

CITY OF VINELAND

RESOLUTION NO. 2017- _____

RESOLUTION AUTHORIZING THE EXECUTION OF A LEASE AGREEMENT BY AND BETWEEN THE CUMBERLAND COUNTY IMPROVEMENT AUTHORITY AND THE CITY OF VINELAND FOR PROPERTY KNOWN AS 57 WEST PARK AVENUE, VINELAND FOR PUBLIC WORKS, VEHICLE MAINTENANCE AND OFFICES.

WHEREAS, the City of Vineland is in need of office space for the Vineland Municipal Electric Utility (VMEU) as presently, employees are housed in trailers on the VMEU facility; and

WHEREAS, the Department of Public Works is in need of additional space as a result of the contamination of the Walnut Road site and the need to remediate the contamination, as well as the need of a vehicle maintenance yard; and

WHEREAS, the Cumberland County Improvement Authority (CCIA) is the owner of certain property known as 57 West Park Avenue, Vineland with improvements thereon, including an office complex, vehicle maintenance garage facility and storage area not needed for their use and purpose (Property); and

WHEREAS, the CCIA has expressed an interest in leasing the Property and the City is interested in leasing the same with an option to purchase with a lease amount of \$4.25 per square foot and option to purchase at the expiration of the lease term for \$1.00 which the City finds to be fair and reasonable; and

WHEREAS, N.J.S.A. 40:37A-78 authorizes any municipality to enter into a lease agreement for a public facility with an Authority for use by such municipality and provide for the payment to the Authority for such facility.

NOW THEREFORE BE IT RESOLVED by the Council of the City of Vineland that the Mayor and Clerk are hereby authorized to execute a Lease Agreement with the Cumberland County Improvement Authority for a period of 10 years at a lease price of \$4.25 per square foot in the form substantially similar to that which is attached hereto, subject to final approval by the City Solicitor.

Adopted:

President of Council

ATTEST:

City Clerk

LEASE AGREEMENT

This Lease Agreement is made on the ____ day of _____, 2017, BETWEEN the Cumberland County Improvement Authority, with an address of 2 N. High Street, Millville, New Jersey 08332 (hereinafter referred to as "Landlord"), AND the City of Vineland with an address of 640 E. Wood Street, Vineland, New Jersey 08362 (hereinafter referred to as 'Tenant').

1. PREMISES. The Landlord does hereby lease to the Tenant, and the Tenant does hereby rent from the Landlord the following described premises (the "Premises"): 30,000 square feet of general office space, public works space, and a vehicle maintenance/garage facility located at Property addressed as 57 W. Park Avenue, Vineland, NJ 08360 and known as Block 2801, Lot 9 on the Tax Map of the City of Vineland (the "Property") and as more specifically depicted on the attached Exhibit A

2. TERM. This lease shall commence on _____ and shall last for a period of ten (10) years. ("Lease Term"). Tenant shall have the option to continue this Lease for two (2) five (5) year option periods. Should Tenant desire to exercise this option, Tenant must provide written notice to Landlord at least ninety (90) days prior to the expiration of the Lease Term for the first option and at least ninety (90) days prior to expiration of the first option for the second option. Upon expiration of the Lease Term and any options, this Lease Agreement will continue on a month-to-month basis wherein Landlord and/or Tenant must provide sixty (60) days notice to the other party in order to terminate the Lease. If Lease continues on a month-to-month basis, rent shall be payable pursuant to Section 4 below.

3. USE. The Premises are to be used by, and occupied by, Tenant as general office space, public works space, and a vehicle maintenance/garage facility.

4. PAYMENT OF RENT.

(a) Tenant agrees to pay rent at the rate of \$4.25 per square foot on a yearly basis which equates to a rent payment of \$127,500.00 per year. This amount shall be payable on a prorated monthly basis. Rent payments should be made on the first day of each month in an amount prorated for equal monthly payments of \$10,625.00. The rent shall remain \$127,500.00 per year, or \$10,625.00 per month, throughout the initial ten (10) year Lease Term, during each of the five (5) year options if exercised by Tenant, and during any month-to-month tenancy created after expiration of the Lease Term and any options.

(b) Tenant understands this is a "triple net" lease whereby all expenses related to this tenancy shall be payable by Tenant, including, but not limited to, electric, water, sewer, gas, janitorial services, fire/burglar protection, internet/IT services. However, snow removal and landscaping will be performed by Landlord and Landlord will provide a security camera system at entry and exit points of the Premises.

5. LATE PAYMENTS. In the event that payment of rent is not received by Landlord by the tenth (10th) day of each month, Tenant shall pay, as additional rent, a late charge equal to five

(5) percent of the rent payment. Landlord shall be entitled to the same remedies for non-payment of late charges as for non-payment of rent.

6. OPTION TO PURCHASE. Upon expiration of the Lease Term and both five (5) year options, if exercised by Tenant, Tenant shall have the option to purchase the Premises for \$1.00. Should Tenant elect to purchase the Premises, Tenant must provide written notice to Landlord within 90 days of the expiration of the second option.

7. TENANT FIT OUT. Landlord will renovate and fit-out the Premises per Tenant's specifications. Tenant will reimburse Landlord for all costs related to the approved renovations and fit-out. Tenant will also reimburse Landlord for its direct expenses associated with the project development and construction management services. Landlord and Tenant will agree to the scope and cost of all renovations and all project development and construction management services prior to implementation by Landlord.

8. REPAIRS AND CARE.

(a) The Tenant has examined the premises and has entered into this Lease without any representation on the part of the Landlord as to the condition thereof. The Tenant shall take good care of the premises and shall, at the Tenant's own cost and expense, make all non-structural repairs, including painting and decorating, and shall maintain the premises in good condition and state of repair. The Tenant shall neither encumber nor obstruct the sidewalks, driveways, yards, entrances, hallways and stairs. Structural repairs shall be the sole responsibility of Landlord.

(b) Not later than the day of Tenant's vacation of the Premises, Tenant shall, at Tenant's expense, remove all of Tenant's personal property and surrender the Premises in as good condition as they were at the beginning of the Lease Term, excepting reasonable wear and damage by fire, the elements, casualty, or other cause not due to the misuse or neglect by Tenant, Tenant's agents, servants, visitors or licensees.

9. COMPLIANCE WITH LAWS. The Tenant shall promptly comply with all laws, ordinances, rules, regulations, requirements and directives of the Federal, State and Municipal Governments or Public Authorities and of all their departments, bureaus and subdivisions, applicable to and affecting the said Premises, their use and occupancy, for the correction, prevention and abatement of nuisances, violations or other grievances in, upon or connected with the said Premises, during the term hereof.

10. ALTERATIONS AND IMPROVEMENTS. After completion of renovation and fit-out of the Premises, no alterations, additions or improvements shall be made, and no climate regulating, air conditioning, cooling, heating or sprinkler systems, television or radio antennas, heavy equipment, apparatus and fixtures, shall be installed in or attached to the Premises, without the prior written consent of the Landlord. Unless otherwise provided herein, all such alterations, when made, installed in, or attached to the Premises will belong to, and become the property of Landlord and will be surrendered with the Premises upon Tenant's vacation of the Premises.

11. TENANT'S LIABILITY INSURANCE. Tenant shall provide, at its own expense, and keep in force during the term of this Lease and any renewal terms, general comprehensive liability insurance with an insurance company licensed to do business in the State of New Jersey, selected by Tenant, and in the amount of \$1,000,000.00 combined bodily injury and property damage and an aggregate limit of not less than \$2,000,000.00. Such policy or policies shall include Landlord and Landlord's mortgagee, if any, as additional insureds. Tenant agrees to deliver certificates evidencing such insurance to Landlord within fifteen (15) days of the date of execution of this Lease and within fifteen (15) days after the date of renewal of the policies.

12. DAMAGE OR DESTRUCTION BY FIRE OR OTHER CASUALTY.

(a) If the Premises are damaged by fire or other casualty to such extent that the cost of restoration, as determined by an insurance adjustor licensed in the State of New Jersey, will equal or exceed fifty (50) percent of the replacement value of the Premises (exclusive of foundations) just prior to the occurrence of the damage, then Tenant may, within sixty (60) days from the date of the damage, give the Landlord a written notice of election to terminate this Lease Agreement, effective thirty (30) days from the date of such notice. However, in the event Tenant does not terminate this Lease Agreement in such circumstance, then Rent shall be abated in direct proportion to that amount of square footage in the Premises which cannot be used by Tenant for the purposes set forth in Paragraph 3 herein. In addition, Landlord shall be responsible for making restoration within one hundred eighty (180) days after the date of the damage, subject to Force Majeure. In the event that restoration is not made within said time period, Tenant shall have the right to terminate this Lease Agreement, upon thirty (30) days written notice to Landlord.

(b) Notwithstanding anything to the contrary contained herein, in no event shall the provisions of this Paragraph become effective or be applicable if the fire or other casualty and damage shall be the result of the carelessness, negligence or improper conduct of the Tenant or the Tenant's agents, employees, guests, licensees, invitees, subtenants, assignees or successors. In such case the Tenant's liability for the payment of the rent and the performance of all the covenants, conditions and terms hereof on the Tenant's part to be performed shall continue and the Tenant shall be liable to the Landlord for the damage and loss suffered by the Landlord. The Tenant shall have the proceeds of its insurance paid over to the Landlord to the extent of the Landlord's costs and expenses to make the repairs hereunder, and such insurance carriers shall have no recourse against the Landlord for reimbursement.

13. ASSIGNMENT AND SUBLEASE. Tenant may assign or sublease the within Lease Agreement to any party subject to the following:

(a) Tenant shall have the right to assign this Lease or sublease the whole or any part of the Premises, without Landlord's consent, to an affiliated entity, such as a parent, successor by merger or subsidiary of Tenant or an entity controlled by or under common control of Tenant ("Affiliate").

(b) Tenant may not assign, mortgage, pledge or encumber this Lease, in whole or in part, or sublet the whole or any part of the Premises to any person who is not an Affiliate, without the

written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed.

14. INSPECTION AND REPAIR. The Tenant agrees that the Landlord and the Landlord's agents, employees or other representatives, shall have the right to enter into and upon the said Premises or any part thereof, at all reasonable hours, for the purpose of examining the same or making such repairs or alterations therein as may be necessary for the safety and preservation thereof.

15. SIGNS. The Tenant shall not place nor allow to be placed any signs of any kind whatsoever, upon, in or about the said premises or any part thereof, except with the express, written approval of Landlord.

16. UTILITIES. The Tenant will pay, when due, all rents or charges for water and other utilities used by the Tenant per Section 4(b) above.

17. PROPERTY TAX. As the Premises will be used for municipal purposes, Landlord and Tenant are of the understanding that the Premises will be exempt from property tax. However, shall a property tax be imposed on the Premises, Tenant shall be responsible for payment of property tax.

18. EVENTS OF DEFAULT; REMEDIES.

(a) If Tenant does not: (1) within ten (10) days after the due date thereof pay any installment of basic annual rent, additional rent or any other monetary obligation; or (2) within fifteen (15) days after written notice from Landlord cure a default other than a default in the payment of basic annual rent or additional rent (provided, however, that such fifteen (15) day period shall be extended if the default is of such a nature that it could not reasonably be cured within such period of fifteen (15) days and Tenant promptly commences and thereafter diligently pursues the curing of such default), then, in any such event, Tenant shall be deemed in default under this Lease.

(b) Upon the occurrence of an event of default as set forth in this Lease, or should the Tenant be adjudicated a bankrupt, insolvent or placed in receivership, or should proceedings be instituted by or against the Tenant for bankruptcy, insolvency, receivership, agreement of composition or assignment for the benefit of creditors, or if this Lease or the estate of the Tenant hereunder shall pass to another by virtue of any court proceedings, writ of execution, levy, sale, or by operation of law, the Landlord may, if the Landlord so elects, at any time thereafter, terminate this Lease and the term hereof, upon giving to the Tenant or to any trustee, receiver, assignee or other person in charge of or acting as custodian of the assets or property of the Tenant, fifteen (15) days written notice of the Landlord's intention to do so. Upon the giving of such notice, this Lease and the term hereof shall end on the date fixed in such notice as if the said date was the date originally fixed in this Lease for the expiration hereof; and the Landlord shall have the right to remove all persons, goods, fixtures and chattels therefrom, by force or otherwise, without liability for damages.

19. REMOVAL OF TENANT'S PROPERTY. Any equipment, fixtures, goods or other property of the Tenant, not removed by the Tenant upon the Tenant's vacation of the Premises, shall be considered as abandoned and the Landlord shall have the right to sell or otherwise dispose of the same, after providing Tenant with thirty (30) days written notice via United States Postal Service Certified Mail.

20. NON-LIABILITY OF LANDLORD. The Landlord shall not be liable for any damage or injury which may be sustained by the Tenant or any other person, as a consequence of the failure, breakage, leakage or obstruction of the water, plumbing, stream, sewer, waste or soil pipes, roof, drains, leaders, gutters, valleys, downspouts or the like or of the electrical, gas, power, conveyor, refrigeration, sprinkler, air conditioning or heating systems, elevators or hoisting equipment; or by reason of the elements; or resulting from the carelessness, negligence or improper conduct on the part of any other Tenant or this Tenant or any other Tenant's agents, employees, guests, licensees, invitees, subtenants, assignees or successors; or attributable to any interference with, interruption of or failure, beyond the control of the Landlord, of any services to be furnished or supplied by the Landlord.

21. HAZARDOUS SUBSTANCES. Tenant agrees not to generate, store, manufacture, refine, transport, treat, dispose of, or otherwise permit to be present on or about the Premises any Hazardous Substances. As used herein, Hazardous Substances shall be defined as any 'hazardous chemical,' 'hazardous substance' or similar term as defined in the Comprehensive Environmental Responsibility Compensation and Liability Act, as amended (42 U.S.C. 9601, ET SEQ.), the New Jersey Environmental Cleanup Responsibility Act, as amended (N.J.S.A. 13:1K-6 ET SEQ.), the New Jersey Spill Compensation and Control Act, as amended (N.J.S.A. 58:10-23.11B ET SEQ.), any rules or regulations promulgated thereunder, or in any other applicable federal, state or local law, rule or regulation dealing with environmental protection. It is understood and agreed that the provisions contained in this Paragraph shall be applicable notwithstanding the fact that any substance shall not be deemed to be a Hazardous Substances at the time of its use by the Tenant but shall thereafter be deemed to be a Hazardous Substance. Tenant agrees to indemnify and hold harmless the Landlord and each mortgagee of the Premises from and against any and all liabilities, damages, claims, losses, judgments, causes of action, costs and expenses (including reasonable attorneys' fees) which may be incurred by Landlord or any such mortgagee or threatened against the Landlord or such mortgagee, relating to or arising out of any breach by Tenant of the terms of this Paragraph, said indemnity to survive the expiration or earlier termination of this Lease.

22. CONDEMNATION AND EMINENT DOMAIN. If the whole or any material part of the Premises shall be taken under the power of eminent domain or in the event of a conveyance in lieu thereof, which renders the Premises unusable for Tenant, Landlord shall notify Tenant within thirty (30) days of Landlord's decision to either terminate this Lease or restore the Premises, provided that if, in Landlord's reasonable judgment, Landlord will not be able to restore the Premises to a tenable condition within ninety (90) days, Tenant shall have the right to terminate the Lease by notice to Landlord given within ten (10) days after receipt of Landlord's notice as set forth above. If Landlord or Tenant elects to terminate, the Term shall terminate as of the date on which possession of the Premises is required to be surrendered to the condemning authority, the Rent shall be paid up to that date, and Tenant shall have no claim

against Landlord for the value of any unexpired Term of this Lease. If Landlord elects not to terminate and Tenant does not terminate in a timely manner, then Landlord shall promptly restore the Premises to the extent of condemnation proceeds available for such purpose to a condition comparable to its condition at the time of such condemnation less the portion lost in the taking, and this Lease shall continue in full force and effect except that the Base Rent shall be reduced in proportion to the reduction in the floor area of the Premises. In the event of any total or partial taking of the Premises, Landlord shall be entitled to receive the entire award in such proceeding and Tenant shall have the right to claim and recover from the condemning authority such compensation as may be separately awarded or recoverable by Tenant for the cost of relocating to a substitute or new property and removing Tenant's furniture and fixtures.

23. HOLDING OVER BY TENANT. If Tenant shall remain in possession of the Demised Premises after the conclusion of the term of this Lease (and any renewal terms), Tenant shall become a month-to-month tenant under the provisions herein provided. Such month-to-month tenancy shall then continue until terminated by either Landlord or Tenant, upon sixty (60) days prior written notice to the other party.

24. GOVERNING LAW. This Lease, and the rights and obligations of the parties thereto, shall be interpreted and construed in accordance with the laws of the State of New Jersey.

25. PARTIAL INVALIDITY. If any provision of this Lease shall be determined by a court of competent jurisdiction to be invalid, such determination shall not affect any of the other provisions of this Lease and such other provisions shall remain in full force and effect. If any provision of this Lease shall be capable of two constructions, one of which would render the provision valid and the other of which would render it invalid, then such provision shall have the construction and meaning which would render it valid.

26. NOTICES. All notices required under the terms of this Lease shall be given and shall be complete by mailing such notices by certified or registered mail, return receipt requested, to the address of the parties as shown at the head of this Lease, or to such other address as may be designated in writing, which notice of change of address shall be given in the same manner.

27. TITLE AND QUIET ENJOYMENT. The Landlord covenants and represents that the Landlord is the owner of the premises herein leased and has the right and authority to enter into, execute and deliver this Lease; and does further covenant that the Tenant on paying the rent and performing the conditions and covenants herein contained, shall and may peaceably and quietly have, hold and enjoy the leased premises for the term aforementioned.

28. ENTIRE CONTRACT. This Lease contains the entire contract between the parties. No representative, agent or employee of the Landlord has been authorized to make any representations or promises with reference to the within letting or to vary, alter or modify the terms hereof. No additions, changes or modifications, renewals or extensions hereof, shall be binding unless reduced to writing and signed by the Landlord and the Tenant.

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals the day and year first written above.

ATTEST:

LANDLORD:

By: _____

Title: _____

ATTEST:

TENANT:

By: _____

Title: _____