

A-1000Hg

USE AND OCCUPANCY AGREEMENT

This Use and Occupancy Agreement ("Agreement") is made as of the 1st day of September, 2023 by and between the **CITY OF ATLANTIC CITY**, whose address is 1301 Bacharach Boulevard, Atlantic City, New Jersey 08401 (hereinafter referred to as "City") and **PKF-MARK III, INC.**, (hereinafter referred to as "PKF") whose address is 17 Blacksmith Rd, Suite 101, PA 18940. PKF and the City may be referred to hereinafter singularly as "PKF" and "City" and collectively as the "Parties".

Recitals

A. PKF has a twelve (12) month term to USE and OCCUPY unused space for storage of equipment from September 1, 2023 to August 31, 2024; and

B. The City is the owner of property known as Bader Field and Sandcastle Stadium as shown on the Tax Map of the City as Block 794, Lot 1, (the "Property") and recognizes that PKF needs a place for storage; and

C. PKF is desirous of using and occupying approximately 50,000 square feet, as represented in Attachment A, of unused space located on Bader Field for the purpose of storing various materials and equipment, including, but not limited to, Conex boxes, man lifts, and some marine equipment such as barges, and work boats; and

D. The Parties intend by this Agreement to set forth the terms and conditions under which PKF may use and occupy unused space on the Property for storage and staging in exchange for a fee of NINE THOUSAND DOLLARS (\$9,000), paid monthly; and

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and promises, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. PKF will be permitted to use and occupy approximately 50,000 square feet of unused space located at Bader Field subject to the terms and conditions of this Agreement. No other person or entity shall be permitted to use or occupy the space provided to PKF.
2. No legal title or leasehold interest in the Property shall be deemed or construed, created or vested in PKF by this Agreement. It is expressly understood and agreed that PKF is not a tenant, the City is not a landlord, and that PKF does not have any rights, whatsoever, as may exist under applicable Landlord – Tenant law or any other similar State or local laws or regulations.
3. PKF shall pay to the City, a monthly use and occupancy fee of NINE THOUSAND DOLLARS (\$9,000) (calculated as \$.18/square foot x 50,000 sf) paid monthly and the first payment being due on the date of occupancy or within 15 days of execution of this Agreement, whichever is earlier.

4. PKF shall devise an aesthetic solution to obscure the view of its equipment and materials from neighborhood view.
5. PKF's right to use and occupy the Property in accordance with this Agreement shall begin on September 1, 2023 and shall automatically terminate on August 31, 2024 at midnight, eastern prevailing time, (the "Termination") unless both parties agree to extend the agreement for an additional period.
6. In case of the destruction or damage of any kind whatsoever to the Property or any portion thereof, other than due to the City's sole negligence, which results in PKF not being able to use its designated portion of the Property, PKF shall immediately, as practical, vacate the Property, unless consent has been requested and received in writing.
7. Either party shall have the right to terminate this Agreement at any time upon thirty (30) days written notice to the other party.
8. PKF shall hold harmless and indemnify the City for all cost, liabilities and claims arising out of or related to the existence, maintenance, or use of the said use and occupancy of the City's Property, or any use of the City's Property by PKF. PKF further agrees to indemnify, defend and hold the City, its members and employees harmless from and against any loss, claims, expense or liability, including attorney's fees, arising out of or related to the loss or damage to PKF's personal property or injury or harm to third persons resulting from of or related to PKF's use and occupancy hereunder. PKF shall further release the City from any and all responsibility or liability for any loss or damage to PKF's property or injury to third parties caused by and during PKF's use or occupancy of the Property.
9. PKF shall obtain insurance conforming to the following terms:
 - a. PKF shall purchase and maintain insurance, in conformance with the provisions contained in this Agreement. This insurance will provide a defense to and indemnify the City against any such claim, damage, loss or expense that is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property (other than the work itself) including the loss of use, which arises out of PKF's operations under this Agreement. This insurance shall apply regardless of whether the operations, actions, derelictions or failures to act from which the claim arises, are attributable to PKF, any of its contractors, officers, agents, subcontractors, employees, anyone directly or indirectly employed by any of them including anyone for whose acts of the aforementioned may be liable by operation of statute, government regulation, or applicable case law and the City, unless, caused by the sole negligence of the City.
 - b. Proof of this insurance shall be provided to the City before the upon execution of this Agreement. In no event shall the failure to provide this proof, prior to the execution of this Agreement, be deemed a waiver by the City of PKF's insurance obligations set forth herein.

- c. In the event that the insurance company(ies) issuing the policy(ies) required by this section deny coverage to the City, PKF will defend and indemnify the City at the PKF's expense.
- d. PKF must obtain the required insurance with the carrier rated A-VII or better by A. M. Best. PKF shall maintain at least the limits of liability as set forth below:
- i. **Commercial General Liability Insurance**
 \$1,000,000.00 Each Occurrence (Bodily Injury and Property Damage)
 \$2,000,000.00 General Aggregate
 \$ 2,000,000.00 Products/Completed Operations Aggregate
 \$ 1,000,000.00 Personal and Advertising Injury
 Contractual liability that will respond to Indemnification clause, shall be included in the policy. The General Aggregate Limit shall apply separately to this Agreement. As an alternative, the PKF may provide Commercial General Liability Insurance with no aggregate.
 - ii. **Protection and Indemnity Insurance (only required if boats, barges or other sea vessels are used)**
 \$2,000,000 Each Occurrence Limit (Limit may be reduced to \$1,000,000 if this policy included in the Umbrella Liability Insurance).
 Pollution Liability in an additional amount of \$1,000,000 must be included in the policy for Each Occurrence Limit.
 - iii. **Comprehensive Automobile Liability Insurance**
 \$1,000,000.00 Combined Single Limit Bodily Injury and Property Damage.
 Coverage must include all owned, non-owned and hired vehicles used by PKF.
 - iv. **Workers' Compensation and Employers' Liability Insurance**
 \$500,000.00 Each Accident
 \$500,000.00 Each Employee for Injury by Disease
 \$500,000.00 Aggregate for Injury by Disease
 If PKF is a Sole Proprietor, Partnership or LLC, Insurance Policy and Certificate must indicate that the proprietor/partners/members are "included". This requirement does not apply if inclusion is not allowed by law. If any employee of PKF or any subcontractor of PKF is subject to the United States Longshoremen and Harbor Workers Act or the Jones Acts, Certificate must indicate the coverage is included.
- e. The City, along with their respective elected or appointed officials, officers, agents and employees, shall be named as Additional Insureds for Operations and Products/Completed Operations on PKF's Commercial General Liability Policy which must be primary and noncontributory with respect to the Additional Insureds.
- f. It is expressly understood by the Parties to this Agreement that it is the intent of the Parties that any insurance obtained by the City is deemed excess, noncontributory and not co-primary in relation to the coverage(s) procured by PKF, any of its contractors, officers, agents, subcontractors, employees or anyone directly or indirectly employed

by any of them or by anyone for whose acts any of the aforementioned may be liable by operations of statute, government regulation or applicable case law.

- g. If PKF's policy limits are greater than the minimum limits noted above, the minimum limits required are automatically adjusted to those greater limits.
 - h. A Waiver of Subrogation clause shall be added to the General Liability, Automobile Liability and Professional Liability policies in favor of the City and this clause shall apply to the City's elected or appointed officials, officers, agents and employees. It should also apply to PKF's Worker's Compensation policy if allowed by state law.
 - i. Prior to commencement of occupancy, PKF shall submit a Certificate of Insurance in favor of the City and as an Additional Insured Endorsement (in a form acceptable to the City) as required hereunder.
 - j. In any and all claims against the Additional Insureds by any employee of PKF, anyone directly or indirectly employed by PKF or anyone for whose acts PKF may be liable, the indemnification obligation shall not be limited by any limitation on the amount or type of damage, compensation or benefits payable by or for PKF under Workers' Compensation acts, disability benefit acts or other employee benefit acts.
 - k. PKF shall maintain in effect all insurance coverages required under this Agreement at PKF's sole expense and with insurance companies acceptable to the City. In the event PKF fails to obtain or maintain any insurance coverage required under this Agreement, the City may, at its sole discretion, purchase such coverage as desired for the City's benefit and charge the expense to PKF, or, in the alternative, terminate this Agreement. In the event the coverage is cancelled or non-renewed, the insurance carrier(s) will provide 30 days advance notice of the cancellation or non-renewal.
10. All notices shall be sent by certified mail, return receipt requested, to all Parties and are deemed received when sent. Notices shall be sent to the addresses of PKF and the City as set forth in this Agreement.
11. This Agreement is binding on and shall inure to the benefit of the Parties, their successors, and assigns. Notwithstanding anything to the contrary herein, PKF acknowledges and agrees that PKF shall not have the right to assign this Agreement.
12. This Agreement contains the entire agreement of the Parties as it pertains to the use and occupancy of the Property and shall not be modified, altered or changed unless in writing and signed and delivered by all the parties hereto.
13. This Agreement has been entered into solely for the benefit of the Parties. The Parties, by entering into this Agreement, do not intend to benefit any other third party and do not intend to bestow upon any third party any rights or entitlement. The Parties do not intend to create a right in any third party to compel performance of, or to otherwise assert any rights hereunder.

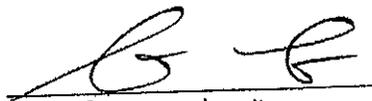
14. This Agreement may be signed in counterparts, all of which when taken together shall constitute a single agreement.

15. This Agreement shall not be recorded by the City. The filing or recordation of this Agreement in violation of this provision shall be deemed a default of this Agreement.

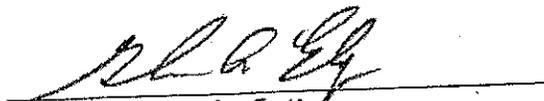
16. This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the date set forth on the first page hereof.

Witness:


By: Scott Lattimer
Project Manager

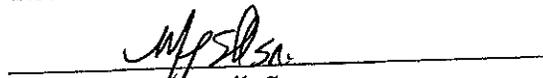
PKF MARK III, INC.


By: Sean A. Eustace
Title: President and CEO

Witness:

Paula Geletei,
City Clerk

THE CITY OF ATLANTIC CITY


By: Marty Small, Sr.
Title: Mayor

Approved as to the form and execution.


Peter T. Sallata, Esq., Asst. City Solicitor

Date: 10/10/23

Resolution of the City of Atlantic City

No. 695

Approved as to Form and Legality on Basis of Facts Set Forth

Factual contents certified to by

Assistant City Solicitor /s/ Pete Sallata

Business Administrator/s/ Anthony A. Swan

Prepared by City Solicitor's Office

Council Members RANDOLPH & SHABAZZ present the following Resolution:

RESOLUTION TO AWARD USE AND OCCUPANCY AGREEMENT OF APPROXIMATELY 50,000 SF OF SPACE TO PKF-MARK III, INC. TO STORE EQUIPMENT AT BADER FIELD FROM SEPTEMBER 1, 2023, THROUGH AUGUST 31, 2024

WHEREAS, the City is the owner of property known as Bader Field and Sandcastle Stadium as shown on the Tax Map of the City as Block 794, Lot 1, (the "Property") and desires to lease available portions of the property for storage; and

WHEREAS, the bid of **PKF-MARK III, INC.**, a corporation of the Commonwealth of Pennsylvania, whose address is 17 Blacksmith Rd, Suite 101, PA 18940, was received and publicly opened and read at a meeting of the Purchasing Board held August 22, 2023, for a one-year Use and Occupancy Agreement to Store Equipment at Bader Field, said bid being the lowest responsible bid for the undertaking; and

WHEREAS, PKF, per its bid proposal, desires to use and occupy approximately 50,000 square feet of unused space located on Bader Field for the purpose of storing various materials and equipment, including, but not limited to, Conex boxes, man lifts, and some marine equipment such as barges, and work boats at a cost of \$0.18 per Square Foot, for a total \$9,000.00 per month, effective as of September 1, 2023.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Atlantic City that the Mayor is authorized to execute and the City Clerk to attest an agreement, to be entered into between the City of Atlantic City and **PKF-MARK III, INC.** for the hereinabove undertaking, in strict compliance with the Advertisement, Proposal Form, and the Specifications and Instructions to bidders, said agreement to be approved as to form and execution by the City Solicitor; and

NOW, THEREFORE, BE IT FURTHER RESOLVED by the City Council that the Use and Occupancy Agreement between the City of Atlantic City and **PKF-MARK III, INC.** for the right to store equipment at Bader Field (a space of approximately 50,000 square feet) for a period of twelve (12) months, at a cost of \$0.18 per Square Foot for a total of \$9,000.00 per month, from September 1, 2023 until August 31, 2024 is hereby **ACCEPTED**.

September 21, 2023 11:07 AM

DO NOT USE SPACE BELOW THIS LINE													
RECORD OF COUNCIL VOTE ON FINAL PASSAGE													
COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	MOT.	SEC.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	MOT.	SEC.
DUNSTON	X						SHABAZZ	X				X	
KURTZ	X						TIBBITT	X					
MARSHALL	X						WEEKES	X					
MORSHED	X					X	ZIA	X					
RANDOLPH, PRESIDENT								X					
X-Indicates Vote NV-Not Voting AB-Absent MOT-Motion SEC-Second													

This is a Certified True copy of the Original Resolution on file in the City Clerk's Office.

DATE OF ADOPTION: SEPTEMBER 20, 2023

Paula Geletei

 /s/ Paula Geletei, City Clerk