

## AMENDMENT NO. 1 TO LEASE AGREEMENT

THIS AMENDMENT NO 1 (“Amendment No. 1”), to the Lease Agreement for leased premises in Warehouse 1 located at the City of Pensacola Port of Pensacola (“Port”) dated June 17, 2010 (“Original Agreement”), is made and entered into this \_\_\_ day of \_\_\_\_\_, 2017, by and between the City of Pensacola (“City” or “Lessor”) and Offshore Inland Marine & Oilfield Services, Inc. (“Lessee”).

### Recitals:

WHEREAS, City and Lessee entered into the Original Agreement, incorporated herein by this reference, to lease space in the southern half (1/2) of Warehouse 1 and associated berth apron and open storage area located at the Port for the purposes described therein ; and

WHEREAS, Lessee has outstanding amounts owing to the City, and City and Lessee have determined that it is in their mutual best interests for Lessee and City agree to a payment plan respecting such outstanding amounts; and

WHEREAS, the parties find other terms and conditions of the Original Agreement require amendment; and

WHEREAS, the parties now desire to amend the Original Agreement;

NOW, THEREFORE, in consideration of One Hundred Dollars (\$100.00) the receipt and sufficiency of which are hereby acknowledged by the parties, and of the mutual covenants and agreements herein contained, it is agreed that the Original Agreement shall be hereby amended as follows:

1. The Recitals above are true and correct and are hereby incorporated as a material part to this Amendment No. 1.
2. Section 4 of the Original Agreement is hereby amended to add the following fourth (4<sup>th</sup>) paragraph:

Lessee expressly agrees that no later than the first (1<sup>st</sup>) day of the first (1<sup>st</sup>) month following completion of the Lessor improvements contemplated in Section 9(b) herein, such status of completion of improvements to be the sole discretion of the Lessor and to be documented by written notice of completion by the Port Director, the Leased Premises will on that date expand to include all of Warehouse 1, specifically adding the northern half (1/2) of Warehouse 1 to the definition of Leased Premises, and on that date Lessee shall be obligated to all rental rates pursuant to Section 6 applied to the entire Warehouse 1 Leased Premises and such shall be due and owing by Lessee to Lessor.

3. Section 5 of the Original Agreement is deleted in its entirety.
4. New Section 5 of the Original Agreement hereby created in its entirety to read:

## **5. OUTSTANDING AMOUNT PAYMENT PLAN.**

(a) Lessee acknowledges and agrees that as of March 15, 2017 Lessee failed to pay past-due outstanding amounts in dockage or vessel fees and related charges of Two Hundred Sixty Nine Thousand Two Hundred and Forty Seven Dollars (\$269,247.00) immediately owing to the City, and in lieu of default upon request from Lessee, the City will agree to a payment plan respecting such outstanding amounts as further described in this Section 5(a). Lessee agrees the unwanted continued existence of these outstanding amounts are material considerations in continuing this Agreement between the parties. In addition to timely payment of monthly rents, utility, fees, taxes, charges, payments, or other monetary obligations under this Agreement or any other agreement, or owing as a result of Lessee's operations at the Port, Lessee shall continue to pay Ten Thousand Dollars (\$10,000.00) per month, no later than the fifteenth (15<sup>th</sup>) day of each month. Lessee acknowledges and agrees that in the event of failure to make such monthly payment as provided herein, City Council may, in City Council's sole discretion, terminate the lease, effective upon City Council action to terminate the lease. Lessee shall, within no more than thirty (30) days of the City Council action to terminate the lease, vacate the Port and surrender all of the Leased Premises and all improvements, fixtures, and property thereon, to become the exclusive property of the City, and ensure that all such land and property shall be in good condition.

Further, Lessee shall remit to the City a final balloon payment for the entire outstanding amount, by no later than September 30, 2017. Lessee shall, on or before September 1, 2017, provide to City written notification of any inability or intention not to make the final balloon payment in full on September 30, 2017. Upon Lessee's delivery of said notice, if any, the City Council may, in City Council's sole discretion, terminate the lease or allow renegotiation as to payment of outstanding amounts. In the event of termination after notification of non-payment as described herein, Lessee shall, within no more than thirty (30) days of the City Council action to terminate the lease, vacate the Port and surrender all of the Leased Premises and all improvements, fixtures, and property thereon, to become the exclusive property of the City. Lessee acknowledges and agrees that in the event of failure to provide the notice as described herein and failure to make such balloon payment as provided herein, City Council may, in City Council's sole discretion, terminate the lease, effective upon City Council action to terminate the lease. In that event of failure to provide notice and failure to make such balloon payment, Lessee shall, within no more than thirty (30) days of the City Council action to terminate the lease, vacate the Port and surrender all of the Leased Premises and all improvements, fixtures, and property thereon, to become the exclusive property of the City.

No interest shall accrue on the outstanding balance through September 30, 2017. Beginning October 1, 2017, interest shall accrue on any remaining outstanding balance due under this section 5(a) at the rate of twelve percent (12%) per annum as otherwise further described and calculated in the Port Tariff.

(b) Lessee further acknowledges and agrees that as of March 15, 2017 Lessee failed to

pay past-due outstanding amounts in dockage or vessel fees and related charges in the amount of Three Hundred Sixty Three Thousand Dollars (\$363,000.00) owing to the City. The parties acknowledge and agree that reimbursement of certain project related expenses incurred by Lessee currently remains in question and, that by mutual agreement, this \$363,000.00 has been held in abeyance pending completion of the grant project. Therefore, the parties agree that final disposition of the \$363,000.00 outstanding balance, and other credits that may or may not be due Lessee, will be addressed as expeditiously as practicable following completion of the grant project improvements and final closeout of the grant. Such resolution of reimbursement shall be negotiated by the parties and presented to City Council for final approval. No interest shall accrue on the amount held in abeyance under this section 5(b) until the grant project is completed and upon the vote of the City Council to charge interest at a rate not higher than the Port Tariff rate.

5. Section 6 of the Original Agreement is hereby amended in its entirety to read:

**6. RENT.**

(a) Effective upon the Commencement Date of this Agreement, and as compensation for the exclusive use of the facilities described in Section 4 above, Lessee shall pay to Lessor rent in the amount of One Hundred Four Thousand Four Hundred Dollars (\$104,400.00) per year payable in twelve (12) equal monthly payments of Eight Thousand Seven Hundred Dollars (\$8,700.00) per month, plus sales tax, due and payable in advance on the first (1<sup>st</sup>) day of each month, and such rental rates subject to the increases as stated in the renewal terms in Section 2 above.

(b) Rental rates for Lessee's expansion of its Leased Premises to include the entirety of Warehouse 1, expanding into the northern half (1/2) of Warehouse 1, whether undertaken in accordance with the terms of Section 4, Section 8 or Section 9(b) of this Agreement, shall be at the applicable per square foot rental rate then being paid by Lessee multiplied by the total number of square feet of Lessee's expanded Leased Premises with the total of Warehouse included, and inclusive of revision or expansion thereof, plus sales tax, for the entirety of Warehouse 1 due and payable in advance on the first (1<sup>st</sup>) day of each month, and such rental rates subject to the increases as stated in the renewal terms in Section 2 above.

(c) Any additional space, whether taken by Lessee in accordance with Section 4, Section 8 or Section 9(b) of this Agreement or any other additional space occupied by Lessee, shall immediately be incorporated into, and considered part of, Lessee's Leased Premises, and all terms and conditions of this Agreement shall be at the applicable per square foot rental rate then being paid by Lessee multiplied by the total number of square feet of Lessee's Leased Premises, due and payable in advance on the first (1<sup>st</sup>) day of each month, and such rental rates subject to the increases as stated in the renewal terms in Section 2 above.

6. Section 8 of the Original Agreement is hereby amended in its entirety to read:

**8. EXPANSION.** In the event Lessee desires to expand its Warehouse 1 leasehold into portions of the northern half (1/2) of Warehouse 1 prior to completion of the improvements as addressed in Section 9(b) below, contingent upon full satisfaction of outstanding amounts in Section 5 above, Lessee may request, in advance, in writing to the Port Director, such expansion on a temporary or permanent basis, the grant of any such expansion to be made in the sole discretion of Lessor. The City Administrator, in consultation with the Port Director, shall have the sole discretion to determine whether or not to grant any expansion request. If granted, this Lease shall be immediately amended by simple letter of agreement between the parties hereto to reflect the revised boundaries of the Leased Premises, with the City Administrator having full authority to sign any such agreement.

7. Section 9 of the Original Agreement is hereby amended to add the following provisions immediately after the fifth (5th) paragraph:

**(b) Lessor Improvements.**

The parties acknowledge the Lessor contemplates the construction of certain improvements pursuant to FDOT Transportation Economic Development Project Fund Agreement FPN# 422354-2-94-01 (“Grant”), attached hereto as Exhibit B and incorporated herein by this reference, provided however, only to the extent such Lessor improvements may be designed and constructed by Lessor at a cost not to exceed the total amount of project funding provided by the Grant.

In the event the desired improvements are deemed, by the Port Director with the prior consent of the City Chief Financial Officer, to exceed Grant budgetary parameters, the Port Director with the prior consent of the City Chief Financial Officer, in their sole discretion may either terminate such improvements, evaluate reduction in project scope and design to assess feasibility of improvements, or, contingent upon full satisfaction of outstanding amounts in Section 5 above, permit Lessee to pay, at Lessee’s sole cost and expense, in advance of any construction, one hundred percent (100%) of any cost in excess of budgetary parameters and any associated costs.

As provided in Section 4 above and Section 6(b) above, upon completion of Lessor’s improvements in this Section 9(b), Lessee shall occupy and pay rent on the total space of Warehouse 1. Upon occupation of Warehouse 1 hereunder, Lessee shall simultaneously become solely responsible, at Lessee’s sole cost and expense, for maintaining the improvement in strict accordance with all manufacturer guidelines, any applicable Grant guidelines, and to the satisfaction of Lessor. Lessor may, in Lessor’s discretion, inspect improvements as Lessor deems necessary.

Notwithstanding anything in this Agreement to the contrary, title to improvements in this Section 9(b) shall vest in Lessor upon completion and shall in no event be removed by Lessee.

8. Section 14 of the Original Agreement is hereby amended in its entirety to read:

**14. DOCKAGE FEES.** With the exception of the fees addressed in Section 5 above, unless otherwise requested on a case-by-case basis by Lessee and approved by Lessor, dockage fees assessed against vessels calling at Lessee's facility shall be billed to and paid by Lessee. The dockage rate for all vessels calling at Lessee's facility shall be sixty percent (60%) of the applicable full Port Tariff rates then in effect, or any applicable frequency or volume incentive rate requested by Lessee and approved by the Port Director in accordance with applicable provisions of the Port Tariff.

9. Section 15 of the Original Agreement is hereby amended in its entirety to read:

**15. VESSEL SECURITY AND HARBOR FEES.** With the exception of the fees addressed in Section 5 above, unless otherwise requested on a case-by-case basis by Lessee and approved by Lessor, vessel security and harbor fees assessed against vessels calling at Lessee's facility shall be billed to and paid by Lessee. Vessel security and harbor fees shall be assessed at one hundred percent (100%) of the Port Tariff rates then in effect.

10. Section 20 of the Original Agreement is hereby amended in its entirety to read:

**20. UTILITIES.** For any required utilities, Lessee shall arrange for direct billing with the appropriate utility provider. If direct billing is not possible due to the placement or routing of utility infrastructure, Lessor and Lessee shall develop a mutually agreeable methodology by which the Lessor will bill the Lessee its pro-rata share of those utilities. Construction, installation and maintenance of any improvements to utility infrastructure required to support Lessee's operations shall be at the sole cost and expense of Lessee, other than construction of any utility infrastructure completed under Section 9(b) above. This stipulation does not apply to the provision of potable water to vessels, which is a service provided by the Port of Pensacola, Operations Division. Provision of potable water to vessels must be requested in advance in accordance with Port Tariff Item 440 and all applicable fees as expressed in Port Tariff Item 440 and Port Tariff Item 442 will be assessed to the party responsible for payment of vessel fees as described in Section 14 and 15 of this Agreement.

11. Section 21 of the Original Agreement is hereby amended in its entirety to read:

**21. MAINTENANCE.** Lessee shall maintain the leasehold improvements of whatever nature situated on the Leased Premises at its own expense. Lessee shall at all times maintain the Leased Premises in a safe, neat and orderly manner; free from trash, debris or other unsafe, unsightly or unsanitary matter. Should Lessee fail to maintain the Leased Premises in a safe, neat and orderly manner, the Lessor reserves the right to intervene and resolve such matters after a period of seventy-two (72) hours. All costs for such intervention by the Lessor will be the responsibility of Lessee, at Lessee's sole cost and expense, pursuant to the Port of Pensacola Terminal Tariff. All other maintenance, including maintenance of any and all improvements constructed or placed by the Lessee, shall be the responsibility of the Lessee, at Lessee's sole cost and expense.

Subject to the performance of Lessee's obligations under Paragraph 22, Paragraph 23, and this Paragraph 21, Lessor agrees to maintain the Leased Premises, supporting improvements and infrastructure not under Lease by Lessee, and surrounding areas, (including access, loading and parking improvements and areas) in a good state of repair and in a safe condition at its own expense. Lessor's obligation to maintain the Leased Warehouse Area shall be limited to major structural components, including but not necessarily limited to those items listed in Paragraph 23. All other maintenance, including maintenance of any and all improvements constructed by the Lessee, shall be the responsibility of the Lessee. In addition, Lessor shall cause the Port of Pensacola harbor and shipping channel to have and maintain the minimum draft depth of 33 feet. Lessor shall maintain all berths, bulkheads, and fender systems.

With the exception of improvements pursuant to Section 9(b) above, Lessee has the right to make any and all repairs to the Leased Premises or the supporting improvements that are the responsibility of Lessor to correct conditions that immediately and significantly threaten its leasehold improvements, warehouse contents, or operations thereof. Lessee shall notify Lessor of any such intended repair action at least fifteen (15) days prior to the work being performed unless said work must be performed immediately to address an emergency situation (i.e., to prevent the threat of imminent property damage or personal injury or a material interruption of Lessee's business operations), in which event Lessee may perform such work immediately without notice or expiration of a waiting period (but Lessee shall notify Lessor of such repair work as soon as practicable following initiation of emergency repair efforts). Notwithstanding the foregoing, in no event shall Lessee have the right to proceed with work until approved by the Port Director. This provision will not be exercised unreasonably by Lessor or Lessee, but is intended to allow Lessee to protect the substantial investment being made in the leasehold improvements and Lessee's business operation. If Lessee undertakes repairs that are the responsibility of Lessor, upon approval of Lessor, Lessor shall reimburse Lessee for the reasonable and necessary costs and expenses incurred by Lessee therefore.

12. Section 23 of the Original Agreement is hereby amended in its entirety to read:

**23. REPRESENTATIONS CONCERNING CONDITION.** Lessor warrants and represents that the real property of the Leased Premises, and excepting any improvements under Section 9 above, are in good and serviceable condition and in compliance with all applicable laws, codes and regulations with respect to all major structural components including, but not limited to, the following:

- (a) roof and structural components thereof
- (b) exterior walls and structural components thereof
- (c) gutters/drains/downspouts
- (d) plumbing, drains and storm drains
- (e) basic electrical supply and distribution
- (f) foundation and loading docks
- (g) doors (personnel and cargo)

13. Intentionally omitted.

14. Intentionally Omitted.

15. Section 38 of the Original Agreement is hereby amended in its entirety to read:

**38. NOTICES.** Any notices required by this Lease Agreement or by law to be sent to Lessor shall be sufficient if transmitted by personal delivery, nationally recognized overnight delivery service (such as Federal Express Corporation or UPS), or certified mail, return receipt requested, addressed to Lessor as follows:

Port Director  
Port of Pensacola  
700 South Barracks Street  
Pensacola, Florida 32502

with a copy to:  
City of Pensacola  
Attn: City Administrator  
222 W. Main Street  
Pensacola, Florida 32502

Any notices required by this Lease Agreement or by law to be sent to Lessee shall be sufficient if transmitted by personal delivery, nationally recognized overnight delivery service (such as Federal Express Corporation or UPS), or certified mail, return receipt requested, addressed to Lessee as follows:

Chief Financial Officer  
Offshore Inland Marine & Oilfield Services  
640 S. Barracks St.  
Pensacola, FL 32502

Either party may change the above address by providing 10 days advance written notice to the other party.

16. Section 39 of the Original Agreement is hereby amended in its entirety to read:

**39. ADMINISTRATION OF AGREEMENT.** The Port Director shall serve as administrator of this Agreement on behalf of the Lessor. Administrator of this Agreement on behalf of the Lessee shall be the Lessee's Chief Financial Officer.

17. Section 41 of the Original Agreement is hereby amended in its entirety to read:

**41. TAXES.** During the term of this Agreement, Lessee shall be responsible for all taxes and assessments levied on the Leased Premises and improvements, including all

improvements under Section 9 above, regardless of whether Lessee or Lessor is billed.

18. Intentionally Omitted.

19. New Section 48 of the Original Agreement is hereby created to read:

**48. 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.

20. New Attachment A to the Original Agreement is hereby created to read:

*(attached hereto as Attachment A to this Amendment No. 1)*

21. The remainder of the Agreement not amended shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 1 to the Original Agreement.

**CITY OF PENSACOLA, FLORIDA**

**OFFSHORE INLAND & MARINE  
OILFIELD SERVICES, INC.**

\_\_\_\_\_  
Mayor, Ashton J. Hayward, III

Attest:

By \_\_\_\_\_  
President

\_\_\_\_\_  
City Clerk, Ericka L. Burnett

Attest:

SEAL

By: \_\_\_\_\_  
Corporate Secretary

(SEAL)

Witnesses:

Witnesses:



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Legal in form and valid as drawn:

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City Attorney

Approved As To Substance:

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Department Director/Division Head

**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](mailto:PUBLICRECORDS@CITYOFPENSACOLA.COM), 222 WEST MAIN STREET, PENSACOLA, FL 32502.**