

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") is made on May 12, 2014, by and between THE CITY OF PENSACOLA, FLORIDA ("City"), with a mailing address of 222 West Main Street, Pensacola, Florida 32502 and FISH AND WILDLIFE CONSERVATION COMMISSION ("Commission"), with a mailing address of 620 South Meridian Street, Tallahassee, Florida 32399.

WHEREAS, City agrees to lease to Commission the property detailed in Attachment A ("Premises") for the purposes of building and maintaining the Florida Gulf Coast Marine Fisheries Hatchery/Enhancement Center ("Center"), as further described in Section 12.19 and Section 12.20 of the Deepwater Horizon Oil Spill Natural Resource Damage Assessment Draft Programmatic and Phase III Early Restoration Plan and Draft Early Restoration Programmatic Environmental Impact Statement dated December, 2013 ("Draft Phase III ERP/PEIS") attached hereto as Attachment B and incorporated herein by this reference, for the propagation of marine organisms, public education and outreach respecting natural marine resources, and a marine research component to include the Commission partnering in research with governmental, university or non-profit entities for the purpose of maintaining the project as an on-going concern.

NOW THEREFORE, for and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, and the mutual covenants and obligations set forth in this Lease, City and Commission do hereby agree as follows:

Section 1. Recitals. The recitals above are true and correct, are material inducements to entering into this Lease Agreement, and are hereby made a part of this Lease.

Section 2. Leased Premises. City leases to Commission, and Commission leases from City, the Premises consisting of approximately 44.45 acres, legally described as LTS 14 TO 22 DONL NO BLK 44 DONELSON AND 19 ARPENT AND ALL BLKS 61 TO 69 86 87 108 109 127 131 248 WATERFRONT OR 829 P 382 CONSERVATION EASEMENT OR 6417 P 1666 SEC 43/44 T 2S R 30 CA 98, Escambia County Property Appraiser Parcel Identification Number 000S009070014044, as aerially depicted on Attachment A hereto.

Section 3. Development of the Leased Premises. In deciding to enter the Lease, the City has materially relied on the proposed Center and the public waterfront access and public recreation facilities as described in the Draft Phase III ERP/PEIS attached hereto as Attachment B. The Commission shall use the Premises for the sole purpose of creation and operation of the Center and the creation and operation of the public waterfront access, public education and outreach respecting marine resources, marine research component, and public recreation facilities as contemplated in the Draft Phase III ERP/PEIS. Any improvements on the Premises shall be subject to the development plan review and approval procedures specified for the Waterfront Redevelopment District in the City's land development code. Title to the improvements shall vest with the City upon termination or expiration of the lease. Prior to commencing construction

of any improvements on the Premises, the Commission shall submit to the City for the City's review and prior approval the design of the Center, and the public waterfront access, public education and outreach respecting marine resources, marine research component, and public recreation facilities. The Commission shall not construct any additional improvements or alterations or alter or add to any exterior improvements without prior written consent of City.

Section 4. "As-Is" Condition. The Premises are being leased by City to Commission "as is" and City is not obligated whatsoever with regard to development of the Premises, nor development, construction, operation, maintenance or other activities associated with the Center, the public waterfront access, public education and outreach respecting marine resources, marine research component, or the public recreation facilities. Commission shall make any changes and improvements on the Premises, with prior City review pursuant to this Lease, as is necessary for the creation and operation of the Center, and the additional public waterfront access, public education and outreach respecting marine resources, marine research component, and public recreation facilities on the Premises, including but not limited to removal of debris, contouring of the site to facilitate construction of buildings, ponds, and man-made wetlands, and delineation of protected plant communities on site to ensure their protection during construction. Neither the City, nor the City's officers, employees or agents have made any representations or promises whatsoever with respect to the Premises or services to be provided by the City in connection with their use.

Section 5. Term. The term of this Lease ("Term") shall begin on the full execution of this Lease and shall expire thirty (30) years later, unless terminated sooner pursuant to the provisions of this Lease.

Section 6. Rent. During the Term, Commission shall pay to City annual rent in the amount of Fifty Dollars (\$50.00) per year (the "Rent"). The Commission is solely responsible for full and prompt payment of the Rent.

Section 7. Project Costs and Operating Expenses. The Commission shall be responsible for all expenses relating to the development, construction, operation, maintenance, insurance, repair, replacement, and upkeep of the Premises, including any improvements on the Premises, and including, but not limited to such unexpected expenses as cost overruns or remediation, for the full term of Lease.

Section 8. Quiet Enjoyment and Right of Use. Commission shall have the right of ingress and egress to, from and upon the Premises for all purposes necessary to the full quiet enjoyment by Commission of the rights conveyed herein. It is the intent of the Commission to create opportunities for public use of and access to the Premises in partnership with the City, and in furtherance of such the City reserves the right to enter into separate agreements with the Commission to provide waterfront recreational facilities, public education and outreach respecting marine resources, the marine research component, and public access compatible with the Center and permitted use of this Agreement. Parking and traffic management activities will be coordinated with the City, upon mutual agreement of the parties, to ensure appropriate access while minimizing potential negative impacts on the community.

Section 9. Memorandum of Understanding. Additional details regarding the operation of the Center will be addressed in a subsequent memorandum of understanding between the Commission and the City, to be completed prior to operations commencing on the Premises ("Memorandum of Understanding").

Section 10. Unauthorized Use. Commission shall, through its agents and employees, prevent the unauthorized use of the Premises or any use thereof not in conformance with this Lease. Authorized use includes activities related to the creation and operation of the Center, the public waterfront access and public recreation facilities, and associated ponds and wetlands, for the propagation of marine organisms, public education and outreach respecting natural marine resources, and a marine research component to include the Commission partnering in research with governmental, university or non-profit entities for the purpose of maintaining the project as an on-going concern.

Section 11. Right of Inspection. City or its duly authorized agents shall have the right, upon reasonable notice, to inspect the Premises and the works and operations thereon of Commission in any matter pertaining to this Lease.

Section 12. Surrender of Premises. Upon termination or expiration of this Lease, Commission shall surrender the Premises to City. In the event no further use of the Premises or any part thereof is needed by the Commission, the Commission shall notify the City in writing of the Commission's request to release all or any part of the Premises. Such written request shall be made to the City of Pensacola, City Administrator, P.O. Box 12910, Pensacola, Florida 32521, at least six (6) months prior to the release of all or any part of the Premises. Release shall only be valid through execution of a release of lease instrument in the same formality as this Lease. Execution of the release shall be in the mutual discretion of the parties. Upon release of all or any part of the Premises or upon termination or expiration of this Lease, all fixed improvements, including both physical structures and modifications of the Premises, shall become the property of City, unless the City, in the City's sole discretion, determines that best use for the Premises would include removal of the fixed improvements and in such case the Commission shall remove the fixed improvements at the Commission's sole cost and expense within six (6) months. Unless otherwise agreed to by the Commission and the City, removable equipment and removable improvements placed on Premises by Commission, which do not become a permanent part of the Premises will remain the property of Commission to be removed by Commission at the Commission's sole expense upon termination of this Lease, unless the City, in the City's sole discretion, determines that the best use for the Premises would include continuing similar operations that necessitate use of the removable equipment and removable improvements and in such case the Commission shall forfeit the removable equipment and removable improvements to the City at no cost and such shall be deemed as owned by the City.

Section 13. No Assignment. Commission shall not assign or otherwise transfer any of the rights or obligations under this Lease, assign or otherwise transfer any interest in or to the Premises or any improvement located thereon, without prior written consent of the City.

Section 14. Subletting. Commission shall not sublease any interest in or to the Premises or any improvement located thereon to any third party without the prior written consent of the City, which consent shall not be unreasonably withheld. No sublease will release the Commission

from any of Commission's obligations or responsibilities under this Lease.

Section 15. Net Lease. Notwithstanding anything contained herein to the contrary, the parties agree that this Lease shall be construed as a "net lease" whereby the Commission shall be solely responsible for any expense or cost relating to the Premises, this Lease, or the Commission's use of the Premises during the Term of this Lease, including, without limitation: insurance; utilities; repairs, replacement and maintenance; and security requirements.

Section 16. Utilities. The Commission shall be responsible for procuring all utility services including, but not limited to, water service, sewer service, electrical service, gas service, janitorial service, trash removal service, data communication service and telephone service. The Commission shall be responsible for procuring all utility services necessary for Commission's operation on the Premises and shall be responsible for promptly paying those persons or entities furnishing or providing the services. Construction, installation and maintenance of any improvements to utility infrastructure required to support the Commission's operations shall be at the sole cost and expense of the Commission.

Section 17. Environmental Laws. Commission shall comply with all federal, state, municipal and county laws, statutes, ordinances, codes, administrative orders, rules and regulations and permits relating to environmental matters, storm water, and other pollution control applicable to the construction, occupancy, use and operation of the Premises ("Environmental Laws").

Section 18. Events of Default. Any of the following events shall constitute an "Event of Default" of this Lease by the Commission:

- (i) If the Commission fails to observe, keep or perform any of the other terms, covenants, agreements or conditions of this Lease for a period of ten (10) business days after receipt of written notice from City; or
- (ii) If any act occurs which deprives the Commission permanently of the rights, powers and privileges necessary for the proper conduct and operation of the Center, the public waterfront access, public education and outreach respecting marine resources, marine research component, or public recreation; or
- (iii) If at any time the Commission abandons and ceases to use the Premises for a period of ninety (90) consecutive days, except when such abandonment and cessation is due to *force majeure*; or
- (iv) If at any time the Commission uses or permits the Premises to be used for any purpose which has not been authorized by this Lease; or
- (v) If the Commission uses or permits the use of the Premises in violation of any law, rule or regulation; or
- (vi) If the Commission's interest under this Lease is being modified or altered by any assignment or unauthorized subletting or by operation of law; or
- (vii) Commission's failure to take occupancy of the Premises when same is tendered by City to Commission.

Section 19. Remedies Upon Default. Upon the happening and/or during the continuance of any Event of Default specified above, the City will provide written notice to the Commission identifying the specific Event of Default ("Notice of Default Event"). The Commission shall

have thirty (30) days following receipt of such written notice to correct the Event of Default. If said Default remains and/or is not corrected within this time period, the City may then, at its sole and absolute discretion, avail itself of any remedy provided by law and/or equity, including without limitation, any one or more of the following remedies:

- (i) Without initially terminating this Lease, City may reenter and take possession of the Premises, and the Commission shall continue to timely make such payments as required under this Lease. The City may thereafter enter into a sale or new lease of the Premises with any party, or operate the same on its own behalf. Immediately prior to commencement of the City's operation of the Premises or the effective date of the new lease, as applicable, the City shall notify the Commission of such event;
- (ii) The City may immediately terminate this Lease and enter the Premises and exclude the Commission from possession of the Premises, declare all rents, fees, taxes and other charges and amounts which are then due and payable and costs of the City to prepare the Premises for reletting or sale to be immediately due and payable; and
- (iii) The City may take whatever other action at law or in equity that City considers to be necessary or desirable in order to enforce performance and observance of any obligation, agreement or covenant of the Commission under this Lease, or may exercise all rights and remedies that are available under Florida and federal law. No method of entry authorized herein and made by the City shall cause or constitute a default of this Lease or be deemed to constitute an interference with the possession or use of the Premises by the Tenant if made in accordance with the terms of this Lease and applicable law.

Section 20. Performance Schedule. Time is of the essence of this Lease, and in case the Commission shall fail to perform the covenants on its part to be performed at the time fixed for the performance of such respective covenants by the provisions of this Lease, City may declare Tenant to be in default of such Lease and immediately terminate the Lease. Barring any unforeseen delays due to site conditions or Force Majeure as defined in Section 36 below, Commission shall commence construction of the Center, the public waterfront access and public recreation facilities no later than three (3) years following the execution date of this Lease. Should Commission fail to commence construction, or become reasonably aware of the inability to commence construction, on or before three (3) years of the execution date of this Lease, the Commission hereby expressly agrees to immediately forfeit all property interests and any rights under this Lease and occupation of the Premises, and the Lease shall be void. Commission shall complete construction of the Center, the public waterfront access and public recreation facilities no later than three (3) years of the date of commencement of construction. Should Commission fail to complete construction, or become reasonably aware of the inability to complete construction, on or before three (3) years of the date of commencement of construction, the Commission hereby expressly agrees to immediately forfeit all property interests and any rights under this Lease and occupation of the Premises, and the Lease shall be void.

Section 21. Notices. Notices by City and Commission shall be given to each other at the following addresses:

City:

City Administrator
P.O. Box 12910
Pensacola, Florida 32521

Commission:

Fish And Wildlife Conservation Commission
100 Eighth Avenue SE
St. Petersburg, Florida 33701-5020
Attn: Gil McRae, Director, Florida Fish and Wildlife Research Institute

Section 22. Compliance with Laws. Commission agrees that this Lease is contingent upon and subject to Commission obtaining all applicable permits and complying with all applicable local, State or Federal permits, regulations, ordinances, rules and laws.

Section 23. Governing Law. This Lease shall be governed by an interpreted according to the laws of the State of Florida.

Section 24. No Waiver of Breach. The failure of either party to insist in any one or more instances upon strict performance of anyone or more of the covenants, terms and conditions of this Lease shall not be construed as a waiver of such covenants, terms, and conditions, but the same shall continue in full force and effect, and no waiver of either party of any one of the provisions hereof shall in any event be deemed to have been made unless the waiver is set forth in writing, signed by the waiving party.

Section 25. Authority. Each person executing this Lease on behalf of City and Commission, respectively, warrants and represents that the entity for whom he or she is acting has duly authorized the transactions contemplated herein and the executing this Lease by him or her, and that upon its execution, this Lease shall constitute a valid and binding obligation of the party on whose behalf it is so executed.

Section 26. Insurance. The State of Florida is self-insured for general liability and property insurance.

HOLD HARMLESS. The parties hereto, their respective elected officials, officers, and employees shall not be deemed to assume any liability for the acts, omissions, or negligence of the other party. The City of Pensacola, as a local governmental body of the State of Florida as defined in §768.28, Florida Statutes, agrees to be fully responsible for its negligent acts or omissions or tortious acts which result in claims or suits against the Commission and agrees to be fully liable for any damages proximately caused by said acts or omissions. The Commission, as a subdivision of the State of Florida as defined in §768.28, Florida Statutes, agrees to be fully responsible for its negligent acts or omissions or tortious acts which result in claims or suits against the City and agrees to be fully liable for any damages caused by said acts or omissions. Nothing herein is intended to serve as a waiver of sovereign immunity by the City or the Commission and nothing herein shall be construed as consent by the City or the Commission to be sued by third parties in any matter arising out of this Lease.

Section 27. Damages. In the event the Premises are damaged or destroyed due to fire, flood, hurricane, force majeure event or other disaster, casualty or cause whether or not due to the fault of Commission, its officers, employees, contractors, agents, or invitees, Commission shall be responsible for all necessary repairs or reconstruction and shall undertake all such repairs or reconstruction as expediently as practical.

Repair, reconstruction or replacement of any and all improvements installed, constructed or placed by or for the benefit of Commission shall be the responsibility of the Commission. Additionally, the City shall have no liability or responsibility for any damage to or loss of any gear, equipment, supplies, materials or other product owned by Commission or being stored at any facility assigned for the use and benefit of the Commission on behalf of a customer, client or invitee of the Commission.

In the event that the Premises should be totally destroyed by fire, hurricane or other casualty, or in the event the Premises should be so damaged that rebuilding or repairs cannot be completed within one hundred eighty (180) days after the date of such damage, either City or Commission may, at its option, by written notice to the other given not more than thirty (30) days after the date of such fire or other casualty, terminate this Lease.

Section 28. No Partnership. The parties hereto agree that the Commission not subject to the direction or control of the City. This Lease shall not be construed so as to establish a joint venture or partnership between the parties hereto.

Section 29. No Individual Liability. No City official, officer, agent, director, employee or representative shall be held contractually or personally liable under this Lease because of any breach of the Lease or operation of the Lease.

Section 30. Permits and Licenses. The Commission shall be responsible for obtaining all local, state and federal permits, approvals, and/or licenses as may be necessary for it to operate the Premises according to the terms of this Lease. The Commission shall maintain, in accordance with applicable law, permits, approvals and licenses it has obtained throughout the Term and shall submit copies to the City if requested to do so at no cost to the City.

Section 31. Compliance with Government. The Commission shall comply with and shall cause its officers, employees, agents, invitees, guests, contractors and any other persons over whom it has control (including, but not limited to all persons invited or welcomed by the Commission for any purpose) to comply with all applicable municipal, state and federal laws, ordinances, and rules and regulations.

Section 32. No Third Party Beneficiaries. Nothing in this Lease, 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 Lease.

Section 33. Entire Agreement. The parties hereto understand and agree that this Lease contains the entire agreement and understanding between the parties for the use of the Premises by the Commission. The parties understand and agree that neither party nor its agents have made any representations or promises with respect to this Lease except as expressly set forth herein;

and that no claim or liability shall arise for any representations or promises not expressly stated in this Lease. Any other written or oral agreement regarding the Premises is expressly nullified upon the execution of this Lease unless otherwise specifically provided herein.

Section 34. Amendments. This Lease 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 Lease. No provision of this Lease shall be deemed to have been waived by City, unless such waiver be in writing signed by City and addressed to Commission, 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 Commission in strict accordance with the terms hereof. The terms, provisions, covenants, and conditions contained in this Lease 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 35. Counterparts. This Lease 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 36. Force Majeure. Neither Party shall be liable to the other for any delay or failure to perform under this Agreement if such delay or failure is neither the fault nor the negligence of the Party or its employees or agents and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Party's control, or for any of the foregoing that affects subcontractors or suppliers if no alternate source of supply is available.

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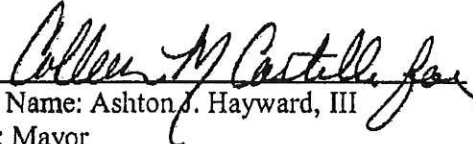
IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

CITY:

THE CITY OF PENSACOLA

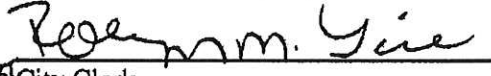
Witnesses:


Print Name: Rebecca Madigan

By: 
Print Name: Ashton J. Hayward, III
Title: Mayor

ATTEST:

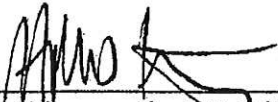

Print Name: Latasha Buchanan


City Clerk

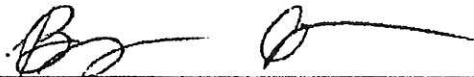
COMMISSION:

FISH AND WILDLIFE CONSERVATION
COMMISSION

Witnesses:


Print Name: Holly Kinsler


By: 
Print Name: ERIC SUTTON
Title: ASSISTANT EXECUTIVE DIRECTOR


Print Name: Becky Owens

ATTEST:





APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

Commission Attorney

ATTACHMENT A

PREMISES

ATTACHMENT B

Draft Phase III ERP/PEIS