

**Memorandum  
Public Works Department**



**To:** City Manager  
**Subject:** Mississippi River Pool No. 15, Lease Contract No. DACW25-1-15-4134  
**Date:** October 20, 2015  
**Number:** 2015-196

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Attached is the renewal lease for the continued use of Government premises on Lock and Dam 15 for the operation and maintenance of a potassium permanganate feeder facility. The lease renewal is granted for a term of twenty-five (25) years versus previous terms of five (5) years. The administrative expenses associated with renewal and oversight of the subject lease will be a one-time payment of \$1,500.00.

The lease term begins April 30, 2015, and ends no later than March 31, 2040. The lease may be terminated with thirty (30) days written notice. The annual lease rate will be eliminated and consideration will no longer be charged to the City of Rock Island to utilize this area. This is a savings of \$13,750.00 over the length of twenty-five (25) years based on the previous annual lease fee of \$550.00. The City of Rock Island has leased this space for over twenty (20) years and will need to continue to do in order to maintain our sole raw water intake location.

**Recommendation**

The Public Works Department recommends that the City Council approve the Lock and Dam 15 Government premises lease renewal as written, authorize the administrative fee of \$1,500.00, payable to FAO, USAED, Rock Island, and authorize the City Manager to execute the lease agreement.

Vendor: FAO, USAED, Rock Island  
Payment Amount: \$1,500.00  
Account Chargeable:  
    Fund: 501                      Water Operations and Maintenance  
    Division: 618                 Utilities Services  
    Cost Center: 352             Water Treatment Plant  
    Object Code: 53904         Buildings and Facilities Rental  
Requisition Number: R005731

**Submitted by:** Randall D. Tweet, Public Works Director  
Larry P. Cook, Utilities Superintendent

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**Approved by:** Thomas Thomas, City Manager



**DEPARTMENT OF THE ARMY**  
CORPS OF ENGINEERS ROCK ISLAND DISTRICT  
PO BOX 2004 CLOCK TOWER BUILDING  
ROCK ISLAND, ILLINOIS 61204-2004

REPLY TO  
ATTENTION OF

October 2, 2015

MVD Regional Real Estate Division North

SUBJECT: Mississippi River Pool No. 15, Lease Contract No. DACW25-1-15-4134

City of Rock Island  
ATTN: Mr. Larry Cook, Utilities Supervisor  
1528 Third Ave.  
Rock Island, IL 61201

Dear Mr. Cook:

Enclosed for your review and signature are two copies of the proposed license contract No. DACW25-1-15-4134 (renewal) which authorizes continued use of Government premises for the operation and maintenance of a potassium permanganate feeder facility. The lease is granted for a term of twenty five (25) years.

Please review the lease and have the appropriate representative from City of Rock Island sign and date both copies of the agreement. Exhibit C should also be signed. A Certificate of Authority has also been attached to each copy of the agreement. The Certificate of Authority should be completed and signed by a City of Rock Island representative other than the person who signs the lease. The pages that require a signature have been marked with yellow tabs.

One copy of the license and Certificate of Authority should be returned to our office in the enclosed return envelope. The second copy is yours to keep. Please also include a check in the amount of \$1,500.00. This will cover the administrative expenses associated with renewal and oversight of the subject lease. We are no longer charging the City of Rock Island consideration to utilize this area.

Once we have received both signed copies of the license, Certificates of Authority, and required remittance we will then execute the contract on behalf of the United States, and a fully executed copy will be returned to the City of Rock Island. If you have any questions or concerns, please feel free to contact me by calling telephone number (309) 794-5292.

Sincerely,

A handwritten signature in black ink that reads "Debi VanOpdorp".

Debi VanOpdorp  
Lead Realty Specialist, Management and Disposal Branch  
MVD Regional Real Estate Division North  
U.S. Army Corps of Engineers  
Rock Island District

Enclosures

## DEPARTMENT OF THE ARMY LEASE

### UPPER MISSISSIPPI RIVER NINE-FOOT CHANNEL PROJECT POOL 15

ROCK ISLAND COUNTY, ILLINOIS

**THIS LEASE**, made on behalf of the United States, between the **SECRETARY OF THE ARMY**, hereinafter referred to as the Secretary, and the City of Rock Island, Illinois, hereinafter referred to as the Lessee.

#### WITNESSETH:

That the Secretary, by the authority of Title 10, United States Code, Section 2667, and for the consideration hereinafter set forth, hereby leases to the Lessee the property identified in Exhibits A and B, attached hereto and made a part hereof, hereinafter referred to as the premises, for the construction, maintenance, and operation of a potassium permanganate feeder facilities in the Corps of Engineers powerhouse building and at the Lessee's raw water intake.

THIS LEASE is granted subject to the following conditions:

#### 1. TERM

Said premises are hereby leased for a term of twenty-five years, beginning April 30, 2015, and ending March 31, 2040, but revocable at will by the Secretary.

#### 2. CONSIDERATION

The consideration or this lease is the operation and maintenance of the premises by the lessee for the benefit of the United States and the general public in accordance with the conditions herein set forth.

#### 3. NOTICES

All correspondence and notices to be given pursuant to this lease shall be addressed, if to the Lessee, to City of Rock Island, Department of Public Works, 1309 Mill St, Rock Island, Illinois 61201, and, if to the United States, to the District Engineer, Attention: Chief, Real Estate Division, PO Box 2004, Rock Island, Illinois 61204-2004, or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope, or wrapper, addressed as aforesaid, and deposited postage prepaid in a post office regularly maintained by the United States Postal Service.

#### **4. AUTHORIZED REPRESENTATIVES**

Except as otherwise specifically provided, any reference herein to "Secretary", "District Engineer", or "said officer" shall include their duly authorized representatives. Any reference to "Lessee" shall include any sublessees, assignees, transferees, successors and their duly authorized representatives.

#### **5. SUPERVISION BY THE DISTRICT ENGINEER**

The use and occupation of the premises shall be subject to the general supervision and approval of the District Engineer, Rock Island District hereinafter referred to as said officer, and to such rules and regulations as may be prescribed from time to time by said officer.

#### **6. APPLICABLE LAWS AND REGULATIONS**

The Lessee shall comply with all applicable Federal, state, county and municipal laws, ordinances and regulations wherein the premises are located.

#### **7. CONDITION OF PREMISES**

The Lessee acknowledges that it has inspected the premises, knows its condition, and understands that the same is leased without any representations or warranties whatsoever and without obligation on the part of the United States to make any alterations, repairs, or additions thereto.

#### **8. TRANSFERS AND ASSIGNMENTS**

Without prior written approval of the District Engineer, the Lessee shall neither transfer nor assign this lease, nor sublet the premises or any part thereof, nor grant any interest, privilege or license whatsoever in connection with this lease. Failure to comply with this condition shall constitute a noncompliance for which the lease may be revoked immediately by the District Engineer.

#### **9. COST OF UTILITIES**

The Lessee shall pay the cost, as determined by the officer having jurisdiction over the premises, of producing and/or supplying any utilities and other services furnished by the government or through government-owned facilities for the use of the Lessee, including the Lessee's proportionate share of the cost of operation and maintenance of the government-owned facilities by which such utilities or services are produced or supplied. The government shall be under no obligation to furnish utilities or services. Payment shall be made in the manner prescribed by the officer having such jurisdiction.

## **10. PROTECTION OF PROPERTY**

The Lessee shall keep the premises in good order and in a clean, safe condition by and at the expense of the Lessee. The Lessee shall be responsible for any damage that may be caused to property of the United States by the activities of the Lessee under this lease, and shall exercise due diligence in the protection of all property located on the premises against fire or damage from any and all other causes. Any property of the United States damaged or destroyed by the Lessee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Lessee to a condition satisfactory to said officer, or at the election of said officer, reimbursement made therefor by the Lessee in an amount necessary to restore or replace the property to a condition satisfactory to said officer.

## **11. INSURANCE**

**a.** At the commencement of this lease, the Lessee shall obtain, from a reputable insurance company, or companies, liability insurance. The insurance shall provide an amount not less than that which is prudent, reasonable and consistent with sound business practices or a minimum combined single limit of \$1,000,000, whichever is greater, for any number of persons or claims arising from any one incident with respect to bodily injuries or death resulting therefrom, property damage, or both, suffered or alleged to have been suffered by any person or persons resulting from the operations of the Lessee under the terms of this lease. The Lessee

shall require its insurance company to furnish to the District Engineer a copy of the policy or policies, or if acceptable to the District Engineer, certificates of insurance evidencing the purchase of such insurance. The minimum amount of liability insurance coverage is subject to revision by the District Engineer every three years or upon renewal or modification of this lease.

**b.** The insurance policy or policies shall be of comprehensive form of contract and shall specifically provide protection appropriate for the types of facilities, services and activities involved. The Lessee shall require that the insurance company give the District Engineer thirty (30) days written notice of any cancellation or change in such insurance. The District Engineer may require closure of any or all of the premises during any period for which the Lessee does not have the required insurance coverage.

## **12. RIGHT TO ENTER AND FLOOD**

The right is reserved to the United States, its officers, agents, and employees to enter upon the premises at any time and for any purpose necessary or convenient in connection with government purposes; to make inspections, to remove timber or other material, except property of the Lessee, to flood the premises, to manipulate the level of the lake or pool in any manner whatsoever and/or to make any other use of the lands as may be necessary in connection with government purposes, and the Lessee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee thereof.

### **13. INDEMNITY**

The United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the exercise of the privileges herein granted, or for damages to the property of the Lessee, or for damages to the property or injuries to the person of the Lessee's officers, agents or employees or others who may be on the premises at their invitation or the invitation of any one of them, and the Lessee shall hold the United States harmless from any and all such claims not including damages due to the fault or negligence of the United States or its contractors.

### **14. RESTORATION**

On or before the expiration of this lease or its termination by the Lessee, the Lessee shall vacate the premises, remove the property of the Lessee, and restore the premises to a condition satisfactory to said officer. If, however, this lease is revoked, the Lessee shall vacate the premises, remove said property and restore the premises to the aforesaid condition within such time as the said officer may designate. In either event, if the Lessee shall fail or neglect to remove said property and restore the premises, then, at the option of the said officer, the property shall either become the property of the United States without compensation therefor, or the said officer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The Lessee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation, or termination of this lease in restoring the premises.

### **15. NON-DISCRIMINATION**

The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessee's operations, programs or activities conducted on the leased premises, because of race, color, religion, sex, age, handicap or national origin. The Lessee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural and Transportation Barriers Compliance Board.

### **16. SUBJECT TO EASEMENTS**

This lease is subject to all existing easements, or those subsequently granted as well as established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the Lessee, and easements will not be granted which will, in the opinion of the District Engineer, interfere with the use of the premises by the Lessee.

### **17. SUBJECT TO MINERAL INTERESTS**

This lease is subject to all outstanding mineral interests. As to federally owned mineral interests, it is understood that they may be included in present or future mineral leases issued by the Bureau of Land Management (BLM) which has responsibility for mineral development on federal lands. The Secretary will provide lease stipulations to BLM for inclusion in said mineral

leases that are designed to protect the premises from activities that would interfere with the lessee's operations or would be contrary to local law.

## **18. TERMINATION**

This lease may be terminated by the Secretary upon 30 days written notice to the lessee if the Secretary shall determine that the rights hereby granted interfere with the use or disposal of said land by the United States, or it may be revoked by the Secretary for failure of the lessee to comply with any or all of the conditions of the lease, or for non-use for a period of two (2) years, or for abandonment.

## **19. PROHIBITED USES**

**a.** The Lessee shall not permit gambling on the premises or install or operate, or permit to be installed or operated thereon, any device which is illegal; or use the premises or permit them to be used for any illegal business or purpose. There shall not be conducted on or permitted upon the premises any activity which would constitute a nuisance. The Lessee shall not sell, store or dispense, or permit the sale, storage, or dispensing of beer or other intoxicating liquors on the premises.

**b.** The Lessee shall not construct or place any structure, improvement or advertising sign or allow or permit such construction or placement without prior written approval of the District Engineer.

## **20. NATURAL RESOURCES**

The Lessee shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the premises except as authorized in writing by the District Engineer.

## **21. DISPUTES CLAUSE**

**a.** Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the Act), all disputes arising under or relating to this lease shall be resolved under this clause and the provisions of the Act.

**b.** "Claim", as used in this clause, means a written demand or written assertion by the Lessee seeking, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of lease terms, or other relief arising under or relating to this lease. A claim arising under this lease, unlike a claim relating to this lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the Lessee. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding \$50,000 is not a claim under the Act until certified as required by subparagraph c.(2) below. The routine request for rental payments that is not in dispute is not a claim under the Act. The request may be converted to a claim under the Act, by this clause, if it is disputed either as a liability or amount or is not acted upon in a reasonable time.

**c.** (1) A Claim by the Lessee shall be made in writing and submitted to the District Engineer for a written decision. A claim by the Government against the Lessee shall be subject to a written decision by the District Engineer.

(2) For Lessee claims exceeding \$50,000, the Lessee shall submit with the claim a certification that--

(i) the claim is made in good faith; and

(ii) supporting data are accurate and complete to the best of the Lessee's knowledge and belief;

(iii) and the amount requested accurately reflects the lease adjustment for which the Lessee believes the Government is liable.

(3) If the Lessee is an individual, the certificate shall be executed by that individual. If the Lessee is not an individual, the certification shall be executed by --

(i) a senior company official in charge of the Lessee's location involved;

or

(ii) an officer or general partner of the lessee having overall responsibility of the conduct of the Lessee's affairs.

**d.** For Lessee claims of \$50,000 or less, the District Engineer must, if requested in writing by the Lessee, render a decision within 60 days of the request. For lessee-certified claims over \$50,000, the District Engineer must, within 60 days, decide the claim or notify the Lessee of the date by which the decision will be made.

**e.** The District Engineer's decision shall be final unless the Lessee appeals or files a suit as provided in the Act.

**f.** At the time a claim by the Lessee is submitted to the District Engineer or a claim by the Government is presented to the lessee, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certificate described in paragraph c.(2) of this clause, and executed in accordance with paragraph c.(3) of this clause.

**g.** The Government shall pay interest or the amount found due and unpaid by the Government from (1) the date the District Engineer received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the District Engineer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim. Rental amounts due to the Government by the Lessee will have interest and penalties as set out in the condition on CONSIDERATION.

**h.** The Lessee shall proceed diligently with the performance of the lease, pending final resolution of any request for relief, claim, or action arising under the lease, and comply with any decision of the District Engineer.

## **22. ENVIRONMENTAL PROTECTION**

a. Within the limits of their respective legal powers, the parties to this lease shall protect the premises against pollution of its air, ground, and water. The Lessee shall comply with any laws, regulations, conditions, or instructions affecting the activity hereby authorized if and when issued by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the premises is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by said Environmental Protection Agency, or any Federal, State, interstate or local governmental agency are hereby made a condition of this lease. The Lessee shall not discharge waste or effluent from the premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

b. The Lessee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs from activities of the lessee, the Lessee shall be liable to restore the damaged resources.

c. The Lessee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises.

## **23. PRELIMINARY ASSESSMENT SCREENING**

A Preliminary Assessment Screening (PAS) documenting the known history of the property with regard to the storage, release or disposal of hazardous substances thereon, is attached hereto and made a part hereof as Exhibit C. Upon expiration, revocation or relinquishment of this lease another PAS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the said officer in determining any environmental restoration requirements. Any such requirements will be completed by the Lessee in accordance with the condition on RESTORATION.

## **24. HISTORIC PRESERVATION**

The Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered on the premises, the Lessee shall immediately notify said officer and protect the site and the material from further disturbance until said officer gives clearance to proceed.

## **25. SOIL AND WATER CONSERVATION**

The Lessee shall maintain, in a manner satisfactory to said officer, all soil and water conservation structures that may be in existence upon said premises at the beginning of or that may be constructed by the Lessee during the term of this lease, and the Lessee shall take appropriate measures to prevent or control soil erosion within the premises. Any soil erosion occurring outside the premises resulting from the activities of the Lessee shall be corrected by the Lessee as directed by the said officer.

## **26. TAXES**

Any and all taxes imposed by the state or its political subdivisions upon the property or interest of the Lessee in the premises shall be paid promptly by the Lessee. If and to the extent that the property owned by the Government is later made taxable by State or local governments under an Act of Congress, the lease shall be renegotiated.

## **27. COVENANT AGAINST CONTINGENT FEES**

The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this lease without liability or, in its discretion, to require the Lessee to pay, in addition to the lease rental or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

## **28. OFFICIALS NOT TO BENEFIT**

No member of or delegate to congress or resident commissioner shall be admitted to any share or part of this lease or to any benefits to arise therefrom. However, nothing herein contained shall be construed to extend to any incorporated company if this lease is for the general benefit of such corporation or company.

## **29. SEVERAL LESSEES**

If more than one Lessee is named in this lease the obligations of said Lessees herein contained shall be joint and several obligations.

## **30. MODIFICATIONS**

This lease contains the entire agreement between the parties hereto, and no modification of this agreement, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative and this provision shall apply to this condition as well as all other conditions of this lease.

## **31. MINIMUM WAGE**

Any reference in this section to "prime contractor" or "contractor" shall mean the Lessee and any reference to "contract" shall refer to the Lease.

a. The parties expressly stipulate this contract is subject to Executive Order 13658, the regulations issued by the Secretary of Labor in 29 CFR part 10 pursuant to the Executive Order, and the following provisions.

**b. Minimum Wages.**

(1) Each worker (as defined in 29 CFR 10.2) engaged in the performance of this contract by the prime contractor or any subcontractor, regardless of any contractual relationship which may be alleged to exist between the contractor and worker, shall be paid not less than the applicable minimum wage under Executive Order 13658.

(2) The minimum wage required to be paid to each worker performing work on or in connection with this contract between January 1, 2015 and December 31, 2015 shall be \$10.10 per hour. The minimum wage shall be adjusted each time the Secretary of Labor's annual determination of the applicable minimum wage under section 2(a)(ii) of Executive Order 13658 results in a higher minimum wage. Adjustments to the Executive Order minimum wage under section 2(a)(ii) of Executive Order 13658 will be effective for all workers subject to the Executive Order beginning January 1 of the following year. If appropriate, the contracting officer, or other agency official overseeing this contract shall ensure the contractor is compensated only for the increase in labor costs resulting from the annual inflation increases in the Executive Order 13658 minimum wage beginning on January 1, 2016. The Secretary of Labor will publish annual determinations in the Federal Register no later than 90 days before such new wage is to take effect. The Secretary will also publish the applicable minimum wage on [www.wdol.gov](http://www.wdol.gov) (or any successor Web site). The applicable published minimum wage is incorporated by reference into this contract.

(3) The contractor shall pay unconditionally to each worker all wages due free and clear and without subsequent deduction (except as otherwise provided by 29 CFR 10.23), rebate, or kickback on any account. Such payments shall be made no later than one pay period following the end of the regular pay period in which such wages were earned or accrued. A pay period under this Executive Order may not be of any duration longer than semi-monthly.

(4) The prime contractor and any upper-tier subcontractor shall be responsible for the compliance by any subcontractor or lower-tier subcontractor with the Executive Order minimum wage requirements. In the event of any violation of the minimum wage obligation of this clause, the contractor and any subcontractor(s) responsible therefore shall be liable for the unpaid wages.

(5) If the commensurate wage rate paid to a worker on a covered contract whose wages are calculated pursuant to a special certificate issued under 29 U.S.C. 214(c), whether hourly or piece rate, is less than the Executive Order minimum wage, the contractor must pay the Executive Order minimum wage rate to achieve compliance with the Order. If the commensurate wage due under the certificate is greater than the Executive Order minimum wage, the contractor must pay the 14(c) worker the greater commensurate wage.

**c. Withholding.** The agency head shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the prime contractor under this or any other Federal contract with the same prime contractor, so

much of the accrued payments or advances as may be considered necessary to pay workers the full amount of wages required by Executive Order 13658.

**d. Contract Suspension/Contract Termination/Contractor Debarment.** In the event of a failure to pay any worker all or part of the wages due under Executive Order 13658 or 29 CFR part 10, or a failure to comply with any other term or condition of Executive Order 13658 or 29 CFR part 10, the contracting agency may on its own action or after authorization or by direction of the Department of Labor and written notification to the contractor, take action to cause suspension of any further payment, advance or guarantee of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the contractor in default with any additional cost. A breach of the contract clause may be grounds for debarment as a contractor and subcontractor as provided in 29 CFR 10.52.

**e.** The contractor may not discharge any part of its minimum wage obligation under Executive Order 13658 by furnishing fringe benefits or, with respect to workers whose wages are governed by the Service Contract Act, the cash equivalent thereof.

**f.** Nothing herein shall relieve the contractor of any other obligation under Federal, State or local law, or under contract, for the payment of a higher wage to any worker, nor shall a lower prevailing wage under any such Federal, State, or local law, or under contract, entitle a contractor to pay less than \$10.10 (or the minimum wage as established each January thereafter) to any worker.

**g. Payroll Records.**

(1) The contractor shall make and maintain for three years records containing the information specified in paragraphs (g)(1) (i) through (vi) of this section for each worker and shall make the records available for inspection and transcription by authorized representatives of the Wage and Hour Division of the U.S. Department of Labor:

- (i) Name, address, and social security number.
- (ii) The worker's occupation(s) or classification(s)
- (iii) The rate or rates of wages paid.
- (iv) The number of daily and weekly hours worked by each worker.
- (v) Any deductions made; and
- (vi) Total wages paid.

(2) The contractor shall also make available a copy of the contract, as applicable, for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available such records for inspection and transcription shall be a violation of 29 CFR part 10 and this contract, and in the case of failure to produce such records, the contracting officer, upon direction of an authorized representative of the Department of Labor, or under its own action, shall take such action as may be necessary to cause suspension of any further payment or advance of funds until such time as the violations are discontinued.

(4) The contractor shall permit authorized representatives of the Wage and Hour Division to conduct investigations, including interviewing workers at the worksite during normal working hours.

(5) Nothing in this clause limits or otherwise modifies the contractor's payroll and recordkeeping obligations, if any, under the Davis-Bacon Act, as amended, and its implementing regulations; the Service Contract Act, as amended, and its implementing regulations; the Fair Labor Standards Act, as amended, and its implementing regulations; or any other applicable law.

**h.** The contractor (as defined in 29 CFR 10.2) shall insert this clause in all of its covered subcontracts and shall require its subcontractors to include this clause in any covered lower-tier subcontracts. The prime contractor and any upper-tier subcontractor shall be responsible for the compliance by any subcontractor or lower-tier subcontractor with this contract clause.

**i.** Certification of Eligibility.

(1) By entering into this contract, the contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed pursuant to section 5 of the Service Contract Act, section 3(a) of the Davis-Bacon Act, or 29 CFR 5.12(a)(1).

(2) No part of this contract shall be subcontracted to any person or firm whose name appears on the list of persons or firms ineligible to receive Federal contracts.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

**j.** Tipped employees. In paying wages to a tipped employee as defined in section 3(t) of the Fair Labor Standards Act, 29 U.S.C. 203(t), the contractor may take a partial credit against the wage payment obligation (tip credit) to the extent permitted under section 3(a) of Executive Order 13658. In order to take such a tip credit, the employee must receive an amount of tips at least equal to the amount of the credit taken; where the tipped employee does not receive sufficient tips to equal the amount of the tip credit the contractor must increase the cash wage

paid for the workweek so that the amount of cash wage paid and the tips received by the employee equal the applicable minimum wage under Executive Order 13658. To utilize this proviso:

(1) The employer must inform the tipped employee in advance of the use of the tip credit;

(2) The employer must inform the tipped employee of the amount of cash wage that will be paid and the additional amount by which the employee's wages will be considered increased on account of the tip credit;

(3) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received); and

(4) The employer must be able to show by records that the tipped employee receives at least the applicable Executive Order minimum wage through the combination of direct wages and tip credit.

**k. Antiretaliation.** It shall be unlawful for any person to discharge or in any other manner discriminate against any worker because such worker has filed any complaint or instituted or caused to be instituted any proceeding under or related to Executive Order 13658 or 29 CFR part 10, or has testified or is about to testify in any such proceeding.

**l. Disputes concerning labor standards.** Disputes related to the application of Executive Order 13658 to this contract shall not be subject to the general disputes clause of the contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR part 10. Disputes within the meaning of this contract clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the workers or their representatives.

**m. Notice.** The contractor must notify all workers performing work on or in connection with a covered contract of the applicable minimum wage rate under the Executive Order. With respect to service employees on contracts covered by the Service Contract Act and laborers and mechanics on contracts covered by the Davis-Bacon Act, the contractor may meet this requirement by posting, in a prominent and accessible place at the worksite, the applicable wage determination under those statutes. With respect to workers performing work on or in connection with a covered contract whose wages are governed by the FLSA, the contractor must post a notice provided by the Department of Labor in a prominent and accessible place at the worksite so it may be readily seen by workers. Contractors that customarily post notices to workers electronically may post the notice electronically provided such electronic posting is displayed prominently on any Web site that is maintained by the contractor, whether external or internal, and customarily used for notices to workers about terms and conditions of employment.

### 32. HOLD HARMLESS AND INDEMNIFICATION:

If a duly authorized representative of the United States discovers or determines, whether before or subsequent to executing this contract, that an erroneous determination regarding the applicability of Executive Order 13658 was made, contractor, to the extent permitted by law, agrees to indemnify and hold harmless the United States, its officers, agents, and employees, for and from any and all liabilities, losses, claims, expenses, suits, fines, penalties, judgments, demands or actions, costs, fees, and damages directly or indirectly arising out of, caused by, related to, resulting from or in any way predicated upon, in whole or in part, the erroneous Executive Order 13658 determination. This includes contractor releasing any claim or entitlement it would otherwise have to an equitable adjustment to the contract and indemnifying and holding harmless the United States from the claims of subcontractors and contractor employees.

### 33. DISCLAIMER

This lease is effective only insofar as the rights of the United States in the premises are concerned; and the Lessee shall obtain any permit or license which may be required by Federal, state, or local statute in connection with the use of the premises. It is understood that the granting of this lease does not preclude the necessity of obtaining a Department of the Army permit for activities which involve the discharge of dredge or fill material or the placement of fixed structures in the waters of the United States, pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (33 USC 403), and Section 404 of the Clean Waters Act (33 USC 1344).

**THIS LEASE** is not subject to Title 10, United States Code, Section 2662, as amended.

**IN WITNESS WHEREOF**, I have hereunto set my hand by authority of the Secretary of the Army, this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Kevin Sommerland  
Real Estate Contracting Officer  
MVD Regional Real Estate Division North  
U.S. Army Corps of Engineers

**THIS LEASE** is also executed by the Lessee this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

City of Rock Island, Illinois

BY: \_\_\_\_\_  
(Signature)

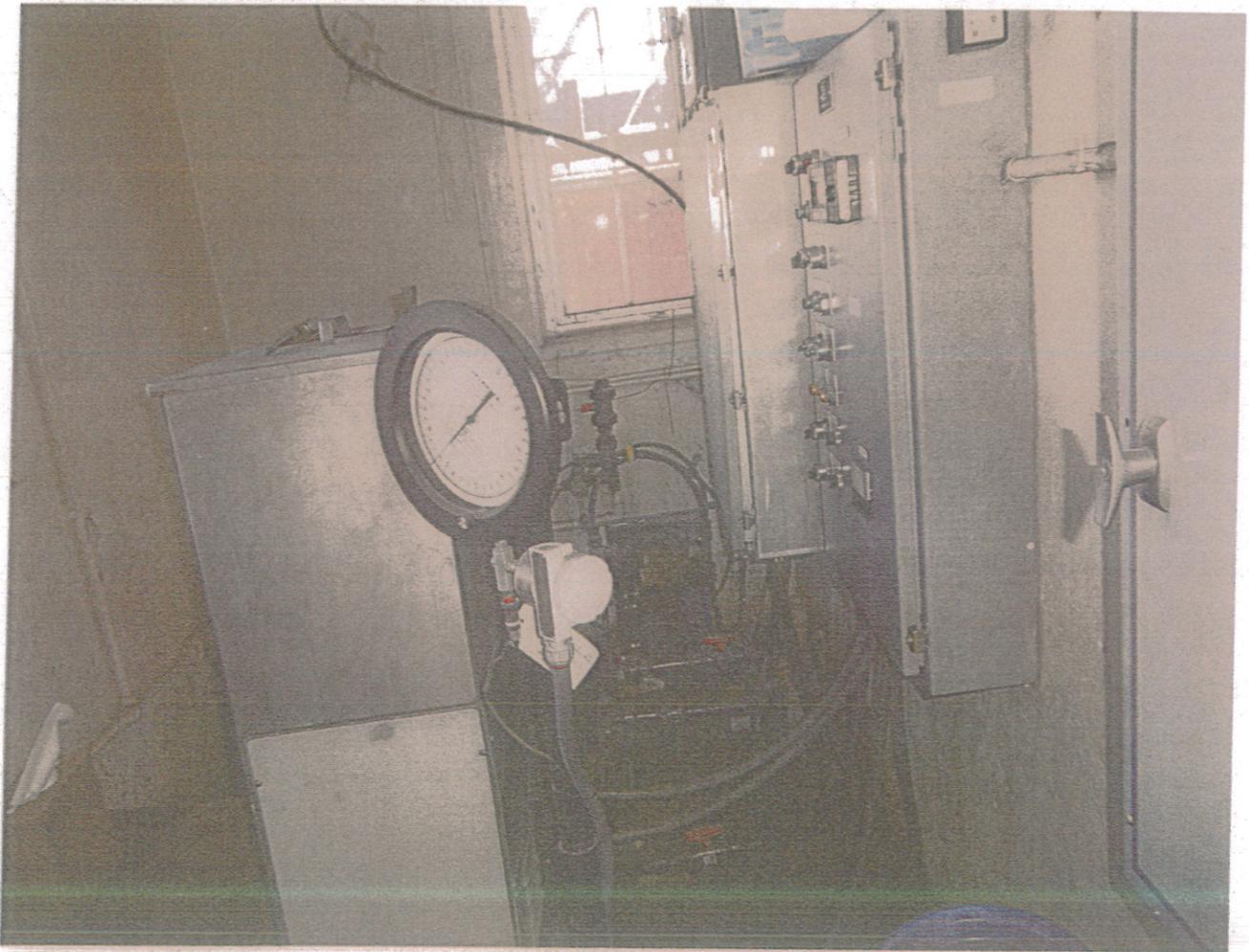
\_\_\_\_\_  
(Print or Type Name)

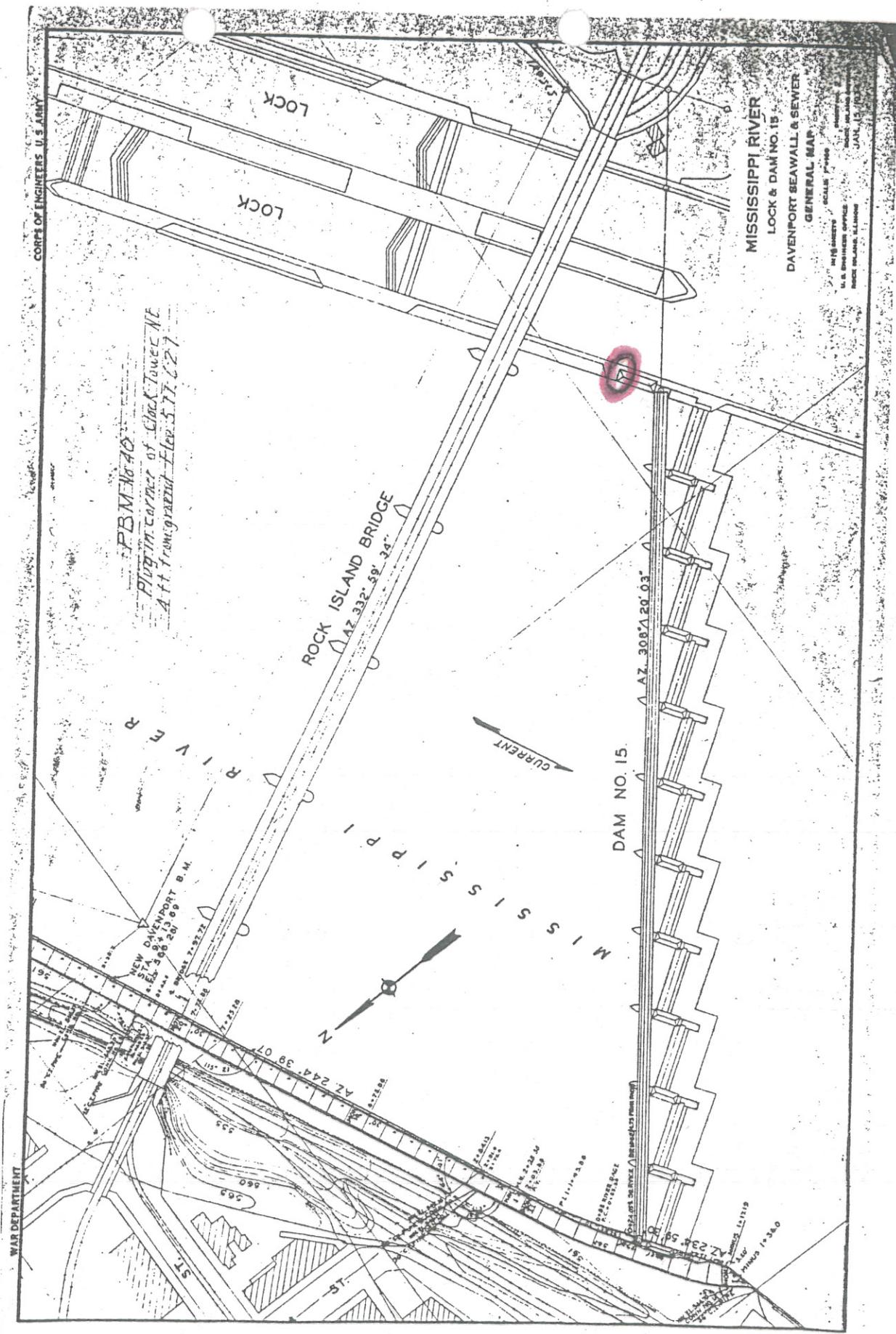
\_\_\_\_\_  
(Position and Title)

1528 Third Ave  
Rock Island, Illinois 61201

## EXHIBIT A

The property included in this lease is a 13'10"x5'3" area in a Government-owned power house and the adjacent walls and appurtenances in the vicinity of the City of Rock Island, Illinois water intake located at Locks and Dam 15, River Mile 483, as shown on Exhibit B attached hereto, all being situated in Township 18 North, Range 2 West of the 4<sup>th</sup>





CORPS OF ENGINEERS U.S. ARMY

PBM No 40  
 Plug in corner of Clock Tower NE  
 At ft. from ground Elev. 577.627

MISSISSIPPI RIVER  
 LOCK & DAM NO. 15  
 DAVENPORT BEAWALL & SEWER  
 GENERAL MAP  
 SCALE 1" = 1000'  
 U.S. ENGINEERING OFFICE  
 MADE IN U.S.A.  
 JAN. 15, 1933

WAR DEPARTMENT

Location of feeder/lease area

EXHIBIT B

## EXHIBIT "C"

### *PRELIMINARY ASSESSMENT SCREENING (PAS)*

*Easement Contract No. DACW25-1-15-4134*

1. **REAL PROPERTY TRANSACTION:** This action consists of granting a 25 year lease to the City of Rock Island, Illinois, to use United States facilities for the installation, operation and maintenance of potassium permanganate feeder facilities in the powerhouse building located at Lock and Dam 15.
2. **COMPREHENSIVE RECORDS SEARCH:** A search of the Real Estate records was conducted in March 2015 and included the following:
  - a. The acquisition files for the locksite property dated 1934.
  - b. Tract map dated 1935.
  - c. Aerial photograph of area dated 1964 and 1975.
  - d. Lease file dated 1995 (original lease).
  - e. Conversation with water treatment supervisor Larry Cook.

The District Engineering and Operations Divisions reviewed this action. They were asked to identify any records of hazardous materials being stored, released or disposed of on the property; however, no such records were identified in their review.

3. **SITE INSPECTION:** There was no site inspection performed specifically for this PAS. There was no information revealed in the records search to indicate potential for hazardous materials to warrant a site investigation.
4. **FINDINGS:** The conclusion of this PAS is that there is no known history or present existence of hazardous materials on the property included in the lease.
5. This PAS is a real property transaction record to serve as documentation for the hazardous substance contamination condition of the property. The proposed real property transaction of granting an easement on the property to the City of East Dubuque should proceed.

Prepared by: Debi VanOpdorp Date: 2/04/15  
Debi VanOpdorp  
Lead Realty Specialist  
Management and Disposal Branch

Approved by: \_\_\_\_\_ Date: \_\_\_\_\_  
Kevin Summerland  
Contracting Officer  
MVD Regional Real Estate Division North

**ACCEPTANCE**

The City of Rock Island accepts the findings of this PAS and hereby agrees that there is no known history or present existence of hazardous materials on the property included in the lease. The City of Rock Island understands that this PAS will be used as a basis for determining any environmental restoration required under the terms of the lease.

City of Rock Island, Illinois

BY \_\_\_\_\_  
Signature

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

***CERTIFICATE OF AUTHORITY***  
***Lease Contract No. DACW25-1-15-4134***

I, \_\_\_\_\_, certify that I am the  
(name of certifying officer)

\_\_\_\_\_ of the City of Rock Island, named  
(official capacity of certifying officer)

as grantee herein; that \_\_\_\_\_ who signed the lease on  
(name of signer of lease)

behalf of the grantee, was then the \_\_\_\_\_ of the  
(official capacity of signer of lease)

City of Rock Island, that said lease was duly signed for and on behalf of said

City by the authority of its governing body, and is within the scope of its delegated powers.

\_\_\_\_\_  
(signature of certifying officer)