding Entity EIN:</b>  |  |  |            |   |
| Are the business's <b>Income tax returns</b> filed under a separate EIN?              |  |  | <b>Yes</b> | <b>No</b> <input checked="" type="checkbox"/> |
| <b>Income-Tax-Filing Entity Name:</b>   |  |  |            |   |
| <b>Income-Tax-Entity EIN:</b>   |  |  |            |   |
| <b>Sole Proprietorship/Single Member LLC Name:</b>                                    |  |  |            |   |
| <b>Owner's Social Security Number:</b>  |  |  |            |   |
| Do you have W-2 employees working in the City of Detroit or with the City of Detroit? |  |  | <b>Yes</b> | <b>No</b>                                     |
| Does the business file <b>Withholding returns</b> under a separate EIN?               |  |  | <b>Yes</b> | <b>No</b>                                     |
| Does the business use a PEO/Co-Employment/Employee Leasing arrangement?               |  |  | <b>Yes</b> | <b>No</b>                                     |
| <b>Withholding Entity Name:</b>   |  |  |            |   |
| <b>Withholding Entity EIN:</b>  |  |  |            |   |