

## LEASE AGREEMENT

**THIS LEASE AGREEMENT** is made this 22 day of October, 2019, by and between the **CITY OF HYATTSVILLE**, a municipal corporation of the State of Maryland, hereinafter “the City,” and **NGUYEN PHU THANH**, hereinafter referred to as “Owner.”

### **RECITALS**

**WHEREAS**, the City and Owner are collectively referred to herein as “the Parties,” and

**WHEREAS**, the City’s Department of Public Works, hereinafter referred to as “the DPW,” is located at 4633 Arundel Place, Hyattsville, Maryland 20781, hereinafter referred to as “the DPW Building,” and

**WHEREAS**, the City is planning to renovate the DPW Building, hereinafter referred to as “the Project,” and

**WHEREAS**, Owner is desirous of assisting the City in achieving the Project by making the property located at 4629 Baltimore Avenue, Hyattsville, Maryland 20781, hereinafter referred to as “the Premises,” available to the City for its use and occupancy on a limited and temporary basis, and

**WHEREAS**, for the purpose of construction staging and storage related to the transition between DPW locations, the Mayor and City Council has authorized the City Administrator to enter into this Agreement, and

**WHEREAS**, the City and Owner are entering into this Agreement pursuant to that authorization and to expedite the Project’s completion.

### **TERMS**

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein and other good and valuable consideration, the sufficiency of which is hereby mutually acknowledged, the City and Owner agree as follows:

#### **SECTION 1. PREMISES**

1.1. Owner hereby grants to the City, and the City hereby accepts from Owner, the right to occupy the Premises, including its structures and parking lot.

1.2. The right granted by Owner to the City to occupy the Premises shall include access, ingress, and egress to, and use of, the Premises as a parking lot and staging area for the Project, including, but not limited to, employee parking, pick up and drop off of equipment and other material, storage and material management, and all other activities as may be related to the Project.

1.3. The City agrees that Owner has no obligation to make any alterations, modifications, or additions to the Premises, its structures, or parking lot as a condition precedent to the effectiveness of this Agreement.

## SECTION 2. DURATION AND RENT

*PN* 2.1. Owner hereby leases unto the City the Premises for a period of twelve (12) months, which is to commence on ~~October~~ *May* 1, 2019, and end on October *31*, 2020, hereinafter the "effective term," at a fixed rental fee of Thirty-Six Thousand Dollars (\$36,000.00), payable in equal monthly installments of Three Thousand Dollars (\$3,000.00), due and payable on or before the 1st day of the month.

2.2. Rent payments shall be paid in lawful money of the United States by [x] cash, [x] personal check, or [x] cashiers check.

*PN* 2.3. Rent payments shall be made payable to Nguyen Phu Thanh and mailed or delivered to following address: *6605 Cypress Rd, Lanham, MD 28706*

2.4. The Parties expressly agree that no security deposit shall be required of the City.

2.5. In the event the City shall elect to terminate this Agreement, or any renewal or extension thereof, prior to the expiration of the effective term, Owner agrees to permit said early termination upon the City giving to Owner thirty (30) days prior written notice of the City's intent to terminate. The City shall not be required to pay the monthly rental fee to Owner for any months beyond the end of the month in which the City elects to terminate this Agreement.

## SECTION 3. USE OF PREMISES

3.1. The City shall use and occupy the Premises for the purposes of achieving the Project as specified in this Agreement and for no other purpose.

3.2. The City shall comply with the laws, rules and regulations of any federal, State, or County authority, or with any notice from any insurance company pertaining to the City's occupancy or use of the Premises, provided that such notice is timely served on the City.

3.2.1. Legal. The City shall not use or permit the Premises or any part thereof to be used in violation of any present or future applicable law, regulation or ordinance, or of the certificate of occupancy issued for the Premises or its buildings and parking lot, and shall immediately discontinue any use of the Premise which is declared by any governmental authority having jurisdiction to be in violation of law or said certificate of occupancy.

3.2.2. Fire and Safety. The City shall not do, or permit anything to be done in the Premises, or bring or keep anything therein, which will in any way increase the rate of fire insurance on the building, or invalidate or conflict with fire insurance policies on the Premises, its buildings, fixtures, or on property kept therein.

3.2.3. Environmental Protection. The City shall not generate, use, release, store, or dispose of any hazardous materials in or about the Premises except the City may use, store, and dispose of Hazardous Materials that are both (i) in compliance with Environmental Laws and with permits issued pursuant thereto (if such permits are required), if any, and (ii) either (A) in the case of Hazardous Materials, in amounts not in excess of that necessary to operate the Premises for the purposes set forth herein or (B) fully disclosed to and approved by Owner. Hazardous Materials mean (a) "hazardous wastes" as defined under any applicable Environmental Law (hereinafter defined), (b) "hazardous substances" as defined by any applicable Environmental Law, (c) "toxic substances" as defined by any applicable Environmental Law, (d) "hazardous materials" as defined by any Environmental Law, (e) petroleum products, (f) chlorofluorocarbons, and (g) substances whose presence could be detrimental to the Premises or hazardous to health or the environment. "Environmental Law" means any federal, state or local statute, rule, regulation, ordinance, code, policy or rule of common law now or hereafter in effect and in each such case as amended, and any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment, relating to the environment, health, safety, or hazardous materials, including without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9601 *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801 *et seq.*; the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 *et seq.*; the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*; the Safe Drinking Water Act, 42 U.S.C. §§ 300f *et seq.*; the Atomic Energy Act, 42 U.S.C. §§ 2011 *et seq.*; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136 *et seq.*; and the Occupational Safety and Health Act, 29 U.S.C. §§ 651 *et seq.*

3.3. The City shall not make any alterations, additions, or improvements, structural or otherwise in or to the Premises.

#### **SECTION 4. UTILITIES AND SERVICES**

4.1. Owner shall furnish sufficient electrical service for normal and routine lighting, heat and air conditioning for the Premises' buildings.

4.2. Owner shall provide running water at the Premises' buildings.

4.3. The City shall provide its own cleaning, routine maintenance, pest control, janitorial and trash removal services for the Premises at its own cost and expense.

4.4. Owner shall provide a key and or an electronic card-key access control system for entry to the Premises and or the Premises' buildings.

#### **SECTION 5. OWNER'S RIGHT OF ENTRY**

5.1. Owner shall have the right to enter the Premises upon providing the City with twenty-four hours advanced notice (a) to make inspections or to make repairs to the Premises or other premises as Owner may deem necessary; and (b) for a purpose relating to the safety, protection, or preservation of the Premises' buildings.

5.2. Owner shall use reasonable efforts to minimize interference to the City's use and occupancy of the Premises when making repairs, but Owner shall not be required to perform the repairs at any time other than during normal working hours.

## **SECTION 6. MAINTENANCE AND REPAIRS**

6.1. Owner shall make structural repairs to the Premises necessary for safety and occupancy, and shall maintain and repair, if necessary, all building equipment serving the Premises and all exterior plate glass in the Premises.

6.2. If Owner determines that the Premises, its buildings, or parking lot has been damaged, Owner agrees to notify the City's Project Manager, in writing, of said damage within ten (10) business days of that determination. The written notice must: identify the damaged property, state any known causes, provide an approximate repair or replacement cost, and recommendation for, or proposed action by, the City. If no written notice is delivered to the City's Project Manager, or if it is not timely, the Parties agree that any claim for damage is waived.

6.3. The City shall keep the Premises and the fixtures and equipment therein in good order and in a clean, safe and sanitary condition, will take good care thereof and will suffer no waste or damage thereto. At the expiration or other termination of the effective term, the City will surrender the Premises, its buildings, and parking lot broom clean and in the same order and condition in which they were on the commencement date, ordinary wear and tear excepted.

## **SECTION 7. THE CITY'S RESPONSIBILITIES**

7.1. The City's Project Manager, namely, Mr. Hal Metzler, will monitor activities on behalf of the City relating to the City's use of the Premises. Mr. Metzler may be reached at (301) 985 – 5000 (office) or at (240) 832 – 6959 (mobile).

7.2. The City will require that its employees conduct their staging operations at the Premises in a workmanlike manner.

7.3. The City will provide Owner with proof of insurance as set forth in Section 9.

## **SECTION 8. DEFAULT**

8.1. Each of the following shall be deemed an Event of Default and a breach of this Agreement:

8.1.1. A failure by the City to remit the rental fee to Owner when due as set forth in Section 2 above. Under such circumstances, Owner shall not be permitted to repossess the premises unless the City has failed to pay the monthly rental fee for three (3) consecutive months.

8.1.2. Any act or failure to act by Owner with respect to the Premises that unreasonably delays the City's efforts to complete the Project.

## **SECTION 9. INSURANCE**

9.1. The City shall obtain and maintain liability insurance coverage.

9.1.1. The City shall, within ten (10) days of the execution of this Agreement, file with Owner, the Certificate from an insurance company authorized to do business in the State of Maryland and satisfactory to Owner showing issuance of liability insurance in the amount of at least One Million Dollars (\$1,000,000.00) coverage with a deductible no greater than Ten Thousand Dollars (\$10,000.00). The City shall be fully and completely responsible to pay the deductible.

9.1.2. Unless waived by Owner, the Certificate shall bear an endorsement in words exactly as follows:

The insurance company certifies that the insurance covered by this certificate has been endorsed as follows: "The insurance company agrees that the coverage shall not be cancelled, changed, allowed to lapse, or allowed to expire until thirty (30) days after notice to: Nguyen Phu Thanh, \_\_\_\_\_.

9.2. In addition, the City shall, throughout the term of this Agreement, maintain comprehensive general liability insurance in the following amounts and shall submit an insurance certificate as proof of coverage prior to final Agreement approval:

9.2.1. Personal injury liability insurance with a limit of \$1,000,000.00 for each occurrence and \$1,000,000.00 aggregate, where insurance aggregates apply; and

9.2.2. Property damage liability insurance with limits of \$1,000,000.00 for each occurrence and \$5,000,000.00 aggregate, where insurance aggregates apply.

## **SECTION 10. LIABILITY**

10.1. The City, or its agents, servants, or employees, shall not be liable for any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain, or snow or leaks from any part of the Premises, its buildings, or parking lot, including the roof, or from the pipes, conduits, appliances or plumbing works, or from the roof, street, or subsurface or from any other place or by dampness or by any other cause of whatsoever nature, unless caused by or due to the gross negligence of the City, its agents, servants, or employees.

10.2. The City shall not be liable in any manner to Owner, his agents, employees, licensees, or invitees for any injury or damage to Owner, his agents, employees, licensees, or invitees or their property by the criminal or intentional misconduct of third parties, unless said third parties are agents of the City. All claims against the City for any such damage or injury are hereby expressly waived by Owner, and Owner hereby agrees to hold harmless and indemnify the City from all such damages and the expense of defending all claims made by Owner's agents, employees, licensees, or invitees arising out of such acts.

**SECTION 11. CERTIFICATIONS OF OWNER**

11.1. Owner warrants he has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for him, to solicit or secure this Agreement, and that he has not paid or agreed to pay any person, partnership, corporation or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of this Agreement.

**SECTION 12. SET-OFF**

12.1 In the event the Owner shall owe an obligation of any type whatsoever to City at any time during the effective term, or after the termination of the relationship created hereunder, the City shall the right to offset any amount so owed by the Owner against any compensation due to the Owner by the terms of this Agreement.

**SECTION 13. NOTICES**

13.1. Notices pursuant to this Agreement shall be given by United States Mail, postage pre-paid, addressed as follows:

The City: Tracey E. Douglas  
City Administrator  
City of Hyattsville  
4310 Gallatin Street  
Hyattsville, Maryland 20781

Owner: Nguyen Phu Thanh  
\_\_\_\_\_  
\_\_\_\_\_

13.2. Alternatively, notices required pursuant to this Agreement may be personally served on the Owner.

13.3. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice into the United States Mail Service.

**SECTION 14. APPLICABLE LAW**

14.1. The laws of the State of Maryland, excluding conflicts of law rules, shall govern this Agreement as if this Agreement were made and performed entirely within the State of Maryland. Any suit to enforce the terms hereof or for damages or other relief as a consequence of the breach or alleged breach hereof shall be brought exclusively in the courts of the State of Maryland in Prince George’s County, and the Parties expressly consent to the jurisdiction thereof and waive any right which they have or may have to bring such elsewhere.

## **SECTION 15. SUCCESSORS AND ASSIGNS**

15.1. The Parties bind themselves, their partners, successors, assigns, and legal representatives to this Agreement and to the partners, successors, assigns, and legal representatives of such other party with respect to all covenants of this Agreement. Neither party shall assign, sublet, or transfer its interest, including, but not limited to, the proceeds thereof, in this Agreement without the written consent of the other party.

## **SECTION 16. MISCELLANEOUS**

16.1. The recitals above are hereby incorporated into this Agreement.

16.2. Neither the City nor the Owner has made any representations or promises with respect to the Premises or the Premises' buildings and parking lot except as herein expressly set forth.

16.3. The neuter, feminine, or masculine pronoun when used herein shall each include each of the other genders and the use of the singular shall include the plural.

16.4. All section and paragraph captions, marginal references, and table of contents in this Agreement are inserted only as a matter of convenience, and in no way amplify, define, limit, construe, or describe the scope or intent of this Agreement nor in any way affect this Agreement.

16.5. If any term or provision of this Agreement or applications thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remaining terms and provisions of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

16.6. All representations, warranties, covenants, conditions and agreements contained herein which either are expressed as surviving the expiration and termination of this Agreement or, by their nature, are to be performed or observed, in whole or in part, after the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement. This Agreement is entered into as of the day and year first written above.

16.7. This Agreement represents the entire and integrated Agreement between the City and Owner and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by the duly authorized representatives of the City and Owner.

16.8. This Agreement shall not be construed in favor or against either party based on the fact that it was drafted by the City.

16.9. This Agreement may be executed in counterparts.

16.10. This Agreement may be executed electronically.

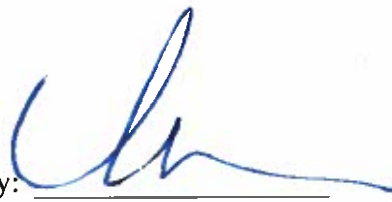
**IN WITNESS WHEREOF**, the City and Owner have executed this Contract as of the date first written above.


Owner

By:   
Witness

By:   
Nguyen Phu Thanh

The City of Hyattsville

By:   
Witness

By:   
Tracey E. Douglas  
City Administrator