



**BC-00000** \_\_\_\_\_

**STATE OF MICHIGAN  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
WATER RESOURCES DIVISION**

**AGREEMENT TO USE AND OCCUPY UNPATENTED GREAT LAKES  
BOTTOMLANDS FOR PRIVATE PURPOSES**

Pursuant to Part 325, Great Lakes Submerged Lands, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA)

The State of Michigan, by the Michigan Department of Environmental Quality (MDEQ), Water Resources Division, P.O. Box 30458, Lansing, Michigan 48909-7958 (Grantor), and

\_\_\_\_\_, (Grantee), enter into this agreement for the use of Great Lakes bottomlands (Agreement). This Agreement is authorized under Section 32504a of Part 325, Great Lakes Submerged Lands, of the Natural Resources and Environmental Protection Act (NREPA), MCL 324.101 et seq, and is based on the following background and understandings:

- A. The United States of America, by the General Services Administration (GSA) pursuant to the National Historic Lighthouse Preservation Act of 2000 (NHLPA), 16 USC 470w-7(a) et seq, transferred by Quit Claim Deed (Deed) to Grantee all right, title and interest of the United States in the Historic \_\_\_\_\_ (Light), which occupies certain Lake \_\_\_\_\_ bottomlands (Bottomlands), subject to the reservations stated therein. The Deed did not convey any submerged lands.
- B. Section 32504a of Part 325 of the NREPA, MCL 324.32504a, authorizes the MDEQ to enter into agreements with “approved organizations,” including local units of government and non-profit entities, to use the bottomlands on which a light is located.
- D. Pursuant to Part 325 of the NREPA, the MDEQ has determined that it may enter into this Agreement based on the following:
  - 1. Grantee’s compliance with the terms and conditions of the Deed;
  - 2. Grantee is an approved organization as that term is defined in MCL 324.32504a;
  - 3. Grantee’s occupation and use of the State of Michigan’s bottomlands in accordance with this Agreement will not impair the public trust or substantially affect public use of the Great Lakes for public trust purposes; and
  - 4. This Agreement is in the public interest because restoration and maintenance of the Light is a continuing use, preserves and makes available to the public an important part of Michigan’s maritime heritage, and furthers the public trust interest in navigation on the Great Lakes.

ACCORDINGLY, Grantor and Grantee, for the consideration specified in this Agreement, agree to the following terms and conditions. Grantor authorizes Grantee to continue to use the bottomlands described in Exhibit 1, which is attached and incorporated by reference [Exhibit 1] and which describes Bottomlands of the Great Lakes belonging to and held in trust by the State of Michigan.

### **1. PURPOSE**

The purpose of this Agreement is to allow Grantee use of the Bottomlands, in order to facilitate the restoration, use, and maintenance of the Light in accordance with, under the authority of, and subject to the Deed.

### **2. TERM AND RENEWAL**

- (a) Grantor grants to Grantee the right to continue to use and occupy the Bottomlands for an initial term of possession of fifty (50) years, beginning upon the effective date of this Agreement.
- (b) At the expiration of the initial term, the Grantee may continue to use and occupy the Premises until the Agreement is cancelled by notice from the Grantor or is renewed by the Grantee pursuant to the option given to the Grantee in this section. Further, the Grantor agrees that, if the Grantee has complied with this Agreement, the Grantee shall have the right and option to renew this Agreement.
- (c) This Agreement may be renewed for an additional period of forty-nine (49) years. If the Grantee desires to exercise the option to renew this Agreement, the Grantee shall do so by submitting a written request to Grantor at least three (3) months before expiration of the initial fifty (50) year term. Grantor shall promptly act on the request and determine if Grantee has complied with the Agreement and is entitled to renew, and notify Grantee in writing whether the request is approved.
- (d) At the expiration of the term of this agreement the parties will consider a future agreement for the same or similar purposes as this agreement consistent with the circumstances as they exist at that time.
- (e) Nothing in this section shall be construed to prohibit Grantor and Grantee from entering into a new agreement to authorize the use of the Bottomlands prior to or following the expiration of this Agreement.

### **3. CONSIDERATION**

Grantor agrees that Grantee's restoration, maintenance, and operation of the Light in accordance with the Covenant and Deed, and the public interest served by the Grantee preserving and making available to the public an important part of Michigan's maritime heritage, constitutes adequate consideration for this Agreement.

### **4. COMPLIANCE WITH REQUIREMENTS**

- (a) Grantee shall maintain and operate the Light according to the terms of the Deed as determined by the federal agencies that administer those instruments.
- (b) Grantee shall not alter the Bottomlands or use or occupy any other submerged lands without the prior written consent of Grantor. Grantee shall obtain a State permit to alter the bottomlands, including the addition or removal of materials to maintain the crib structure or any other relevant structure on the bottomlands that supports or protects the light.
- (c) Grantee shall provide Grantor with copies of all plans, certifications, statements, and reports delivered to the United States or its agents in accordance with its obligations described in the Deed. Grantee will also provide Grantor with copies of all communications from the National Park Service or its agents concerning Grantee's compliance with the Deed.

### **5. COMPLIANCE WITH LAWS**

Grantee shall comply with all applicable federal, state, and local laws, regulations, and codes, and will obtain any necessary permits in connection with its use of the Bottomlands. This compliance includes, but is not limited to:

- (a) Compliance with the Elliott-Larsen Civil Rights Act, MCL 37.2101 et seq and the Persons with Disabilities Civil Rights Act, MCL 37.1101 et seq.

(b) Compliance with State Contracts with Certain Employers Prohibited, 1980 PA 278, MCL 423.321 et seq.

(c) If submerged abandoned property is discovered while conducting activities on the Lake \_\_\_\_\_ bottomlands adjacent to the Light, compliance with Part 761, Aboriginal Records and Antiquities of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA) is required. Activities that disturb the bottomlands within 1,000 feet of the abandoned property must be immediately suspended. The discovery of the abandoned property must be reported to the Office of State Archaeologist (517 373-1618) not more than 72 hours after the discovery.

## **6. ASSIGNMENT OF THE BOTTOMLANDS**

Grantee may not assign this Agreement to any other person or entity without the prior written consent of Grantor.

## **7. ACCESS**

Grantor and Grantor's agents and employees shall have the right at all reasonable times to access the Bottomlands and the Light for the purpose of verifying compliance with the terms of this Agreement.

## **8. INDEMNIFICATION**

Grantee agrees to hold harmless, defend, and indemnify Grantor, its agents, and employees, from and against any and all claims, costs, losses, suits, demands, actions, liabilities, damages, causes of action, or judgments that may in any manner be imposed on or incurred by Grantor, its agents, and employees, for any bodily injury, loss of life, and/or damage to property, resulting from, arising out of, or in any way connected with Grantee's use of the Light and the Bottomlands. This indemnification and hold harmless provision shall survive the termination of this Agreement.

## **10. TERMINATION BY GRANTEE**

Grantee shall have the right to terminate this Agreement by notifying Grantor in writing at least thirty (30) days prior to the termination date. Upon termination, Grantee shall no longer have the right to occupy the bottomlands.

## **11. TERMINATION BY GRANTOR**

(a) This Agreement may be terminated by Grantor, provided Grantee is notified in writing at least thirty (30) days prior to the termination date, for breach of any term of this Agreement.

(b) If Grantor chooses to notify Grantee in writing of a breach of any term of this Agreement Grantee shall have thirty (30) days from the date of the notice in which to cure the breach before Grantor terminates the Agreement. Approval of a written request by Grantee for an extension to cure shall not be unreasonably withheld by Grantor.

## **12. RESERVATION OF RIGHTS**

(a) This Agreement does not limit the power of the State of Michigan, its political subdivisions, or the United States of America to enact and enforce legislation, or to adopt and enforce regulations or ordinances affecting the activity authorized under this Agreement.

(b) Grantor asserts fee title absolute to the Bottomlands, subject to only the rights of use and occupancy granted by this instrument. Grantor reserves to the State all mineral rights, including but not limited to coal, oil, gas, sand, gravel, stone, and other materials or products, located or found on or in the Bottomlands, excluding, however, any part of the Light.

## **13. NOTICES**

Any notice to Grantor or to Grantee required by this Agreement shall be considered effective if submitted in writing and served by personal delivery (with signed delivery receipt), or by first class mail. Unless either party notifies the other in writing of a different mailing address, notices to Grantor and Grantee shall be served to the addresses listed below:

To Grantor:  
Michigan Department of Environmental Quality  
Water Resources Division  
P.O. Box 30458  
Lansing, MI 48909-7958

Copies of such notices must then be sent to:

State Historic Preservation Officer  
Michigan State Housing Development Authority  
P.O. Box 30740  
Lansing, MI 48909-8240

To Grantee:

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**14. INTERPRETATION**

This Agreement shall be interpreted in accordance with the laws of the State of Michigan.

**15. REQUIRED APPROVALS**

This Agreement shall not be binding or effective on either party until approved (and notarized and recorded as necessary) by Grantor, Grantee, Department of Attorney General, and the State Administrative Board.

**16. SEVERABILITY**

Should any provision of this Agreement or any attached exhibits be found to be illegal or otherwise unenforceable by a court of law, the provision shall be severed from the Agreement, and the action shall not affect the enforceability of the remaining provisions of the Agreement.

**17. ENTIRE AGREEMENT AND ENCLOSURES**

This Agreement, with the exhibits listed below, constitutes the entire agreement between the parties with regard to this transaction and may be amended only in writing and executed in the same manner as the Agreement was originally executed.

**Exhibit 1 – Legal Description of Bottomlands**

**Exhibit 2 – Site Drawing**

IN WITNESS WHEREOF, the parties to this Agreement subscribe their names on the date set forth below:

GRANTOR: STATE OF MICHIGAN, by the  
MICHIGAN DEPARTMENT OF  
ENVIRONMENTAL QUALITY

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

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

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

State of Michigan, County of \_\_\_\_\_

The foregoing instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, **2017** by \_\_\_\_\_, its \_\_\_\_\_, for the Michigan Department of Environmental Quality, Water Resources Division.

Notary Public, State of Michigan, County of \_\_\_\_\_

My Commission expires: \_\_\_\_\_

Acting in the County of \_\_\_\_\_

GRANTEE: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

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

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

Federal I.D. No.: \_\_\_\_\_

State of \_\_\_\_\_, County of \_\_\_\_\_

The foregoing instrument was acknowledged before me on this \_\_\_\_\_ day of

\_\_\_\_\_, **2017** by \_\_\_\_\_, its

\_\_\_\_\_ for \_\_\_\_\_

Notary Public, State of Michigan, County of \_\_\_\_\_

My Commission expires: \_\_\_\_\_

Acting in the County of \_\_\_\_\_

This document was prepared by mutual agreement of the parties.

This Agreement has been approved as to legal form by the Michigan Attorney General: November 17, 2009.

Approved by the Michigan State Administrative Board on: \_\_\_\_\_.

This instrument is exempt from the Real Estate Transfer Tax imposed by MCL 207.507(h) and the Real Estate Transfer Tax imposed by MCL 207.526(h).

Prepared by and Return To:

Department of Environmental Quality  
Water Resources Division  
P.O. Box 30458  
Lansing, Michigan 48909-7958