

TERMINATION OF LEASE AGREEMENT

This agreement for termination (Termination) is made and entered into effective as of this _____ day of _____, 2017, by and between the City of Pensacola (City), a municipal corporation of Florida, and Offshore Inland Marine & Oilfield Services, Inc. (OIMO), a corporation authorized to do business in the State of Florida, for the purpose of immediately terminating the Lease Agreement for the City Port of Pensacola Warehouse 9 Leased Premises as hereinafter defined.

Recitals:

WHEREAS, the City and OIMO entered into a Lease Agreement dated May 30, 2014, (Warehouse 9 Lease) for the lease of real property more particularly described as the existing 40,000 square foot steel-frame, aluminum sided warehouse commonly referred to as Port of Pensacola Warehouse 9 (Warehouse 9 Premises), which includes no surrounding land, further depicted in Exhibit A attached to the Warehouse 9 Lease, incorporated herein by this reference, and approximately three and one-half (3 ½) acres of undeveloped land immediately adjacent to the Warehouse 9 Premises (Ground Lease Premises) generally depicted in Exhibit B attached to the Warehouse 9 Lease, incorporated herein by this reference. Collectively the Warehouse 9 Premises and the Ground Lease Premises comprise the leased premises (Leased Premises); and

WHEREAS, Section 42 of the Warehouse 9 Lease provides the lease may be terminated by the City upon default; and

WHEREAS, OIMO has requested the City agree to immediate, early termination of the Warehouse 9 Lease, in lieu of default under the lease, and as consideration of the early termination, OIMO agrees the Leased Premises and all improvements, fixtures, equipment and personal property thereon shall immediately become the exclusive property of the City, however, with respect only to the equipment and personal property, OIMO and the City may mutually agree on temporary arrangements regarding the equipment and personal property in furtherance of this termination transaction; and

WHEREAS, OIMO has represented to City that OIMO will immediately surrender the Leased Premises and all improvements, fixtures, equipment and personal property thereon, to become the exclusive property of the City, and that all such land and property will be in good condition; and

WHEREAS, in lieu of default under the lease, and in consideration of possessing the Leased Premises and all improvements, fixtures, equipment and personal property thereon, the City agrees to immediate, early termination of the Warehouse 9 Lease, **provided however**, that OIMO expressly agrees to remain obligated to the City for timely payment of any rents, taxes, property taxes, fees, sums or amounts due under the Warehouse 9 Lease prior to termination, and the payment of any rents, taxes, property taxes, fees, charges, sums or amounts under any other lease between the parties or due to OIMO's past and current operations at the Port; and

WHEREAS, given the material representations above, the parties hereby agree to enter into this Termination of Lease Agreement;

NOW, THEREFORE, for and in consideration of One Hundred Dollars (\$100.00) the receipt and sufficiency of which is hereby acknowledged by the Parties, and of the representations of the parties above, and the terms and conditions as set forth in this Termination, and for other good and valuable consideration recited herein, the City and OIMO do hereby agree to keep, perform and observe the following provisions of this Termination.

Section 1. Recitals Incorporated. The Parties agree the recitals above are true and correct and are hereby incorporated into this Agreement as material terms.

Section 2. Immediate, Early Termination. The Parties hereby terminate the Warehouse 9 Lease effective as of the date first written above.

Section 3. City Possession of Leased Premises and Property. The Parties agree the Leased Premises and all improvements, fixtures, equipment and personal property thereon are now the exclusive property of the City.

Section 4. Payment Obligations Not Discharged. The Parties agree this termination of the Warehouse 9 Lease shall not discharge or relieve OIMO from timely payment of any rents, taxes, property taxes, fees, sums or amounts due under the Warehouse 9 Lease prior to termination, and the payment of any rents, taxes, property taxes, fees, charges, sums or amounts under any other lease between the parties or due to OIMO's past and current operations at the Port.

Section 5. No Refund. OIMO shall not be entitled to any refund of any rents, taxes, property taxes, fees, sums or amounts due under the Warehouse 9 Lease prior to termination, or any payment of any rents, taxes, property taxes, fees, charges, sums or amounts under any other lease between the parties or due to OIMO's past and current operations at the Port that OIMO has already paid to the City.

Section 6. Insurance and Indemnification. As a material term of this Termination agreement, OIMO represents and warrants to City that OIMO has provided all required liability insurance and property insurance coverage on the Leased Premises and improvements thereon pursuant to the Warehouse 9 Lease. Further OIMO covenants, warrants and attests that there exist no third party claims, demands or liens against it, the Leased Premises or improvements thereon, and that OIMO shall defend and indemnify the City against any and all such claims related to the Warehouse 9 Lease, any other lease between the parties or due to OIMO's past and current operations at the Port. OIMO shall remain liable and responsible for any and all claims and liabilities associated with the Warehouse 9 Lease arising prior to this Termination.

Section 7. No Dispute. Further, OIMO shall not, on behalf of itself as well as its parents, affiliates, lenders, associates, employees, contractors, agents, and all other entities connected or affiliated in any way with the Warehouse 9 Lease or its Termination herein, contest, dispute or legally challenge by any means and in any forum, any action by the City with respect to City

ownership and control of the Leased Premises and all improvements, fixtures, equipment and personal property thereon.

Section 8. OIMO Releases City. Immediately upon the effective termination as provided herein, OIMO automatically and irrevocably, without the need for any further instrument or documentation, forever releases, waives, and completely discharges City (including their agents, attorneys, employees, officials, successors and assigns) of and from any and all claims, controversies, demands, obligations, debts, liabilities, damages, losses, causes of action, disputes, appeals or other demands for relief or claims of liability, past, present or future, known or unknown, suspected or unsuspected, of any nature, character, type or description whatsoever (including but not limited to any claims for attorney's fees, interest or other costs), legal or equitable.

Section 9. Binding Agreement. This Termination shall bind and inure to the benefit of the successors of the respective parties hereto.

Section 10. No Third Party Beneficiaries. Nothing in this Termination, express or implied, is intended to confer upon any other person any rights or remedies of any nature whatsoever under or by reason of this Termination.

Section 11. Entire Agreement. The parties hereto understand and agree that this Termination contains the entire agreement and understanding between the City and OIMO. The parties understand and agree that neither party nor its agents have made any representations or promises with respect to this Termination except as expressly set forth herein, and that no claim or liability shall arise for any representations or promises not expressly stated in this Termination. Any other written or oral agreement regarding the Warehouse 9 Lease, this Termination or the Leased Premises is expressly nullified upon the execution of this Termination unless otherwise specifically provided herein.

Section 12. Amendment. This Termination may not be altered, changed or amended, except by written instrument signed by both parties hereto in the same formality as the execution of this Termination. No provision of this Termination shall be deemed to have been waived by City, unless such waiver be in writing signed by City and addressed to OIMO, nor shall any custom or practice which may grow up between the parties in the administration of the provisions hereof be construed to waive or lessen the right of City to insist upon the performance by OIMO in strict accordance with the terms hereof. The terms, provisions, covenants, and conditions contained in this Termination shall apply to, inure to the benefit of, and be binding upon the parties hereto, and upon their respective successors in interest and legal representatives, except as otherwise expressly provided herein.

Section 13. Counterparts. This Termination may be signed in any number of counterparts, each of which shall be deemed an original so long as it bears the signature of the authorized representatives of each party.

Section 14. Corporate Authorization. The undersigned officer of OIMO hereby personally warrants and certifies that OIMO is a corporation in good standing and is authorized to do business

in the State of Florida. The undersigned officer of OIMO hereby further personally warrants and certifies that he or she, as such officer, is authorized and empowered to bind the corporation to the terms of this Termination by his or her signature thereto. OIMO, as of the date of execution of this Termination, hereby represents and warrants to the City that it has the corporate power to enter into this Termination and to perform all acts required to be performed by OIMO and that the execution and delivery of this Termination have been duly authorized by all necessary corporate action.

Section 15. Prevailing Party Attorneys' Fees. The prevailing party in any action, claim or proceeding arising out of this Termination shall be entitled to attorney's fees and costs from the losing party.

Section 16. Rights and Remedies Cumulative. The rights and remedies of City hereunder shall be cumulative and shall be in addition to rights as otherwise provided at law or in equity, and failure on the part of City to exercise promptly any such rights afforded it by said laws shall not operate to forfeit any such rights.

Section 17. Non-Waiver of Immunity. The City enjoys sovereign immunity. Nothing contained in this Termination shall be construed as modifying, limiting, restricting or otherwise adversely affecting the sovereign immunity defenses and limitations available to the City.

Section 18. Severability. In the event any covenant, conditions or provision of this Termination is illegal, invalid or unenforceable by any court of competent jurisdiction, under present or future laws effective during the term of this Termination, such determination, then and in that event, will not materially prejudice the City as to rights or other obligations contained in the valid covenants, conditions or provision of this Termination that shall remain and continue in full force and effect.

Section 19. Venue. Venue for any claim, action or proceeding arising out of this Termination shall be Escambia County, Florida.

Section 20. State Law. The laws of the State of Florida shall be the law applied in resolution of any action, claim or other proceeding arising out of this Termination.

Section 21. Public Records. The parties acknowledge and agree to fulfill all obligations respecting required contract provisions in any contract entered into or amended after July 1, 2016, in full compliance pursuant to Section 119.0701, *Florida Statutes*, and obligations respecting termination of a contract for failure to provide public access to public records. The parties expressly agree specifically that the contracting parties hereto shall comply with the requirements within Attachment "A" attached hereto and incorporated by reference.

IN WITNESS WHEREOF, the parties have set their hands and seal the date first written above.

CITY OF PENSACOLA

By: _____
Ashton J. Hayward, III, Mayor

ATTEST:

Ericka L. Burnett, City Clerk

SEAL

Witness:

Witness:

OFFSHORE INLAND MARINE &
OILFIELD SERVICES, INC.

By: _____
President

Attest:

Corporate Secretary

Corporate Seal

Witness:

Witness:

Legal in form and valid as drawn:

Approved as to content:

City Attorney

Port Director

Attachment "A"

PUBLIC RECORDS: Consultant/Contractor/Vendor shall comply with Chapter 119, Florida Statutes. Specifically, Consultant/ Contractor/Vendor shall:

- A. Keep and maintain public records required by the City to perform the service.
- B. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following the completion of the Agreement if Consultant/ Contractor/Vendor does not transfer the records to the City.
- D. Upon completion of the Agreement, transfer, at no cost, to City, all public records in possession of Consultant/Contractor/Vendor or keep and maintain public records required by the City to perform the service. If Consultant/Contractor/Vendor transfers all public records to City upon completion of the Agreement, Consultant/ Contractor/Vendor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Consultant/Contractor/Vendor keeps and maintains public records upon completion of the Agreement, Consultant/Contractor/Vendor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request of the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

Failure by Consultant/Contractor/Vendor to comply with Chapter 119, Florida Statutes, shall be grounds for immediate unilateral cancellation of this Agreement by City.

IF CONSULTANT/CONTRACTOR/VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: THE OFFICE OF THE CITY ATTORNEY, (850) 435-1715, PUBLICRECORDS@CITYOFPENSACOLA.COM, 222 WEST MAIN STREET, PENSACOLA, FL 32502.