

**DEVELOPMENT AGREEMENT  
(Jacksonville Naval Museum)**

**THIS DEVELOPMENT AGREEMENT (“Agreement”)**, is entered into on this \_\_\_ day of \_\_\_\_\_, 2023 (“**Effective Date**”), by and between the **DOWNTOWN INVESTMENT AUTHORITY (“DIA”)** on behalf of the City of Jacksonville, a Florida municipal corporation, and **JACKSONVILLE HISTORIC NAVAL SHIP ASSOCIATION, INC.**, a Florida non-profit corporation (the “**Association**”).

**RECITALS**

**WHEREAS**, the City of Jacksonville (the “**City**”) owns certain uplands (the “**Upland Area**”) and certain submerged lands (the “**Submerged Lands Area**”) adjacent to the pier commonly known as Pier 1 (“**Pier 1**”), all as more particularly described on **Exhibit A** and located along the north bank of the St. Johns River in downtown Jacksonville, Duval County, Florida, on property commonly known as the “**Shipyards**”; and

**WHEREAS**, the Association was organized in 2008 as a volunteer-based non-profit Florida corporation exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, as amended, and was created to excite, inspire, educate and entertain the general public, to create a venue dedicated to the mission, memory and men of the Gearing-class destroyers, and to promote the role of the U.S. Navy in securing a free and safe world; and

**WHEREAS**, the Association has previously obtained ownership and possession of the retired naval vessel USS Orleck (DD-886) (the “**Vessel**”) and has relocated the Vessel to a temporary mooring site on the Northbank of the St. Johns River in Downtown Jacksonville;

**WHEREAS**, the Association plans to renovate, maintain and operate the Vessel as a Downtown floating museum (“**Ship Museum**”), open to the public on the Vessel moored in the Submerged Lands Area (collectively with the construction of the Improvements, the “**Project**”);

**WHEREAS**, the Association’s operation of the Ship Museum will promote and operate educational and recreational programs and provide economic benefits to Jacksonville; and

**WHEREAS**, the DIA believes that Project will be beneficial to the citizens of Jacksonville and the Jacksonville Downtown area and pursuant to DIA Resolution 2023-01-02 and Ordinance 2023-\_\_\_-E, the DIA desires to assist the Association with the Project by entering into this Agreement with the Association and, contingent upon certain conditions precedent being met, granting the Association a ten (10) year license with no annual license fees, together with two (2) five (5) year renewal options upon the mutual agreement of the parties, to use the Submerged Lands Area for the Ship Museum subject to the conditions contained herein; and

**NOW, THEREFORE**, in consideration of the mutual promises and covenants, and for other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, the parties agree as follows:

1. RECITALS; DEFINITIONS.

The above stated Recitals are true and correct and, by this reference, are made a part hereof and are incorporated herein. The Association and the DIA hereby acknowledge and agree that the Redevelopment Agreement dated October 1, 2021 with regard to the Vessel, has expired and is no longer effective;

2. AGREEMENT TERM.

This Agreement shall be effective for the period beginning on the Effective Date and ending on the earlier of (i) the expiration or earlier termination of the Submerged Lands License Agreement, and (ii) the date that is one (1) year after the Relocation Date (as hereinafter defined), unless sooner terminated by the parties pursuant to the provisions herein. This Agreement may be extended for a period of up to one (1) year at the sole discretion of the Chief Executive Officer of the DIA if the Relocation Date is delayed due to construction delays associated with the construction of Shipyards West Park.

3. PROJECT SCOPE OF WORK.

The Association shall relocate, renovate and maintain the Vessel as a Downtown Ship Museum open to the public. On or before March 31, 2023, the Association shall have completed the necessary improvements to accommodate the mooring of the Vessel (the “**Mooring Improvements**”) in accordance with the plans attached as **Exhibit B** to the Submerged Lands License Agreement (the “**Mooring Improvements Plans**”), which are incorporated herein by reference. On or before the later of March 31, 2023 or the date that the Temporary Utilities are installed, the Association, at its sole cost and expense, shall move the Vessel from its current location and, subject to the execution of the Submerged Lands License Agreement by the DIA, shall moor it within the Submerged Lands Area in accordance with the Mooring Improvements Plans. After the execution of the Temporary Area License Agreement by the DIA, the Association shall, at its sole cost and expense, install the Temporary Upland Improvements (as defined in Section 10 below) pursuant to the terms and conditions of the Temporary Area License Agreement on an unimproved area of land, which shall be initially located in the area described on **Exhibit A** to the Temporary Area License Agreement, but which may be relocated by the DIA from time to time in its sole discretion as necessary to facilitate construction of Shipyards West Park (the “**Temporary Area**”). The Temporary Upland Improvements and the Mooring Improvements are sometimes collectively referred to herein as the “**Improvements**”. The Performance Schedule attached hereto as **Exhibit C** and the Project Budget attached hereto as **Exhibit D** are considered part of this Agreement and incorporated herein by this reference. The parties agree that the Project Budget sets forth the estimated minimum amount of funding necessary for the Association to complete the Temporary Upland Improvements and operate the Ship Museum for one year after relocation. Prior to commencement of any installation of any improvements on the Temporary Area, the Association shall obtain DIA approval of any improvements to be installed thereon and DIA’s approval of the final plans for the Temporary Upland Improvements and final scope of work for the same which shall be attached to the Temporary Area License Agreement as set forth therein.

4. PROPERTY EXAMINATION.

- A. Environmental Conditions. The Association acknowledges that the Upland Area and the Submerged Lands Area are currently subject to a Brownfields Site Rehabilitation Agreement (“**BSRA**”), Site ID #BF16000-1002, and a Florida Department of Environmental Protection Consent Order (OGC Case 96-2444) (“**Consent Order**”), copies of which have been provided to the Association. The Association shall comply with the BSRA and the Consent Order and any of the conditions of those agreements that affect any of the land described on **Exhibit A** attached hereto, including, but not limited to, non-disturbance of the site-wide, soils cap of two feet, except as allowed and governed by the Site-wide Cover Interim Remedial Action and Operation and Maintenance Plan dated August 12, 1998, and any amendments thereto. Further, prior to making any improvements other than the Mooring Improvements, the Association shall provide DIA and the City with written confirmation from FDEP that the improvements contemplated do not violate the BSRA nor require any special remedial action. The Association shall provide the DIA and City with immediate written notice of any communication from regulatory or grant authorities concerning contamination or remediation requirements. This Section 4.B shall be incorporated into the terms of each of the License Agreements.
- B. No Warranties; Due Diligence; “As Is.” It is understood and agreed that the DIA hereby disclaims all warranties or representations of any kind or character, express or implied, with respect to the land described on **Exhibit A** attached hereto, including but not limited to, warranties or representations as to matters of title, zoning, physical or environmental conditions, availability of access, ingress or egress, operating history, government approvals, governmental regulations or any other matter or thing relating to or affecting the land described on **Exhibit A** attached hereto. The Association represents that it has conducted such inspections and investigations of the land described on **Exhibit A** attached hereto, including, but not limited to, the physical and environmental conditions thereof, and shall rely upon same, and shall assume the risk of adverse matters, including, but not limited to, adverse physical and environmental conditions, including the existence in or on the land described on **Exhibit A** attached hereto of hazardous materials, that may not have been revealed by inspections and investigations. The Association agrees that any land licensed to the Association pursuant to the License Agreements shall be licensed to the Association in its “**as is, where is**” condition, with all faults, and there are no oral agreements, warranties or representations collateral to or affecting the such land by any of the parties hereto (except as expressly set forth herein).
- C. Restroom and Guest Services Facility Use Agreement. Upon completion of the final design of Shipyards West Park, the parties agree to mutually work together to determine what use rights the Association will have with respect to the Permanent Building (as hereinafter defined) and enter into an agreement to be mutually agreed upon by the parties, the form and substance of which shall be acceptable to the DIA and the Office of General Counsel, in their sole discretion (the “**Restroom and Guest Services Facility Use Agreement**”). Without limiting the foregoing, the Association acknowledges and agrees that Shipyards West Park, the Permanent Building and the improvements to be constructed thereon are being designed and constructed for the benefit of the public, and as such the Restroom and Guest Services Facility Use

Agreement may be a license agreement, a joint use agreement, a lease agreement or other agreement as determined by the DIA in the DIA's sole and absolute discretion.

- D. No Title or Property Interest. The Association acknowledges and agrees that, notwithstanding anything to the contrary in this Agreement, the Restroom and Guest Services Facility Use Agreement, the Submerged Land License Agreement or the Temporary Area License Agreement, the Association does not have and will not have or obtain any title to any portion of the land described on **Exhibit A** attached hereto nor any property right or legal or equitable interest therein, except as may be expressly stated in the Restroom and Guest Services Facility Use Agreement, all subject to the terms of this Agreement.

#### 5. ASSOCIATION FUNDING OBLIGATION.

The Association shall provide the DIA with evidence of funding satisfactory to the DIA, in its sole discretion, in the amount of **FIVE HUNDRED THOUSAND and 00/100 U.S. Dollars (\$500,000.00)**, which is the amount necessary to complete the Project in accordance with Project Budget and, based on operating revenue projections, to operate the Vessel and Ship Museum for a period of one year from the Effective Date of the Submerged Lands License Agreement, (collectively, the "**Association Funding Obligation**"). Such evidence of funding may be in the form of actual donations received and on deposit, grant award letters, formal loan commitments from recognized lending institutions or an evergreen letter of credit or such other form as requested by, and satisfactory to, the DIA. The Association shall be listed as the grant award recipient on any grants received in connection with Project and any such grant agreement terms shall not restrict the use of any portion of the land described on **Exhibit A** attached hereto without City's prior written approval, which may be withheld in its sole discretion. Notwithstanding the foregoing, if the Association fails to obtain the Association Funding Obligation and have the same approved by the DIA by March 15, 2023, the DIA, at its sole option, may terminate this Agreement, and, after providing the Association with notice of the same, the parties shall have no further obligations hereunder except as expressly provided herein.

#### 6. REMOVAL OF VESSEL AND IMPROVEMENTS.

By execution of this Agreement the Association acknowledges that the DIA may terminate the each of the License Agreements pursuant to the terms thereof. The Association at its sole expense shall on or prior to the expiration or earlier termination date of the Submerged Lands License Agreement (provided that, the DIA shall give the Association at least ninety (90) days prior written notice of any such termination date) to remove the Vessel and the Mooring Improvements, as well as all Temporary Upland Improvements (to the extent not previously removed) and all other improvements made by the Association which will remain Association assets, and restore the Submerged Lands Area, Pier 1 and the Temporary Area (to the extent not previously restored) to its condition as of commencement of the License Agreements, subject to the City's right to retain such improvements as set forth in the License Agreements. The Association shall provide the DIA with certified estimated removal costs associated with the removal of the foregoing and the towing of the Vessel to Brownsville, Texas, based on written quotes or other documentation as satisfactory to the DIA for review. The agreed upon estimated removal costs by the parties for the removal of the Vessel and the Improvements (the

“**Estimated Removal Costs**”) shall be increased by ten percent (10%) and, as security for the Association’s restoration and removal obligations set forth herein, the Association shall, prior to the execution of the License Agreements, provide to the City an irrevocable letter of credit issued by VyStar Credit Union upon terms reasonably acceptable to the City (“**Letter of Credit**”) which shall include at a minimum the terms and conditions set forth in **Exhibit G** attached hereto and incorporated herein and in the total amount of one hundred ten percent (110%) of the Estimated Removal Costs (collectively, the “**Letter of Credit Requirements**”). As set forth in the Submerged Lands License Agreement, every fifth year during the term of the Submerged Lands License Agreement, the Association will provide the DIA with a current cost estimate, certified by a licensed and insured towing company to be pre-approved by the City Engineer, for the costs to remove the Vessel and a current cost estimate to remove the Improvements and of the Vessel to Brownsville, Texas, approved by the City Engineer. If, at any time, any Letter of Credit shall fail to satisfy the Letter of Credit Requirements, or if the issuer shall send a notice of cancellation or non-renewal, or if the Letter of Credit is in an amount less than one hundred and ten percent (110%) of the most recent certified Estimated Removal Costs, then immediately, but in no event later than thirty (30) days prior to the then-current expiration date, the Association shall replace the Letter of Credit with either: (i) a replacement Letter of Credit that satisfies the Letter of Credit Requirements, or (ii) cash equal to the face amount of the Letter of Credit (which shall be treated as a cash security deposit. If the Association fails to timely replace the Letter of Credit with either cash security or a replacement Letter of Credit as set forth above or if, upon termination of the Submerged Lands License Agreement, the Association fails to remove and relocate the Vessel and Improvements and restore the property, the City shall have the right to utilize the Letter of Credit to effect the removal of the Vessel and the Improvements and restore the property, then: (x) the DIA shall have the right to draw down the full amount of the Letter of Credit; and (y) a default shall be deemed to have occurred under this Agreement. Notwithstanding anything to the contrary contained in this Agreement, the Association shall not be entitled to receive (and the DIA shall not be required to give), grace, cure, or advance notice of either the draw down on the Letter of Credit or the occurrence of the default. In the event that the Letter of Credit funds received by the DIA are not sufficient to cover the costs to remove the Vessel and the Improvements and restore the property, the Association shall within thirty (30) days of receipt of DIA’s written demand pay to the DIA any outstanding costs and reasonable expenses incurred by the DIA or the City in connection with removing the Vessel and the Improvements and restoring the property, including reasonable attorney’s fees. The Association’s obligations in this Section 6 shall survive the termination or expiration of this Agreement.

#### 7. CONDITIONS PRECEDENT TO CITY LICENSE GRANT.

The DIA’s grant of any license to the Association and entering into the License Agreements shall be contingent upon the Association providing the DIA with the following deliverables on or before March 31, 2023, (collectively, the “**Conditions Precedent**”):

- A. Evidence that the Association’s Funding Obligation has been met pursuant to Section 5 above;
- B. Written evidence of the Association’s ownership of the Vessel by certificate of title or such other documentation satisfactory to the DIA;

- C. Written evidence via certificate or certified statement from the contractor of record that the Vessel has been properly reconditioned and retrofitted;
- D. The USCG will certify the ship for transfer to Pier 1 and use as a permanently moored craft.
- E. Florida Department of Environmental Protection's (FDEP) written approval of the License Agreements or written confirmation from FDEP that no such approval is needed;
- F. FDEP's written approval of the Project activities in the form of a regulatory permit or written confirmation from FDEP that no such permit is needed;
- G. Reserved;
- H. United States Coast Guard's (USCG) written approval of the Project activities and mooring of the Vessel as contemplated in the License Agreements or written confirmation from the USCG that no approval of the same is needed;
- I. United States Army Corps of Engineer's (ACOE) written approval of the Project activities in the form of a regulatory permit and/or dredging permits or written confirmation from ACOE that no such permit is needed;
- J. Evidence that all other permits and approvals associated with the Vessel and the operations and activities associated therewith have been obtained by the Association;
- K. Certificates of Insurance evidencing the Association has met the insurance requirements contained in each of the License Agreements;
- L. Receipt by the City of the Letter of Credit pursuant to Section 6 above;
- M. Administrative DDRB approval of the Temporary Upland Improvements;
- N. Approval by the DIA of the final plans for the Temporary Upland Improvements and a final scope of work for the Temporary Upland Improvements as well as any amendments to the Plans and Scope of Work for the Mooring Improvements, or the Final Project Budget;
- O. Two (2) original copies of each of the License Agreements executed by the Association;
- P. Association Board Resolution adopting the terms of this Development Agreement; and
- Q. Evidence of the Association's 501(c)(3) tax exempt status.

8. CITY IMPROVEMENTS.

Upon the execution of each of the License Agreements by the DIA, and provided that there is no continuing event of default under this Agreement or either of the License Agreements, the City agrees that it will be performing the following related work as City capital improvement projects, however, these projects are for the benefit of the public and the maximum indebtedness of the DIA and City for all fees, grants, reimbursable items or other costs pursuant to this Agreement is ZERO AND NO/100 DOLLARS (\$0.00):

- A. Catherine Street Extension. City shall fund the design and construction of an extension of Catherine Street, inclusive of on-street parking on the eastern side of the roadway, a sidewalk running from Bay Street to the Riverwalk, and associated landscape and lighting. Utilities will also be installed and run from Bay Street to the Riverwalk to serve, in part, the Vessel. The estimated completion date of the Catherine Street Extension is March 31, 2024, which may be extended by the City.
- B. Temporary Utilities. The City, at its cost, plans to bring temporary power and water (not sewer) from Bay Street to the Riverwalk in the vicinity of Pier 1 for connection to the Vessel pursuant to such plans and in such quantities as determined by the City in its sole discretion provided that the quantities shall not be less than are currently being provided by the City to the Vessel at its current location (the “Temporary Utilities”). The City shall endeavor to complete this work prior to the Vessel’s relocation to Pier 1 as set forth herein.
- C. Gangway. The DIA shall request the City to provide the Association with temporary use of a gangway in the existing Parks Department inventory, if any, but the City shall not be required to purchase new equipment or remove it from another active use for this purpose. Any such gangway shall be returned to the City within thirty (30) days after demand.
- D. Shipyards West Park. Design and construction of Shipyards West Park which includes the upland from Bay Street to the Riverwalk beginning at Catherine Street and running easterly toward Hogans Creek. This land is subject to the Florida Recreation Development Assistance Program recorded use restriction for public recreational use.
  - (i) Phase 1A for construction would be the upland adjacent to Catherine Street and the Fire Museum and Vessel inclusive of the Riverwalk, and a permanent restroom and ticket building (the “**Permanent Building**”). Phase 1 will not include re-decking of Pier 1 or reconnection to the Riverwalk but may at a future date in the DIA’s sole discretion.
  - (ii) DIA will recommend that Agency Landscape + Planning, LLC (“**Agency**”) include approximately 50 non-exclusive public parking spaces in an area to be determined in the design of the western half of the park, currently envisioned to be accessible from Bay Street and at grade with park space above the roof of the parking area.

- (iii) DIA will recommend that Agency, in its design of the restroom and ticket office for the Fire Museum and Ship Museum, evaluate and accommodate if feasible a second story access to the Fire Museum and Vessel which would eliminate the need for ramped access.
- (iv) DIA will recommend that Agency evaluate, design and price, the re-decking of Pier 1 for future direct access, however current funding may not allow this work until a subsequent phase.
- (v) DIA will recommend that Agency evaluate the opportunity for a third story on the restroom/ticketing building or possible expanded footprint, or possibly on the second story to accommodate a separate privately funded museum space open to the public.

## 9. LICENSE AGREEMENTS.

- A. Submerged Lands License Agreement. At such time that the Association has satisfied the Conditions Precedent pursuant to Section 7 above, which shall be on or before March 31, 2023, the DIA shall grant the Association a non-exclusive ten (10) year license, with two (2) five (5) year renewal options subject to the mutual agreement of the parties, in substantially the form attached hereto as Exhibit E (the “**Submerged Lands License Agreement**”) permitting the Association to use the Submerged Lands Area and Pier 1 as provided therein.
- B. Temporary Area License Agreement. At such time that the DIA executes the Submerged Lands License Agreement, the DIA shall also grant the Association a non-exclusive license, in substantially the form attached hereto as Exhibit F (the “**Temporary Area License Agreement**” and together with the Submerged Lands License Agreement, the “**License Agreements**”) permitting the Association to use the Temporary Area as provided therein.

## 10. TEMPORARY UPLAND IMPROVEMENTS; RELOCATION.

After the execution of the Temporary Area License Agreement, the Association shall, at its sole cost and expense, and in accordance with the terms and conditions of this Agreement, install (i) a trailer office and portable restroom in a location on the Temporary Area to be approved by the DIA, (ii) a barricade or other temporary barrier that is not affixed to the land to segregate the Temporary Area from the remainder of the site, and (iii) a ramp or gangway from the upland to the stern of the Vessel to provide visitor access, and the Association may install temporary signage indicating that the foregoing temporary public access parking area is for Vessel visitors only, (collectively, the “**Temporary Upland Improvements**”). The Association shall be responsible for the rental costs of the trailers, all pump out charges, and any other charges related to the Temporary Upland Improvements and the use of the Temporary Area. The Association shall be permitted to have temporary pedestrian access from the Bay Street sidewalk to the upland adjacent to the Vessel, in a location determined by the DIA in its sole discretion which the Association may, at its sole cost and expense, improve with temporary matting or similar materials, which shall be deemed part of the Temporary Upland Improvements. The



Association shall, at its sole cost and expense, maintain the Temporary Area and the Improvements in good, clean, attractive and safe condition as determined in the reasonable discretion of the DIA, and in compliance with all applicable federal, state and local laws, rules, regulations and ordinances.

After the completion of the construction of the Catherine Street extension and the Permanent Building, the DIA shall give the Association written notice (the “**Relocation Notice**”) of the date by which it must relocate from the Temporary Area to the Permanent Building (the “**Relocation Date**”), which shall be at least thirty (30) days from the date of the Relocation Notice. On or before the Relocation Date, the Association shall vacate the Temporary Area, remove all of the Temporary Upland Improvements, personal property and other improvements from the Temporary Area, restore any damage caused by the same, and deliver the Temporary Area to the DIA in substantially the same condition as the Temporary Area was on the date that the Association first occupied the same, subject to ordinary wear and tear. Notwithstanding the foregoing, if on the Relocation Date the temporary gangway is still needed and a public parking area for Shipyards West Park is not completed, the DIA shall endeavor to provide the Association with an area for the temporary gangway and a temporary parking area for visitors to the Vessel until the date of such completion. This Section shall survive the expiration or earlier termination of this Agreement.

#### 11. TERMINATION AND DEFAULT.

- A. DIA Termination. The DIA may, by written notice to the Association, immediately terminate this Agreement in any of the following circumstances below:
- i. If the Association fails to satisfy the Conditions Precedent within the time specified in Section 7 above;
  - ii. Upon the DIA’s determination that adverse environmental conditions exist on the land described on **Exhibit A** attached hereto;
  - iii. Upon ninety (90) days’ advance written notice of a breach of any other provision of this Agreement or either of the License Agreements;
  - iv. An event of default under Section 10.D below or under either of the License Agreements; or
- B. Notice of Termination. Termination notice shall be delivered by certified mail, return receipt requested, or by such other means of delivery provided herein with proof of delivery. Upon receipt of a notice of termination the parties shall have no further obligations hereunder except as expressly provided herein.
- C. Additional Defaults. The occurrence of any one or more of the following events prior to the expiration of the term shall constitute an event of default hereunder: (i) a violation of any applicable and governing federal, state or local law, rule, regulation or policy with respect to the subject matter hereof; (ii) if any representation or warranty contained in this Agreement or the License Agreement shall be false or misleading in any material respect;

(iii) the application by the Association for, or consent to, the appointment of a receiver, trustee, liquidator or custodian (or similar official) of its or all or a substantial part of its assets, or if any party shall be unable or admit in writing its inability to pay its debts as they mature, make a general assignment for the benefit of creditors, be adjudicated a bankrupt or insolvent, file a voluntary petition in bankruptcy or a petition or answer seeking reorganization or any arrangement with creditors or agrees to take advantage of any insolvency law, file an answer admitting the material allegations of a petition filed against it in any bankruptcy, reorganization or insolvency proceeding or if any corporate action shall be taken by it for any purpose of effecting any of the foregoing, or if any order, judgment or decree shall be entered by a court of competent jurisdiction approving a petition seeking reorganization or appointing a receiver, trustee, liquidator or custodian (or other similar official) of any party hereto or of all or a substantial part of its assets, and such other judgment or decree shall continue unstayed and in effect for a period of thirty (30) consecutive days; or (iv) an event of default of the Association under any other agreement or transaction between the Association and the DIA or the City which remains uncured for a period of thirty (30) days. If an event of default shall occur under this Section 10.D., then City or DIA shall have the right to immediately terminate and cancel this Agreement by giving to the Association written notice of such termination and cancellation.

- D. Remedies. Each party shall have the right to prosecute any proceedings at law or in equity against any defaulting party hereto, or any other person, violating or attempting to violate or defaulting upon any of the provisions contained in this Agreement, and to recover damages for any such violation or default. Such rights shall include the right to restrain by injunction any violation or threatened violation by another of any of the terms, covenants or conditions of this Agreement, or to obtain a decree to compel performance of any such terms, covenants, or conditions, it being agreed that the remedy at law for a breach of any such term, covenant, or condition (except those, if any, requiring the payment of a liquidated sum) is not adequate. All of the remedies permitted or available to a party under this Agreement or at law or in equity shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

## 12. NOTICES.

Unless otherwise provided herein, any and all notices, which are permitted or required in this Agreement, shall be in writing and shall be duly delivered and given when personally served, or the next business day after such notice is sent by overnight delivery service by a nationally recognized courier such as Federal Express or UPS with delivery charges paid by the sender, or three (3) business days after such notice is mailed to the person at the address designated below. If notice is mailed, the same shall be mailed, postage prepaid, in the United States mail by certified or registered mail – return receipt requested. Failure to accept certified or registered mail shall be deemed a receipt thereof within ten (10) days after the first notice of delivery of the certified or registered mail. Any entity may change its address as designated herein by giving notice thereof as provided herein or such other address either party from time to time specifies in writing to the other.

If to the DIA: Downtown Investment Authority  
117 West Duval Street, Suite 310  
Jacksonville, Florida 32202  
Attn: CEO

With copies to: Department of Parks, Recreation and  
Community Services  
City of Jacksonville  
214 N. Hogan Street, 4<sup>th</sup> Floor,  
Jacksonville, FL 32202  
Attn: Director

and

Office of General Counsel  
Government Operations Dept.  
117 West Duval Street, Suite 480  
Jacksonville, Florida 32202  
Attn: Division Chief

If to Association: Jacksonville Historic Naval Ship  
Association, Inc.  
c/o Abel Bean Law P.A.  
100 N. Laura Street, Suite 501  
Jacksonville, FL 32202  
Attn: Daniel K. Bean

With a copy to: Jacksonville Historic Naval Ship Association, Inc.  
2220 County Road 210 West  
Suite 108  
PMB 314  
Jacksonville, Florida 32259

### 13. REPRESENTATIONS AND WARRANTIES BY ASSOCIATION.

Without limiting the representations, warranties and covenants of the Association set forth elsewhere in this Agreement, as a material inducement for the DIA to enter into this Agreement, the Association represents and warrants to the DIA (and unless otherwise specified, such representations, warranties and covenants are true as of the Effective Date and shall continue and be effective during the term of this Agreement as if continuously reiterated) that:

- A. The Association is a Florida non-profit corporation duly incorporated and validly existing under the laws of the State of Florida and is a corporation exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, as amended. The Association is

authorized to conduct business and is in good standing in the State of Florida. The Association has full power and authority (including the Association obtaining any and all required third party consents) to execute and deliver this Agreement and all documents contemplated hereby, to perform its obligations arising hereunder and thereunder, and that the Association's entering into this Agreement will not conflict with or result in a breach of any other agreement to which Association is a party. The individuals signing on behalf of the Association have full power and authority to do so and the Association shall promptly deliver to the DIA, upon request, all documents reasonably requested by the DIA to evidence such authority.

- B. The making, execution and delivery of this Agreement and the Association's performance of all obligations hereunder have been duly authorized and approved by the shareholders, members, partners, or Board of Directors (as the case may be) of the Association.
- C. This Agreement and all documents contemplated hereby each constitute a legal, valid and binding obligation of the Association, enforceable in accordance with their respective terms, assuming execution of the same by the DIA.
- D. This Agreement and all documents contemplated hereby do not and will not contravene any provision of the governing documents of the Association, any judgment, order, decree, writ or injunction to which the Association is bound, or any provision of any applicable law or regulation to which the Association is bound. The execution and delivery of this Agreement and all documents contemplated hereby, and performance of its obligations hereunder and thereunder will not result in a breach of or constitute a default under any agreement or require the consent from any third party.
- E. The Association and each of its contractors, subcontractors, materialmen, laborers and other persons performing any work relating to the Project or Improvements hold all necessary licenses, permits and authorizations required by all applicable governmental agencies and authorities as a condition to conduct business in the State of Florida and to perform work on the land described on **Exhibit A** attached hereto. The Association shall promptly deliver to the DIA, upon request, all documents reasonably requested by the DIA to evidence such licenses, permits, and authorizations.

#### 14. MISCELLANEOUS.

Amendments. This Agreement shall not be amended or modified in any way except by an instrument in writing executed by both parties hereto.

Time is of the Essence; Force Majeure. TIME IS OF THE ESSENCE in the performance by any party of its obligations hereunder. If any date of significance hereunder falls upon a Saturday, Sunday, or legal holiday, such date shall be deemed moved forward to the next day which is not a Saturday, Sunday or legal holiday. Saturdays, Sundays and legal holidays shall not be considered business days. In the event either party shall be delayed or hindered in, or prevented from, the performance of any act (other than the payment of money, the posting of a security deposit or bond, or the delivery of a letter of credit) required hereunder by reason of strikes,

lock-outs, labor troubles, protests, civil unrest, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, epidemic, pandemic, adverse weather conditions, war or other reasons of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Agreement (all of such reasons or causes referred to herein as "force majeure"), then performance of such acts shall be excused for the period of the delay, and the period within which the performance of such act may be required hereunder shall be extended by a period equivalent to the period of such delay.

No Waiver. No waiver of any term of or obligation pursuant to this Agreement may occur or be enforced unless it is signed by both parties hereto. The failure or delay by either party in asserting any of its rights or remedies as to any default hereunder shall not constitute a waiver of such default or any other default or of related rights or remedies.

Cumulative Remedies. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties hereto are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

Severability. Except as expressly provided to the contrary herein, each section, part, term or provision of this Agreement shall be considered severable, and, if for any reason, any section, part, term or provision herein is determined to be invalid, contrary to or in conflict with any existing or future law, rule or regulation by a court or governmental agency having competent jurisdiction, such determination shall not impair the operation of or have any other affect on the remaining sections, parts, terms or provisions of this Agreement, which shall continue to be given full force and effect and bind the parties hereto, and such invalid sections, parts, terms or provisions shall deemed to be not a part of this Agreement.

No Third-Party Beneficiary. This Agreement and the rights and obligations of the parties hereto shall inure to the benefit of and be binding upon the parties hereto. This Agreement is for the sole and exclusive benefit of the parties hereto, and no third party is intended to or shall have any rights or benefits hereunder.

Governing Law/Venue. The Association acknowledges, consents and agrees that all legal actions or proceedings arising out of or related to this Agreement shall lie exclusively in a state or federal court in Duval County, Florida. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Florida.

Further Assurances. The Association shall, upon request of the DIA: (i) promptly correct any defect, error or omission in this Agreement and any related documents; (ii) execute, acknowledge, deliver, procure, record or file such further instruments and do such further acts deemed necessary, desirable or proper by the DIA to carry out the purposes of this Agreement; (iii) execute, acknowledge, deliver, procure, file or record any documents or instruments deemed necessary, desirable or proper by the DIA to protect its rights against the rights or interests of third persons; and (iv) provide such certificates, documents, reports, information, affidavits and

other instruments and do such further acts deemed necessary, desirable or proper by the DIA to carry out the purposes of this Agreement.

Conflicting Provisions. Unless otherwise expressly provided herein, in the event of a conflict between any provisions of this Agreement and any attachment or exhibit attached to or referenced in this Agreement, the provisions of this Agreement shall govern to the extent of such conflict. All parties acknowledge and agree that they have had meaningful input into the terms and conditions contained in this Agreement. The Association acknowledges that it has had ample time to review this Agreement and related documents with counsel of its choice. Should any provision of this Agreement require judicial interpretation, there shall be no presumption that the terms hereof shall be more strictly construed against either party.

Captions and Headings. Captions and headings in this Agreement are for convenience of reference only and shall not affect the construction of this Agreement.

Representations and Warranties. All of the Association's representations, warranties and other covenants set forth herein shall be deemed continuing in nature and shall survive the expiration or early termination of this Agreement.

No Assignment. This Agreement and the rights and obligations herein may not be assigned, in whole or part, by either party without the prior written approval of both the Association and DIA and the approval of the Jacksonville City Council.

Public Records and Sunshine Law. The Association must comply with any and all applicable federal, state and local laws, rules, regulations and ordinances, as the same exist and may be amended from time to time. Such laws, rules, regulations and ordinances shall include, but are not limited to, Chapter 119, Florida Statutes, (the Florida Public Records Law) and Section 286.011, Florida Statutes, (the Florida Sunshine Law). Such laws, rules, regulations and ordinances must also include, but are not limited to obtaining and maintaining all licenses and certifications that are required to perform the Project and Improvements contemplated in this Agreement, in the City of Jacksonville, State of Florida. If any of the obligations of this Agreement are to be performed by a subcontractor, the provisions of this Section shall be incorporated into and become a part of the subcontract.

Counterparts. This Agreement may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument. A counterpart delivered by electronic means shall be valid and binding for all purposes.

Entire Agreement. This Agreement constitutes the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior negotiations, representations, agreements and understandings, oral or written, between them with respect to such subject matter.

Independent Contractor. Association shall act as an independent contractor, and not as an employee, agent, partner, joint-venturer, representative or associate of the DIA or the City, in operating the aforementioned Improvements set forth in this Agreement. The Association shall be solely responsible for the means, methods, techniques, sequences and procedures utilized in the full performance of this Agreement.

No Personal Liability. No representation, statement, covenant, warranty, stipulation, obligation, or agreement contained herein shall be deemed to be a representation, statement, covenant, warranty, stipulation, obligation or agreement of any member, officer, employee or agent of the City, the DIA or Association in his or her individual capacity, and none of the forgoing persons shall be liable personally or be subject to any personal liability or accountability by reason of the execution or delivery thereof.

Exhibits. The Exhibits attached hereto are all incorporated herein by reference.

*[Signature pages follow.]*

**IN WITNESS WHEREOF**, the parties hereto duly execute this Agreement as of the day and year first written above.

**ASSOCIATION:**

**JACKSONVILLE HISTORIC NAVAL SHIP  
ASSOCIATION, INC.**, a Florida non-profit corporation

By: \_\_\_\_\_

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

Title: Its President

Dated: \_\_\_\_\_

**[Signature page of DIA to immediately follow this page.]**



**DIA:**

**DOWNTOWN INVESTMENT AUTHORITY**  
on behalf of the CITY OF JACKSONVILLE, a  
Florida municipal corporation

By: \_\_\_\_\_  
Lori Boyer, CEO

Dated: \_\_\_\_\_

**FORM APPROVED:**

By: \_\_\_\_\_  
Office of General Counsel

GC-#1541381-v7-USS\_Orleck\_-\_JHNSA\_Development\_Agreement\_2023.doc

**LIST OF EXHIBITS**

<b>EXHIBIT A</b>	<b>Property (Upland Area, Pier 1 and Submerged Lands Area)</b>
<b>EXHIBIT B</b>	<b>Reserved</b>
<b>EXHIBIT C</b>	<b>Performance Schedule</b>
<b>EXHIBIT D</b>	<b>Project Budget</b>
<b>EXHIBIT E</b>	<b>Submerged Lands License Agreement</b>
<b>EXHIBIT F</b>	<b>Temporary Area License Agreement</b>
<b>EXHIBIT G</b>	<b>Letter of Credit Requirements</b>

## Exhibit A

### **Property Description for Upland Area, Pier 1 and Submerged Lands Area**

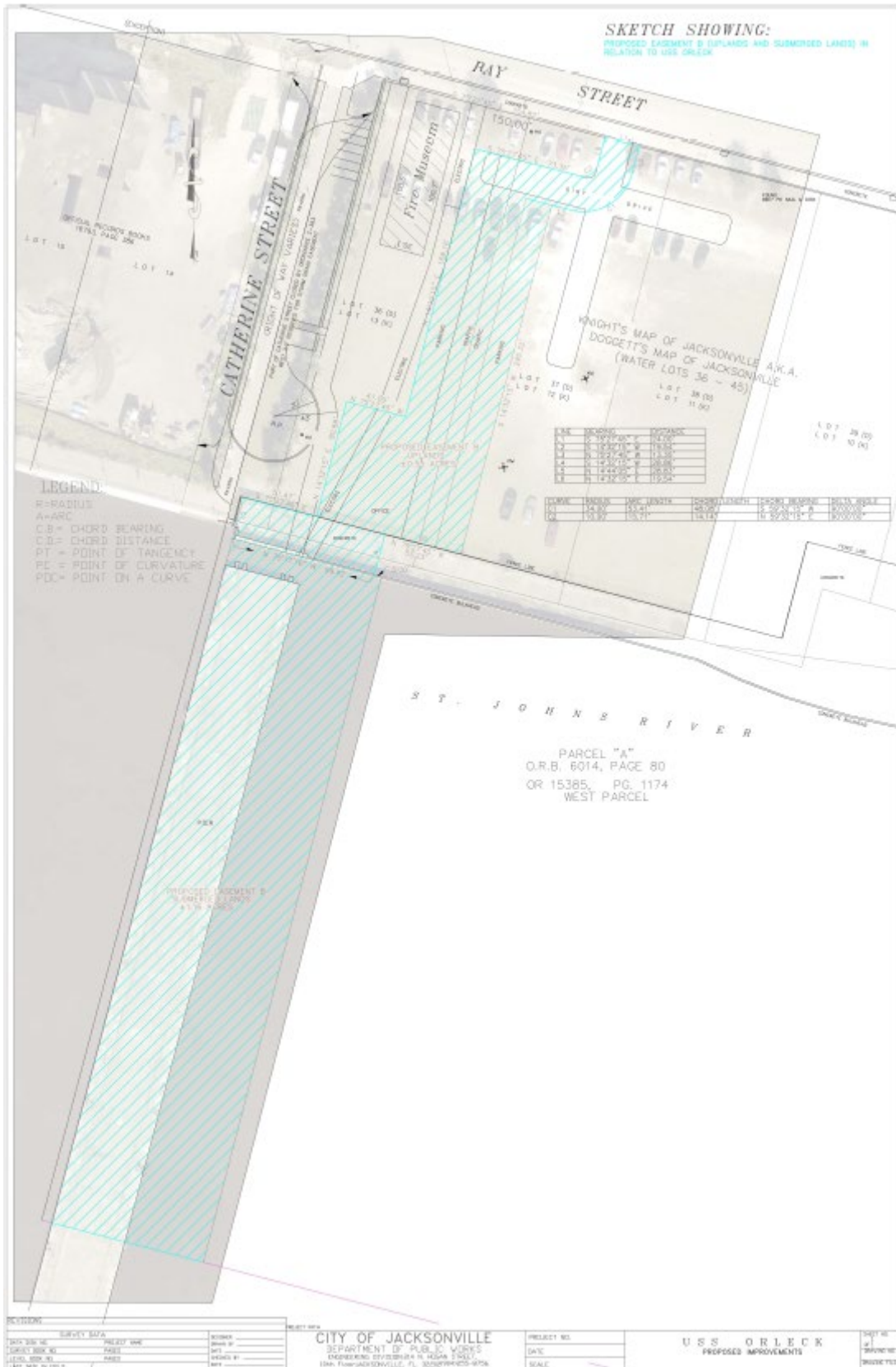
**Upland Area** – An approximately 0.55 acre parcel of unimproved land located in the northwest portion of Duval County Tax Parcel 073354 0000 commonly known as the “Shipyards” in downtown Jacksonville, Duval County, Florida, which northwest portion is generally bounded by Catherine Street to the West, Bay Street to the North, and the St. Johns River to the South, and as more particularly depicted below as the “Proposed Easement B Uplands”.

**Submerged Lands Area** - an area parallel to and immediately adjacent to Pier1 that is 55 feet wide as measured perpendicular to Pier 1 and running from the bulkhead to the outward extent of the City submerged land adjacent to Pier which is approximately 480 feet, as depicted below.

**Pier 1**- The westernmost City pier within the property commonly known as the Shipyards, as depicted below.

(See following page for depiction.)

Exhibit A (continued)  
 Depiction of Upland Area, Pier 1 and Submerged Lands Area



**Exhibit B**

**Reserved**

## **Exhibit C**

### **Performance Schedule**

Consistent with the terms of the Agreement, the Association Funding Obligation must be submitted to and approved by the DIA by March 15, 2023.

Consistent with the terms of the Council Ordinance, the License Agreements must be entered into by the Association on or before March 21, 2023, as the same may be extended consistent with the terms of such Ordinance.

On or before March 31, 2023, the Association shall have completed the Mooring Improvements in accordance with the Mooring Improvements Plans.

On or before March 31, 2023, as the same may be extended consistent with the terms of this Agreement, the Association shall have relocated the Vessel to Pier 1 in accordance with the Agreement.

Within sixty (60) days following the Effective Date of the Temporary Area License Agreement, the Association shall have completed construction of the access ramp to the Vessel and opened the Vessel for tours.

## Exhibit D

### Project Budget

#### USS Orleck Budget 01/2023 through 12/2023

	Annual/One Time	Monthly
<b>REVENUE</b>		
Ticket Sales	\$	38,000.00
Rental/Events	\$	1,500.00
Tours	\$	600.00
Memberships	\$	2,250.00
Gift Shop	\$	3,000.00
Partnerships & Sponsorships	\$	5,000.00
Volunteer Florida Grant (Volunteer Program)	\$	1,667.00
<b>Total Monthly/Annual Revenue</b>	<b>\$ 624,204.00</b>	<b>\$ 52,017.00</b>
Cash on hand as of Jan 1, 2023		
Money Market	\$	791,000.00
Operating Account	\$	111,000.00
Gift Shop	\$	8,500.00
<b>Total</b>	<b>\$</b>	<b>910,500.00</b>
<b>TOTAL Revenue &amp; Cash on Hand</b>	<b>\$ 1,534,704.00</b>	
<b>EXPENSES</b>		
<b><u>Pier One Improvements</u></b>		
Mooring Improvements-Hal Jones	\$ 398,000.00	
Fender installation	\$ 1,000.00	
Dredge Spoil Disposal	Unknown	
Tow to Pier One-Cross State	\$ 24,000.00	
Insurance	\$ -	HJC Has Provided COI
	<b>\$ 423,000.00</b>	
<b><u>Temporary Upland Improvements</u></b>		
Fencing/barricades for parking	\$ 23,000.00	
Matting for temp. sidewalk	\$ 750.00	
Temp Bldgs (2) Delivery and Hookup	\$ 16,000.00	
Crane service to relocate brow (ramp)	\$ 5,000.00	
Upland platform access to brow	\$ 10,000.00	
Insurance		
Miscellaneous	\$ 10,000.00	
	<b>\$ 64,750.00</b>	
<b>Total Improvements Costs (one-time)</b>	<b>\$ 487,750.00</b>	
<b><u>Operating Expenses</u></b>		
Restroom pumpout	\$	500.00
Electric	\$	1,200.00
Water	\$	250.00
Insurance	\$	2,000.00
Adv./prmotion	\$	2,000.00
Office/G&A	\$	2,000.00
Salaries/benefits	\$	25,100.00
Telephone, website,mail,etc.	\$	250.00
Temp office bldg and ticketing and restroom	\$	2,000.00
Interest	\$	12,000.00
Other	\$	1,000.00
<b>Total Monthly/Annual Expenses</b>	<b>\$ 579,600.00</b>	<b>\$ 48,300.00</b>
<b><u>Post Arrival Work on Ship per month</u></b>	<b>\$ 60,000.00</b>	<b>\$ 5,000.00</b>
<b>TOTAL Expenses &amp; Improvements</b>	<b>\$ 1,127,350.00</b>	
<b><u>Tow Away Letter of Credit</u></b>	<b>\$ -</b>	<b>\$375,000 Evergreen Letter From VYSTAR</b>

**Exhibit E**

**Submerged Lands License Agreement**

[To immediately follow this page.]



**SUBMERGED LANDS LICENSE AGREEMENT  
(Jacksonville Naval Museum)**

THIS LICENSE AGREEMENT (this “**License**”) is made and entered into this \_\_\_ day of \_\_\_\_\_, 2023 (the “**Effective Date**”), by and between the **DOWNTOWN INVESTMENT AUTHORITY (“DIA”)** on behalf of the City of Jacksonville, a Florida municipal corporation, whose address is 117 West Duval Street, Suite 310, Jacksonville, Florida 32202, and **JACKSONVILLE HISTORIC NAVAL SHIP ASSOCIATION, INC.**, a Florida non-profit corporation (“**JHNSA**”), whose address is address is c/o Abel Bean Law P.A., 100 N. Laura Street, Suite 501, Jacksonville, FL 32202, Attn: Daniel K. Bean.

**RECITALS**

WHEREAS, the City of Jacksonville (the “**City**”) owns certain submerged lands consisting of approximately 0.6 acres (the “**Submerged Lands Area**”) and the pier commonly known as Pier 1 immediately adjacent to the Submerged Lands Area (“**Pier 1**”), each as more particularly described on **Exhibit A** and located along the north bank of the St. Johns River in downtown Jacksonville, Duval County, Florida; and

WHEREAS, JHNSA was organized in 2008 as a volunteer-based non-profit Florida corporation exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, as amended, and was created to excite, inspire, educate and entertain the general public, to create a venue dedicated to the mission, memory and men of the Gearing-class destroyers and to promote the role of the U.S. Navy in securing a free and safe world; and

WHEREAS, JHNSA owns the retired naval vessel USS Orleck (DD-886) (the “**Vessel**”) and has requested to relocate the Vessel to Pier 1; and

WHEREAS, JHNSA has agreed to renovate, operate and maintain the Vessel as a Downtown floating museum (“**Ship Museum**”) open to the public on the Submerged Lands Area, secured to Pier 1; and

WHEREAS, JHNSA’s operation of the Ship Museum as set forth herein will promote educational and recreational programs and provide economic benefits to Jacksonville; and

WHEREAS, the DIA believes the Project will be beneficial to the citizens of Jacksonville and the Jacksonville Downtown area; and

WHEREAS, subject to the terms of the Development Agreement dated \_\_\_\_\_ (the “**Agreement**”) between the DIA and JHNSA, JHNSA has met the Conditions Precedent (as defined in the Agreement) and therefore, the parties desire to enter into a ten (10) year license with no annual license fees, together with two (2) five (5) year renewal options upon the mutual agreement of the parties, to use the Licensed Area for the Permitted Uses as provided herein.

NOW, THEREFORE, for and in the consideration of the mutual and other good and valuable consideration, including, but not limited to, the covenants, conditions and terms hereof,

the sufficiency and receipt of said good and valuable consideration being herewith acknowledged by the respective parties, the DIA and JHNSA stipulate and agree as follows:

1. Recitals. The recitals set forth above are accurate, correct and true and are incorporated herein by this reference.

2. Definitions. As used in this License, the words defined immediately below shall have the meaning stated next to same. Words imparting the singular number include the plural number and vice versa, and the male gender shall include the female gender and vice versa, unless the context clearly requires otherwise. Capitalized terms used but not defined in this License shall have the meanings ascribed to such terms in the Agreement.

(a) “Approved Plans” shall mean the final plans for the mooring improvements (the “**Mooring Improvements**”) attached as Exhibit B to this License.

(b) “Governmental Requirement” means any permit, law, statute, code, rule, regulation, ordinance, order, judgment, decree, writ, injunction, certificate, license, authorization, or requirement of any governmental and/or regulatory national, state or local entity with jurisdiction over the DIA, City, JHNSA and/or any portion of the Licensed Area. Governmental Requirements shall include all applicable, relevant, or appropriate Florida Statutes and DIA Ordinances, including, without limitation, any regulation found in the Florida Administrative Code, and all Florida Statutes, DIA resolutions, City ordinances and regulations or rules now existing or in the future enacted, promulgated, adopted, entered, or issued, both within and outside the present contemplation of the respective parties to this transaction. Governmental Requirements shall include the BSRA and Consent Order, as defined in Section 7(d) below.

(c) “Hazardous Materials” means any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, asbestos, radon, petroleum products, hazardous or toxic substances or related materials, including, without limitation, those defined in:

(i) The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601 et seq.);

(ii) The Hazardous Materials Transportation Act, as amended (42 U.S.C. § 1808 et seq.);

(iii) The Resource Conservation and Recovery Act of 1976, as amended (42U.S.C. § 6901 et seq.);

(iv) Regulations adopted and publications promulgated pursuant to the foregoing;

(v) Any other Governmental Requirement; and

(vi) Any other material, the use, release, disposal, or presence of which

may result in liability under any Governmental Requirement or common law action.

(d) “Improvements” shall mean the Mooring Improvements and any other improvements made by JHNSA and approved by the DIA as provided herein.

(e) “License” means collectively this License and any and all exhibits hereto, including any amendments or addenda which may supplement, modify or amend the same, now or in the future.

(f) “Licensed Area” means, collectively, the Submerged Lands Area and Pier 1.

(g) “Permitted Uses” means JHNSA’s use of the Licensed Area, which use shall only be for the purposes set forth on **Exhibit F**, attached hereto and incorporated herein by this reference, all in compliance with the terms of this License and all Governmental Requirements.

(h) “Property” shall have the meaning set forth in the Recitals to this License.

(i) “Project” means the construction, mooring, maintenance and operation of the Vessel, the Ship Museum, the Improvements and all other associated improvements within the Licensed Area.

(j) “Vending” is defined as the exchange of goods, foodstuffs, and/or services for monetary gain or services-in-kind.

(k) “Vessel” means the retired naval vessel USS Orleck or such other retired naval vessel owned by JHNSA that may be approved by the DIA in its sole discretion.

3. License. In consideration of the representations, agreements and covenants contained herein, the DIA shall grant a non-exclusive, revocable license to JHNSA for an initial term of ten (10) years, which term shall commence on Effective Date (the “**Initial Term**” and as extended by any Extension Term, the “**License Term**”), to use the Licensed Area only for the Permitted Uses, together with the Improvements constructed or installed thereon by JHNSA during the License Term, in accordance with all of the provisions, covenants, conditions and terms herein. Upon mutual agreement of the parties, the Initial Term may be extended for two (2) additional periods of five (5) years under the same terms and conditions as set forth herein (each, an “**Extension Term**”). Notice of JHNSA’s request for an additional term must be given to the DIA in writing at least one (1) year prior to the expiration of the then current term and the DIA shall provide JHNSA with written acceptance or denial of the same within fifteen (15) days after receipt of JHNSA’s written request.

4. As-Is Condition. JHNSA agrees that the Licensed Area is licensed to JHNSA in its “as is, where is” condition, with all faults, and there are no oral agreements, warranties or representations collateral to or affecting the Licensed Area by any of the parties hereto (except as set forth herein). JHNSA further understands and agrees that the DIA hereby disclaims all

warranties or representations of any kind or character, express or implied, with respect to the Licensed Area, including but not limited to, warranties or representations as to matters of title, zoning, physical or environmental conditions, availability of access, ingress or egress, operating history, government approvals, governmental regulations or any other matter or thing relating to or affecting the Licensed Area. JHNSA represents that it has conducted such inspections and investigations of the Licensed Area, including, but not limited to, the physical and environmental conditions thereof, and shall rely upon same, and upon the effective date of the License Agreement shall assume the risk of adverse matters, including, but not limited to, adverse physical and environmental conditions, including the existence in or on the Licensed Area of hazardous materials, that may not have been revealed by inspections and investigations.

5. License Fees. JHNSA shall not be charged any annual or monthly license fees during the License Term.

6. Taxes and Other Charges. JHNSA shall bear, pay and discharge, on or before the last day on which payment may be made without penalty or interest, all ad valorem real estate taxes or other taxes, if any, which shall or may during the License Term be charged, laid, levied, assessed, imposed, become payable and due, or become liens upon, or arise in connection with JHNSA's use, occupancy or possession of the Licensed Area, the Vessel, the Ship Museum, the Improvements, or any part thereof. The real estate taxes, if any, for the calendar year in which the License Term begins and ends shall be paid in full by JHNSA, whether or not the tax bill has been issued at the date the License Term has begun or terminated, and shall not be pro-rated between the respective parties.

7. Maintenance. JHNSA shall, at its sole cost and expense, preserve and maintain the Vessel, the Ship Museum, the Licensed Area, the Improvements and all other improvements located thereon in good and satisfactory condition as determined in the reasonable discretion of the DIA, provided that, such condition shall at least include the following:

- a. The structure of the Vessel including, without limitation, the hull, decks, and machinery shall be kept watertight and intact and in a good state of repair in accordance with sound marine maintenance practice.
- b. The Vessel and the Ship Museum shall be maintained as a first-class public venue consistent with the proud tradition of the Vessel and in compliance with all applicable federal, state and local laws, rules, regulations and ordinances and other Governmental Requirements.
- c. The Vessel, Ship Museum, Licensed Area, the Improvements and all other improvements located thereon, and shall be maintained in a clean, attractive and safe condition for the public's access and passage.

8. Use of Licensed Area.

(a) The Licensed Area will be used as provided herein by JHNSA only for the Permitted Uses. No other use of the Licensed Area by JHNSA is permitted without the prior

written consent of the DIA, which consent may be withheld in its sole and absolute discretion. Without limiting the foregoing, JHNSA agrees that no political advertising, signs, banners, or placards shall be hung from, attached to, or displayed anywhere on or about the Licensed Area.

(b) JHNSA understands that it is the DIA's goal to ensure that the citizens of Jacksonville have maximum access to and use of the Ship Museum. JHNSA covenants and agrees to administer, maintain and operate the Ship Museum during reasonable hours consistent with JHNSA's purposes and uses as described herein. To facilitate use of the Licensed Area by the general public, and subject to the Governmental Requirements, JHNSA shall post the operational hours of the Ship Museum, including a schedule of activities and programs and specific days of the week and times of day the Ship Museum will be open to the general public. JHNSA covenants and agrees that it shall operate the Ship Museum at least fourteen (14) hours per week until the Shipyards West Park is open to the public and at least forty (40) hours per week thereafter.

(c) JHNSA agrees to comply, and be in compliance at all times, with Governmental Requirements imposed upon the Licensed Area and operation of the Ship Museum and shall not in any way subject the DIA to liability or exposure for failure to adhere to the same, and hereby indemnifies the DIA therefrom.

(d) JHNSA acknowledges and agrees that the Licensed Area is subject to certain provisions, conditions, terms and use restrictions, including, but not limited to, the Brownfields Site Rehabilitation Agreement ("BSRA"), Site ID #BF16000-1002, and a Florida Department of Environmental Protection Consent Order (OGC Case 96-2444) ("**Consent Order**"), copies of which have been provided to the JHNSA, and other federal, state or local governmental and/or regulatory entities requiring that the use of the Licensed Area be in compliance with the provisions, conditions and terms of the said governmental/regulatory entities. JHNSA agrees to be in compliance at all times and to comply with the BSRA and the Consent Order and any of the conditions of those agreements that affect the Licensed Area, including, but not limited to, non-disturbance of the site-wide, soils cap of two feet, except as allowed and governed by the Site-wide Cover Interim Remedial Action and Operation and Maintenance Plan dated August 12, 1998, and any amendments thereto. Further, JHNSA shall provide DIA and the City with written confirmation from FDEP that any improvements contemplated within the Licensed Area do not violate the BSRA nor require any special remedial action. JHNSA shall provide the DIA and City with immediate written notice of any communication from regulatory or grant authorities concerning contamination or remediation requirements.

(e) JHNSA shall not discriminate against any person on the basis of race, creed, color, sex, religion, ethnic or national origin, age, marital status or disability in its use of the Licensed Area or operation of the Ship Museum.

(f) JHNSA shall comply with the City's Volunteer Background Screening Policy, completing background and security reviews of all employees and volunteers who provide or perform services involving the public for JHNSA at the Licensed Area. Use or employment of any volunteer who has not successfully passed such screening policy will be deemed a breach of this License and may result in immediate termination of the License pursuant to Section 16 hereof. Further, JHNSA shall require any of its employees or volunteers participating in children's

programs or activities submit to and successfully pass a Level 2 Background Screening, as contemplated in Section 435.04, Florida Statutes, or other applicable laws regarding children's programs and activities.

(g) JHNSA may sell alcohol during events held at the Ship Museum provided it has secured the necessary permits from the State of Florida Department of Business and Professional Regulation, special events permits and the insurance required by the DIA's Risk Management Division. In the event JHNSA chooses to serve alcohol, JHNSA assumes all risks, known, unknown or reasonably foreseeable, which may be associated with such sales. JHNSA shall hold harmless, indemnify and defend the DIA and the DIA, including their respective directors, officers, employees, representatives and agents against any claim, action, loss, damage, injury, liability, cost or expense of whatsoever kind or nature (including, but not by way of limitation, attorney's fees or court costs) arising out of any injury, whether mental or corporeal, to persons, including death, or damage to property, arising out of or incidental to the sale of alcohol at the Licensed Area.

9. Improvements to Licensed Area, Personal Property.

(a) JHNSA shall complete the construction of the Mooring Improvements in accordance with the Approved Plans and Performance Schedule (collectively, the "**Approved Documents**").

(b) All additions, alterations changes or improvements made as part of the Project shall be made in conformance with plans and specifications approved by the DIA and with all applicable federal, state and municipal regulations, ordinances, codes and laws, including, as applicable, the Downtown Development Review Board design guidelines and requirements. Notwithstanding anything to the contrary in this Agreement, JHNSA shall not make any further additions, alterations, changes or improvements in or to the Licensed Area or any part thereof without the prior written consent of the DIA, which consent may be withheld in the DIA's sole discretion. Menial maintenance shall not be included in this provision. All additions, alterations, changes or improvements made by JHNSA to the Licensed Area shall be made at JHNSA's sole expense and shall, upon the termination of this License for any reason, at the option of the DIA, become the property of the City or shall be removed at JHNSA's sole expense and the Licensed Area restored to its prior condition as of the Effective Date. JHNSA shall not place its personal property on or within the Licensed Area during the License Term without approval of the DIA, and all JHNSA personal property that may be on or about the Licensed Area shall be thereon at JHNSA's sole risk.

(c) Any and all dredging necessary to accommodate the Vessel shall be the responsibility of JHNSA and JHNSA shall pay for all costs associated with the permitting, dredging and dredge disposal work within the Submerged Lands Area (except to the extent that such work is offered without charge to JHNSA). JHNSA shall acquire and comply with all necessary permits and approvals for the dredge work, including but not limited to the applicable permits listed on Exhibit I attached hereto ("**Applicable Permits**").

(d) During and until the completion of the construction of the Improvements,

the JHNSA shall comply with the indemnification and insurance requirements contained on **Exhibits G and H** attached hereto. At all times during the License Term, JHNSA shall comply with the indemnification and insurance requirements as set forth on **Exhibits G and H-1** attached hereto.

(e) It is the intent of the parties that the DIA and the City shall be the intended beneficiary of all warranties relating to the construction of any Improvements (other than those on or in the Vessel), and JHNSA shall require all warranties to so designate the DIA and the City. Prior to substantial completion of any Improvements, JHNSA shall require all contractors to give reasonable notice to the DIA and the City so that the DIA and the City may participate in final walk-through and punch list inspections. Prior to completion and close-out of the construction work, JHNSA shall require its contractors to give reasonable notice to the DIA and the City of all close-out training, including, but not limited to, start-up of equipment and operations and maintenance procedures in order that that DIA and the City may participate. JHNSA shall cause the contractors to deliver to the DIA and the City all warranties upon completion of the construction work.

(f) For improvements over \$50,000 and performed by other than volunteers, JHNSA shall require any contractor or contractors performing work, either as part of the Project or otherwise, to furnish a Construction 100% Performance and Payment Bond (“**Construction Bond**”) in an amount not less than the full amount of the contract price for completing the build-out of any Improvements, as surety for the faithful performance of the contract by the contractor, and for the payment of all persons performing labor and furnishing materials in connection with the work. JHNSA shall, before the commencement of any construction, furnish the DIA with evidence of the Construction Bond as outlined herein. If at any time during the continuance of the contract a surety on the contractor’s bond or bonds becomes irresponsible, the DIA shall have the right to request additional and sufficient sureties which JHNSA shall require the contractor to furnish within ten (10) days after receipt of written notice from the DIA to do so.

(g) Any additions, deletions or revisions to the Mooring Improvements, as set forth in the Approved Plans or any other approved designs and plans, shall require the prior written approval of the DIA.

(h) JHNSA shall obtain, at its own expense, any permits, changes to existing permits, architectural approvals and zoning approvals as may be required by federal, state and local laws and regulations for the Project and any Improvements, and for JHNSA’s use of the Licensed Area.

(i) JHNSA shall if applicable obtain a certificate of occupancy for the Vessel or its equivalent prior to operating the Ship Museum and shall ensure that the Vessel and Improvements meet all applicable building codes and ordinances and other Governmental Requirements, including compliance with the Americans Disabilities Act of 1990, as applicable.

(j) It is understood and agreed between the parties that all Improvements to the Licensed Area upon termination or expiration of this License, shall, at the option of the DIA, and at no expense to the City or the DIA, become the property of the City, free and clear of all

construction or other liens. JHNSA shall deliver to the DIA contractor(s)' affidavits and waivers of lien from all those who supplied labor, material or services in connection with the construction of such Improvements, together with satisfactory proof of full payment of the same.

(k) JHNSA agrees to comply, and to require any contractor, subcontractor or supplier to comply, with all applicable Governmental Requirements as well as the indemnification and insurance requirements applicable to the JHNSA hereunder.

(l) JHNSA acknowledges the existence of the BSRA and Consent Order and shall comply with any of the conditions of those agreements that affect the Licensed Area, including, but not limited to, non-disturbance of the site-wide, soils cap of two feet, except as allowed and governed by the Site-wide Cover Interim Remedial Action and Operation and Maintenance Plan dated August 12, 1998, and any amendments thereto. JHNSA shall provide the DIA immediate written notice of any communication from regulatory or grant authorities concerning contamination or remediation requirements. By executing this License, the parties acknowledge that the Florida Department of Environmental Protection has given its written approval of the License as required by Paragraph 20 of the BSRA.

(m) JHNSA shall indemnify, defend and hold harmless the City, the DIA and their respective officers, employees, agents, invitees, guests and contractors from and against all claims, costs, losses and damages, including, but not limited to, all attorney's fees and all court costs, caused by, arising out of, or resulting from the construction of the Improvements, provided that any such claim, cost, loss or damage: (1) is attributable to bodily injury, sickness, disease, death or environmental remediation liability as referenced in Section 8(l) above, or to damage to or destruction of tangible property; and (2) is caused by acts or omissions of JHNSA or any of its contractors, subcontractors, suppliers, or any persons or organizations employed by any of them in the performance of or furnishing of the construction of any Improvements. The provisions of this paragraph shall survive the expiration or termination of this License.

(n) JHNSA and its contractors and subcontractors shall be responsible for damage to any area on or about the Licensed Area caused by the construction of the Improvements.

10. Maintenance, Repairs and Utilities. JHNSA shall, at its sole cost and expense, maintain and keep the Vessel, the Ship Museum and all Improvements, and the Licensed Area, in good repair and satisfactory condition and in accordance with the terms and conditions of the Agreement as determined in the sole but reasonable discretion of the DIA. JHNSA shall be responsible for, and promptly pay, all charges for gas, electric, garbage, water, sewer and other charges or costs which may become payable and due during the License Term for the gas, electric, garbage, water, sewer and other services and utilities used by JHNSA at the Licensed Area. JHNSA shall be responsible for the installation and maintenance charges for any telephone facilities, computer facilities, or other communication facilities utilized by JHNSA at the Licensed Area. JHNSA shall pay, and be responsible for, the costs of all maintenance and repair associated with JHNSA's use of the Licensed Area. JHNSA shall be responsible at its sole cost and expense for the removal of trash from the Licensed Area.

11. Indemnification. JHNSA, its contractors, subcontractors, consultants and agents



hereby agree to the indemnification provisions attached hereto as **Exhibit G** and incorporated herein by this reference.

12. **Insurance.** At all times during the License Term and any extensions thereto, JHNSA, its contractors, subcontractors, consultants and agents (as applicable) agree to obtain and maintain insurance in the forms and amounts provided in **Exhibits H and H-1** attached hereto and incorporated herein by this reference.

13. **Compliance with Governmental Requirements.** During the License Term, JHNSA shall comply with all Governmental Requirements that govern, affect or are applicable to the condition or use of the Vessel, the Ship Museum or the Licensed Area or that are related to or arise out of JHNSA's use thereof. JHNSA shall notify the DIA of its violation of any Governmental Requirement immediately after JHNSA's knowledge thereof, and JHNSA shall diligently and prudently take requisite action to correct any violations of Governmental Requirements which arise out of JHNSA's use of the Licensed Area as soon as reasonably possible after the discovery of same. JHNSA shall assure the DIA from time to time, by written certification, that JHNSA and the Licensed Area are in compliance with all Governmental Requirements affecting same.

14. **Title to Licensed Area.** Title to the Licensed Area shall remain vested with the City, subject to the covenants, conditions and terms of this License and JHNSA shall have no interest in the title to the Licensed Area but shall only have a license interest thereto. JHNSA shall accept the Licensed Area "as is". Any improvements made to the Licensed Area shall be vested with the City, which shall have the title thereto, subject to the covenants, conditions and terms of this License; however, no furnishings, furniture, equipment or other personal property installed or constructed by JHNSA on or within the Vessel shall be the City's property, but shall be the property of JHNSA. JHNSA shall have control of the Vessel subject to the covenants, conditions and terms of this License, but the City shall always remain vested with title to the Licensed Area and in control thereof to ensure, among other things, that neither JHNSA nor any other entity shall have the authority or right to violate Governmental Requirements affecting the Licensed Area and the utilization thereof.

15. **Destruction or Damage.** In the event the Improvements or the Licensed Area or any part thereof is destroyed or damaged from any casualty, JHNSA shall, to the extent of available insurance proceeds, repair the damage and restore the Licensed Area to the extent reasonable and practical under the circumstances then existing. In the event the Vessel is destroyed or damaged from any casualty or any cause other than the City's gross negligence or willful misconduct, JHNSA shall be solely responsible for the same.

16. **Hazardous Materials.**

(a) Except for cleaning supplies and other maintenance supplies (such as paint) in quantities suitable for consumer use, JHNSA shall not knowingly use, handle, store or permit the use, handling or storage of Hazardous Materials on or about the Licensed Area. JHNSA shall not dispose of or permit or allow the disposal, leakage, spillage or discharge on or upon the Licensed Area of any Hazardous Material. If any Hazardous Material should be used, handled or

stored (except in accordance with this Section) or if any Hazardous Material is disposed of or permitted to leak, spill or discharge on, about or upon the Licensed Area by accident or otherwise, JHNSA shall provide immediate written notice thereof to the DIA and JHNSA shall immediately commence and diligently pursue the removal of any such Hazardous Material and JHNSA shall remediate, clean and restore the Hazardous Material area in accordance with all applicable Governmental Requirements, and pay all fines, fees, assessments and penalties arising therefrom. JHNSA shall furnish to the DIA, periodically at the DIA's request, certification that JHNSA is in compliance with the provisions of this Section.

(b) JHNSA shall provide written notice to the DIA within three (3) days of:

(i) any change in JHNSA's utilization and operation of the Licensed Area involving the use, handling or storage of Hazardous Materials;

(ii) JHNSA's receipt of any warning, notice, notice of violation, lawsuit or the like from any governmental agency or regulatory authority relating to environmental compliance;

(iii) JHNSA's receipt of any complaint, claim, or lawsuit filed by any third party relating to environmental compliance; or

(iv) releases, spillage, leakage or disposal of any Hazardous Material at, on or about the Licensed Area.

(c) If JHNSA fails to comply with any of the provisions of this Section, the DIA and/or the City shall have the right, but shall not be obligated, to enter into and go upon the Licensed Area without thereby causing or constituting a breach or termination of this License, or ejection of JHNSA, either constructive or otherwise, in whole or in part, from all or any portion of the Licensed Area, or an interference with JHNSA's use of the Licensed Area, and take such steps and incur such expenses as the DIA or City shall deem necessary to correct JHNSA's default, including, without limitation of the generality of the foregoing, the making of all replacements or repairs for which JHNSA is responsible, and JHNSA shall reimburse the DIA and/or City, as applicable, on demand for any expense the DIA and/or City incurs as a result thereof.

17. Default. Each of the following events shall constitute a default hereunder by JHNSA, as the case may be, and shall constitute a breach of this License:

(a) If JHNSA fails to pay the DIA any charge due hereunder as and when the same shall become payable after the DIA's written notice for payment; or

(b) If JHNSA shall fail to obtain and maintain during the License Term any applicable material licenses or permits; or

(c) If JHNSA shall fail to maintain the proper insurance as required by this License after having received written notice from the DIA or the City; or

(d) If JHNSA shall violate any term or condition of the Applicable Permits, the BSRA or Consent Order during the License Term; or

(e) If JHNSA shall default under the Agreement; or

(f) If JHNSA shall fail to operate the Ship Museum as required by Section 8(b);

or

(g) If JHNSA shall fail to maintain the Vessel or the Ship Museum as required by Section 7; or

(h) If JHNSA fails to perform any of the other covenants, conditions and terms of this License on JHNSA's part to be performed and such non-performance shall continue for a period of thirty (30) days after written notice thereof by the DIA to JHNSA; or if JHNSA shall fail to act in good faith to commence and undertake performance within such thirty (30) day period to cure a non-performance which cannot be cured within the initial thirty (30) day period unless JHNSA first designates in writing the reasonable time period to cure such non-performance and its intent to do so, or, JHNSA, having commenced to undertake such performance within the initial thirty (30) day period, shall fail to diligently proceed therewith to completion within the designated reasonable time period to cure such non-performance; or

(i) The occurrence of any one or more of the following events prior to the expiration of the License Term shall constitute an event of default hereunder: (i) a violation of any applicable and governing federal, state or local law, rule, regulation or policy with respect to the subject matter hereof; (ii) if any representation or warranty contained in this License shall be false or misleading in any material respect; (iii) the application by JHNSA for, or consent to, the appointment of a receiver, trustee, liquidator or custodian (or similar official) of its or all or a substantial part of its assets, or if any party shall be unable or admit in writing its inability to pay its debts as they mature, make a general assignment for the benefit of creditors, be adjudicated a bankrupt or insolvent, file a voluntary petition in bankruptcy or a petition or answer seeking reorganization or any arrangement with creditors or agrees to take advantage of any insolvency law, file an answer admitting the material allegations of a petition filed against it in any bankruptcy, reorganization or insolvency proceeding or if any corporate action shall be taken by it for any purpose of effecting any of the foregoing, or if any order, judgment or decree shall be entered by a court of competent jurisdiction approving a petition seeking reorganization or appointing a receiver, trustee, liquidator or custodian (or other similar official) of any party hereto or of all or a substantial part of its assets, and such other judgment or decree shall continue unstayed and in effect for a period of thirty (30) consecutive days; or (iv) an event of default of JHNSA under any other agreement or transaction between JHNSA and the DIA or JHNSA and the City.

Any event of default under subsections 16(b) – (g) shall be deemed a material breach of this License and upon such default the DIA shall have the right to terminate and cancel the License immediately by providing written notice to JHNSA of the same. If any other event of default shall occur and remain uncured for a period of thirty (30) days, the DIA shall have the right to immediately terminate and cancel this License by giving to JHNSA written notice of such termination and cancellation. Upon such notice, this License shall terminate and the parties shall

be released from all obligations under this License that do not specifically survive its termination. The foregoing remedy shall not be the exclusive remedy of the DIA for JHNSA's breach of this License but all remedies hereunder, under the Agreement, and at law and equity shall be cumulative, and the exercise by the DIA of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by JHNSA. JHNSA, at its sole expense, shall have ninety (90) days from the date of any written notice of termination to remove the Vessel and the Improvements from the Licensed Area and perform any other Removal Obligations. The City at its option may elect to retain title to the Improvements and shall provide written notice to JHNSA of the same at the same time and in the same manner as the written notice of termination and cancellation. JHNSA shall execute a quitclaim deed, bill of sale, and other documents reasonably requested by the City to evidence ownership of the Improvements in the City. This Section 17 shall survive the termination or expiration of this License.

18. JHNSA Termination. JHNSA shall retain an absolute right to terminate and cancel this License at any time during the License Term in the event JHNSA determines that its financial condition and/or operating funds are not sufficient for JHNSA to maintain and operate the Ship Museum, the Vessel, Improvements or the Licensed Area as described herein upon giving the DIA no less than ninety (90) days' written notice of JHNSA's need to terminate and cancel its obligations hereunder and designating the termination date. In such event, the License shall terminate and cease as of the effective date of JHNSA's termination hereunder (which in no event shall be less than ninety (90) days from the DIA's receipt of JHNSA's notice of termination) and the parties shall be released from all obligations hereunder which do not specifically survive termination; furthermore, all agreements, contracts or other rights with respect to the Licensed Area, the Ship Museum, or the Improvements between JHNSA and other third parties in existence at the time of such termination shall terminate and cease as of the effective date of JHNSA's termination hereunder. JHNSA, at its sole expense, shall have ninety (90) days from the date of any written notice of termination to remove the Vessel and the Improvements from the Licensed Area and perform any other Removal Obligations. The City may elect to retain title to the Improvements with written notice thereof provided to JHNSA consistent with the requirements of Section 16(f) hereof. This Section 18 shall survive the termination or expiration of this License.

19. Removal of Improvements; Letter of Credit. JHNSA, at its sole expense, shall within ninety (90) days after the date of any written notice of termination but in no event later than the expiration of this License remove the Vessel and the Improvements and all JHNSA property from the Licensed Area and restore the Licensed Area and the Temporary Area (to the extent not previously restored) to its condition as of commencement of the License Agreement (collectively, the "**Removal Obligations**"), subject to the City's right to retain such Improvements as set forth in this License. As security for the Removal Obligations, and as a condition precedent to this License, JHNSA has delivered an irrevocable letter of credit to the DIA which satisfies the Letter of Credit Requirements set forth on Exhibit J hereto (the "**Letter of Credit Requirements**") in the amount of \$ \_\_\_\_\_, which amount represents the Estimated Costs of Removal plus an additional ten (10%) pursuant to Section 6 of the Agreement, (the "**Letter of Credit**"). If, at any time, the Letter of Credit (or any replacement Letter of Credit) shall fail to satisfy the Letter of Credit Requirements, or if the issuer shall send a notice of non-renewal, then within five (5)

days from the DIA's demand, but in no event later than ten (10) business days prior to the then-current expiration date, JHNSA shall replace the Letter of Credit with either: (i) a replacement Letter of Credit that satisfies the Letter of Credit Requirements, or (ii) cash equal to the face amount of the Letter of Credit (which shall be treated as a cash security deposit. If JHNSA fails to timely replace the Letter of Credit with either cash security or a replacement Letter of Credit as set forth above, then: (x) the DIA shall have the right to draw down the full amount of the Letter of Credit; and (y) a default shall be deemed to have occurred under this License. Notwithstanding anything to the contrary contained in this License, JHNSA shall not be entitled to receive (and the DIA shall not be required to give), grace, cure, or advance notice of either the draw down on the Letter of Credit or the occurrence of the default.

In the event that JHNSA, upon the expiration or earlier termination of the License Agreement, fails to perform the Removal Obligations, the DIA shall have the right, in addition to all other remedies available at law and in equity, to present any Letter of Credit for full or partial payment to effectuate and perform the Removal Obligations, without giving (and the DIA shall not be required to give) a grace period, cure rights, or advance notice; and despite any objections by JHNSA. In the event the Letter of Credit funds received by the DIA are not sufficient to cover the costs to perform the Removal Obligations or if, for any reason other than the DIA's failure to substantially comply with the requirements of the Letter of Credit, issuer shall fail or refuse to timely honor any demand for payment by the DIA, then JHNSA shall, within thirty (30) days of receipt of the DIA's written demand, pay to the DIA any the difference between the Letter of Credit funds received by the DIA and all costs and expenses incurred to perform the Removal Obligations, including reasonable attorney's fees.

With respect to any Letters of Credit, JHNSA acknowledges, covenants, warrants, and agrees as follows:

- (i) JHNSA is not a third-party beneficiary of the Letter of Credit.
- (ii) JHNSA shall not assign or encumber all or any part of the Letter of Credit and neither the DIA nor its successors and assigns shall be bound by any assignment or encumbrance by JHNSA.
- (iii) No portion of any security deposit held in the form of a Letter of Credit shall earn interest.
- (iv) When making a draw request, the DIA shall not be required to produce or present to the issuer any documents, instruments, or certificates, other than as expressly set forth in the Letter of Credit and shall not be required to produce or present any copies or other documents regarding the draw request to JHNSA.
- (v) JHNSA shall not take any action or fail to take any action which might, directly or indirectly, interfere with or delay the presentation or honoring of a sight draft.
- (vi) JHNSA shall, at its sole cost and expense, cooperate with the DIA and take such actions as the DIA may request with respect to the Letter of Credit including: (i)

notifying the DIA if JHNSA has knowledge that any Letter of Credit no longer satisfies the Letter of Credit Requirements; (ii) using best efforts to cause the issuance of a replacement Letter of Credit if required pursuant to any provision of this License; (iii) delivering any amendments, modifications, documents, certificates, or affidavits requested by the DIA to give effect to the provisions of this Section 19.

Every fifth year during the License Term, JHNSA will provide the DIA a current cost estimate, certified by a licensed and insured towing company to be pre-approved by the City Engineer, for the costs to remove the Vessel and tow the Vessel to Brownsville, Texas, and a current cost estimate to remove the Improvements agreed to by the City Engineer (collectively, the “**Estimated Removal Costs**”). In the event the Letter of Credit is less than one hundred and ten percent (110%) of the most recent certified Estimated Removal Costs, JHNSA shall immediately increase the Letter of Credit to account for the difference.

This Section 19 shall survive the termination or expiration of this License.

20. Licenses, Permits. JHNSA will be responsible for obtaining, in the name of the DIA, JHNSA or otherwise, all licenses, permits, inspections and other approvals necessary for use of the Licensed Area and the operation of the Ship Museum and Improvements on the Licensed Area, including but not limited to any occupational licenses necessary to operate the Ship Museum. The DIA, at no cost and expense to the DIA, shall cooperate with JHNSA in obtaining all such licenses, permits, inspections and other approvals, including, but not limited to, supplying information and executing applications, forms or other documents necessary for same. Any and all licenses, permits, inspections and other approvals shall be deemed to apply to JHNSA or its use of the Licensed Area in accordance with the covenants, conditions and terms of this License.

21. No Assignment. Notwithstanding anything to the contrary in this License, no property rights or interests are being granted to JHNSA and, therefore, JHNSA cannot assign or transfer this License or its rights and obligations hereunder or encumber the Licensed Area in any way.

22. Expiration of Term. At the expiration or earlier termination of the License Term, JHNSA shall peaceably return to the City the Licensed Area in the original property condition as existed at the time of execution of this License, reasonable wear and tear excepted. JHNSA shall remove the Vessel and the Improvements in accordance with Section 18 above. It is understood and agreed between the DIA and JHNSA that JHNSA shall have the right, at its sole expense, to remove from the Licensed Area all personal property of JHNSA situate at the Licensed Area, including, but not limited to, the Vessel, all furnishings, furniture, machinery, equipment, appurtenances and appliances placed or installed on the Licensed Area by same, provided JHNSA restores the Licensed Area after the removal therefrom.

23. DIA’s/City’s Right to Enter. Without limiting any other rights retained by the City and the DIA, for purposes of clarity, the DIA and City at all times and without notice may enter into and upon the Licensed Area for the purpose of inspecting same and/or for making improvements and/or for any other purpose.

24. Sponsor/Donor Recognition, Advertising. Subject to applicable sign ordinances and approval of the Downtown Development Review Board, JHNSA may at its option designate the name of certain specific portions of the Ship Museum to recognize sponsors. Such names, and the graphics designating them, shall be appropriate and tasteful in accordance with practices by similar recreational and park facilities elsewhere in the United States. Such names and the graphics designating them shall be subject to the DIA's prior written approval. Notwithstanding anything herein to the contrary, no names, or the graphics designating them, shall promote or advertise alcohol or tobacco products. No such names or graphics shall be allowed anywhere else on the Licensed Area.

25. DIA/City Recognition. All signage, and graphics for same, which advertise, designate or locate the Ship Museum shall further incorporate in its content, either in written type designation or logo designation, a recognition of the DIA and the City in reasonable form. All signage and banners for advertising, sponsorships and/or donors are excluded from this requirement. No signage making reference to the City or the DIA shall be placed on or about the Licensed Area until such signage has been reviewed and approved by the DIA.

26. Force Majeure. If the DIA or JHNSA shall be delayed in, hindered in or prevented from the performance of any act required hereunder (other than performance requiring the payment of a sum of money, the posting of a security deposit or bond, or the delivery of a letter of credit) by reason of strikes, lockouts, epidemic, pandemic, labor troubles, protests, civil unrest, inability to procure materials, failure of power, restrictive governmental laws, regulations or actions, war, riots, insurrection, epidemic, pandemic, adverse weather conditions, the act, failure to act or default of the other party, or other reason beyond such party's reasonable control (excluding the unavailability of funds or financing), then the performance of such act shall be excused for the period of the delay and the period for the performance of any such act as required herein shall be extended for a period equivalent to the period of such delay.

27. Condemnation. If any part of the Licensed Area is taken by eminent domain or condemnation or voluntarily transferred to such authority under the threat thereof, the DIA may, at its sole option, terminate this License by giving written notice to JHNSA within thirty (30) days after the taking, or if by reason of such taking of the Licensed Area, JHNSA's operation on or access to the Licensed Area is substantially and materially impaired, JHNSA shall have the option to terminate this License by giving written notice to the DIA within thirty (30) days after the taking. JHNSA hereby waives any and all rights it may have in all condemnation awards, including, without limitation, loss of or damage to its License, and hereby assigns said claims to the DIA, except such awards as are separately and specifically awarded to JHNSA for its separate personal property, moving expenses and business damages.

28. Mechanics Liens. JHNSA shall immediately after it is filed or claimed, have released, by bonding or otherwise, any mechanics', materialman's or other lien filed or claimed against any or all of the Licensed Area or any other property owned or licensed by the City or the DIA, by reason of labor or materials provided for JHNSA or any of its contractors or subcontractors, or otherwise arising out of JHNSA's use or occupancy of the Licensed Area. Nothing in the provisions of this License shall be deemed in any way to give JHNSA any right, power or authority to contract for or permit to be furnished any services or materials which would

give rise to the filing of any mechanics' or materialman's lien against the City's estate or interest in and to the Licensed Area, it being expressly agreed that no estate or interest of the City in and to the Licensed Area shall be subject to any lien arising in connection with any alteration, addition or improvement made by or on behalf of JHNSA. At the City's or DIA's request, JHNSA shall execute a written instrument to be recorded for the purpose of providing notice of the existence of the provisions of the preceding sentence in accordance with Section 713.10, Florida Statutes.

29. Annual Report and Financial Audit. On August 1<sup>st</sup> of each year of the License Term, JHNSA shall present an Annual Report and pro forma budget for the upcoming year to the DIA. Such Report shall illustrate and explain JHNSA's financial statements, liabilities, assets, revenue, activities, officers' names and addresses, rules and regulations, by-laws, and election date(s), and shall also give a detailed summary of JHNSA's compliance with background screening, events, and attendance figures. JHNSA shall also provide the DIA annually with a copy of JHNSA's audited financials on or before August 1<sup>st</sup> of each year.

30. Audit. With reasonable notice, the DIA, including but not limited to City Council auditors, shall have the right to conduct an audit of the JHNSA.

31. Vending. JHNSA shall provide the DIA with a list of its proposed vending items and charges for review. JHNSA must comply with all Governmental Requirements while vending at the Licensed Area.

32. Miscellaneous:

(a) Notices. Any and all notices which are permitted or required in this License shall be in writing and shall be duly delivered and given when personally served or mailed to the person at the address designated below. If notice is mailed, the same shall be mailed, postage prepaid, in the United States mail by certified or registered mail - return receipt requested. Notice shall be deemed given on the date of personal delivery or mailing and receipt shall be deemed to have occurred on the date of receipt; in the case of receipt of certified or registered mail, the date of receipt shall be deemed to be within three (3) business days of mailing. Failure to accept certified or registered mail shall be deemed a receipt thereof within ten (10) days after the first notice of delivery of the certified or registered mail. Any entity may change its address as designated herein by giving notice thereof as provided herein.

If to DIA:                      Downtown Investment Authority  
   Attention: CEO  
   City Hall at St. James  
   117 West Duval Street, Suite 310  
   Jacksonville, Florida 32202

With copies to:                Department of Parks, Recreation and Community Services  
   City of Jacksonville  
   214 N. Hogan Street, 4th Floor  
   Jacksonville, FL 32202  
   Attn: Director



and

Office of General Counsel  
Government Operations Dept.  
117 West Duval Street, Suite 480  
Jacksonville, Florida 32202  
Attn: Division Chief

If to JHNSA: Jacksonville Historic Naval Ship Association, Inc.  
c/o Abel Bean Law P.A.  
100 N. Laura Street, Suite 501  
Jacksonville, FL 32202  
Attn: Daniel K. Bean

With a copy to: Jacksonville Historic Naval Ship Association, Inc.  
2220 County Road 210 West  
Suite 108  
PMB 314  
Jacksonville, Florida 32259

(b) Legal Representation. Each respective party to this License has been represented by counsel in the negotiation of this License and, accordingly, no provision of this License shall be construed against a respective party due to the fact that it or its counsel drafted, dictated or modified this License or any covenant, condition or term thereof.

(c) Further Instruments. Each respective party hereto shall, from time to time, execute and deliver such further instruments as any other party or parties or its counsel may reasonably request to effectuate the intent of this License.

(d) Severability of Invalid Provision. If any one or more of the agreements, provisions, covenants, conditions and terms of the License shall be contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such agreements, provisions, covenants, conditions or terms shall be null and void with no further force or effect and shall be deemed separable from the remaining agreements, provisions, covenants, conditions and terms of the License and shall in no way affect the validity of any of the other provisions hereof.

(e) No Personal Liability. No representation, statement, covenant, warranty, stipulation, obligation or agreement contained herein shall be deemed to be a representation, statement, covenant, warranty, stipulation, obligation or agreement of any member, officer, employee or agent of the City, DIA or JHNSA in his or her individual capacity and none of the foregoing persons shall be liable personally or be subject to any personal liability or accountability by reason of the execution or delivery thereof.

(f) Third Party Beneficiaries. Nothing herein express or implied is intended or

shall be construed to confer upon any entity other than the City, DIA and JHNSA any right, remedy or claim, equitable or legal, under and by reason of this License or any provision hereof, all provisions, conditions and terms hereof being intended to be and being for the exclusive and sole benefit of the City, DIA and JHNSA.

(g) Successors and Assigns. This License shall be binding upon and inure to the benefit of the DIA's successors and assigns.

(h) Survival of Representations and Warranties. The respective indemnifications, representations and warranties of the respective parties to this License shall survive the expiration or termination of the License and remain in effect.

(i) Governing Law and Venue. This License shall be governed by and construed in accordance with the laws of the State of Florida and the Ordinances of the City of Jacksonville. Wherever possible, each provision, condition and term of this License shall be interpreted in such manner as to be effective and valid under applicable law; but if any provision, condition or term of this License, or any documentation executed and delivered hereto, shall be prohibited by or invalid under such applicable law, then such provision, condition or term shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision, condition or term or the remaining provisions, conditions and terms of this License or any documentation executed and delivered pursuant hereto. JHNSA acknowledges, consents and agrees that all legal actions or proceedings arising out of or related to this License shall lie exclusively in a state court in Duval County, Florida.

(j) Section Headings. The section headings inserted in this License are for convenience only and are not intended to and shall not be construed to limit, enlarge or affect the scope or intent of this License, nor the meaning of any provision, condition or term hereof.

(k) Counterparts. This License may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one (1) and the same document.

(l) Entire Agreement. This License contains the entire agreement between the respective parties hereto and supersedes any and all prior agreements and understandings between the respective parties hereto relating to the subject matter hereof. No statement or representation of the respective parties hereto, their agents or employees, made outside of this License, and not contained herein, shall form any part hereof or bind any respective party hereto. This License shall not be supplemented, amended or modified except by written instrument signed by the respective parties hereto.

(m) Attorney's Fees and Costs. In any litigation arising out of or pertaining to this License, each party shall be responsible for their own attorney's fees and costs, whether incurred before, during or after trial, or upon any appellate level.

(n) Time. Time is of the essence for this License. When any time period specified herein falls upon a Saturday, Sunday or legal holiday, the time period shall be extended

to 5:00 P.M. on the next ensuing business day.

(o) Waiver of Defaults. The waiver by either party of any breach of this License by the other party shall not be construed as a waiver of any subsequent breach of any duty or covenant imposed by this License.

**[The remainder of this page was intentionally left blank. Signature pages to follow.]**

**IN WITNESS WHEREOF**, the respective parties hereto have hereunto executed this License for the purposes expressed herein effective the day and year first above written.

**DOWNTOWN INVESTMENT  
AUTHORITY** on behalf of the CITY OF  
JACKSONVILLE, a Florida municipal  
corporation

By: \_\_\_\_\_  
Lori Boyer, CEO

WITNESSES:

**JACKSONVILLE HISTORIC NAVAL  
SHIP ASSOCIATION, INC.**, a Florida  
non-profit corporation

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

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

Form Approved:

\_\_\_\_\_  
Office of General Counsel

GC-#1541382-v7-USS\_Orleck\_-\_JHNSA\_-\_Submerged\_Lands\_License\_Agreement\_2023.docx

# EXHIBIT A

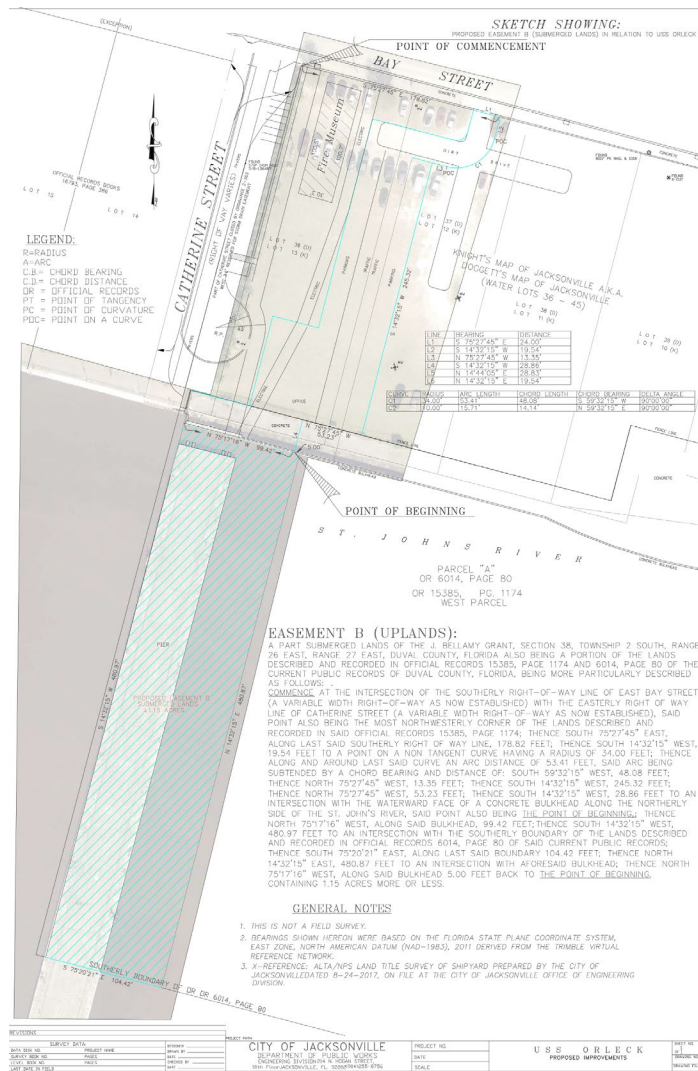
## LICENSED AREA DESCRIPTION

(Submerged Lands Area and Pier 1)

Submerged Lands Area - an area parallel to and immediately adjacent to Pier 1 that is 55 feet wide as measured perpendicular to Pier 1 and running from the bulkhead to the outward extent of the City submerged land adjacent to Pier which is approximately 480 feet, as depicted in the cross-hatched area below.

Pier 1- The westernmost City pier with the property commonly known as the Shipyards, as depicted in the cross-hatched area below.

Notwithstanding the label "Easement B" below, no easement rights are being granted.



**EXHIBIT B**  
**APPROVED PLANS**  
**(See attached)**







USS ORLECK

Jax Shipyard

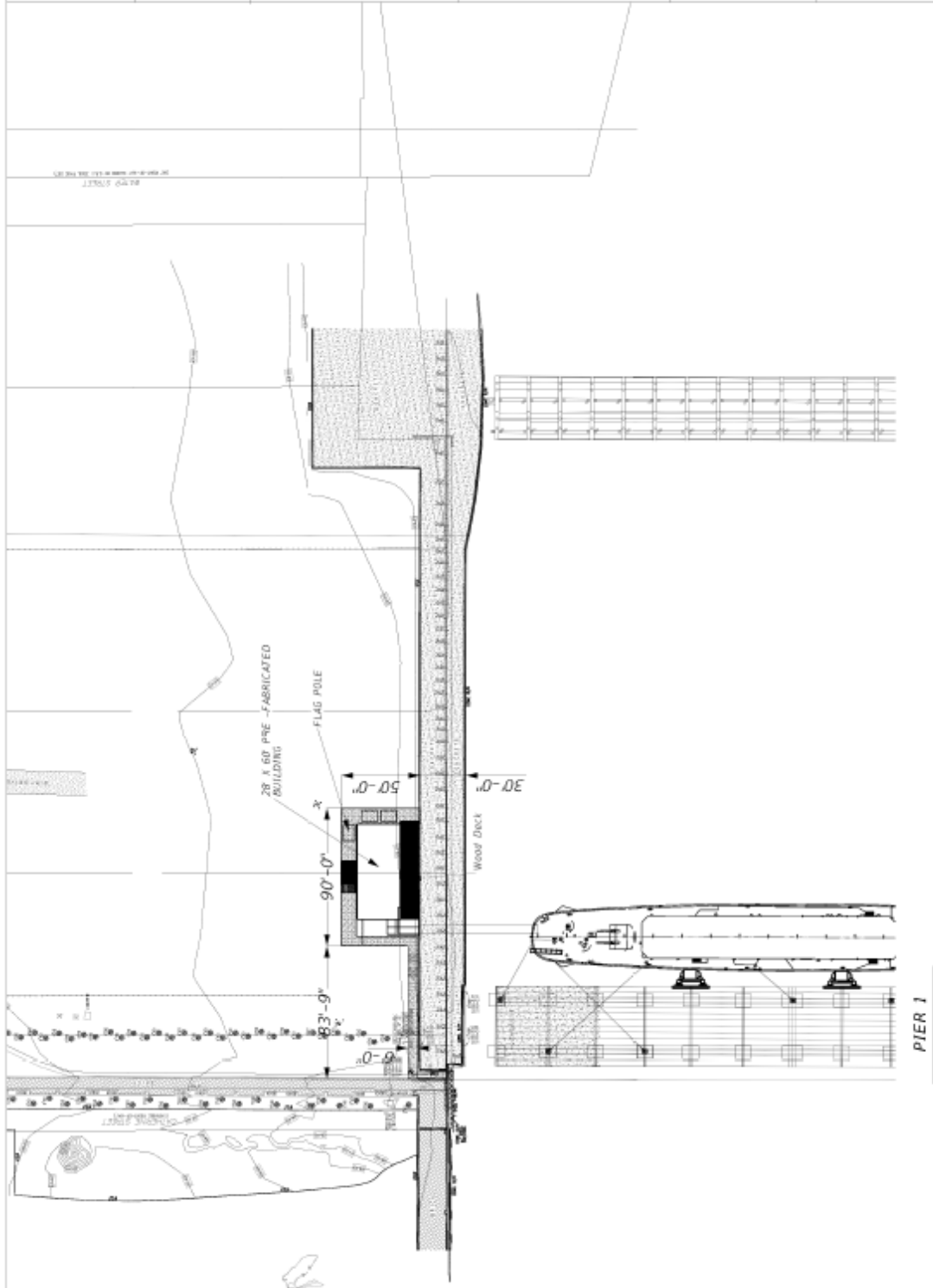


3653-913 Baywoodville Rd.  
Suite 132 Orange, CA 92667  
Phone: 949.234.1398  
www.mceinc.com  
Certificate of Authorization No. 30712

DATE: 08/20/2014 10:00 AM

SHIPYARDS  
UPLAND  
SITE PLAN

PROJECT NO.	14-001
DATE	08/20/2014
SCALE	AS SHOWN
DRAWN BY	JK
CHECKED BY	JK
DATE	08/20/2014
PROJECT	SHIPYARDS UPLAND
SHEET NO.	C-1
TOTAL SHEETS	1



USS ORLECK

Jax Shipyard

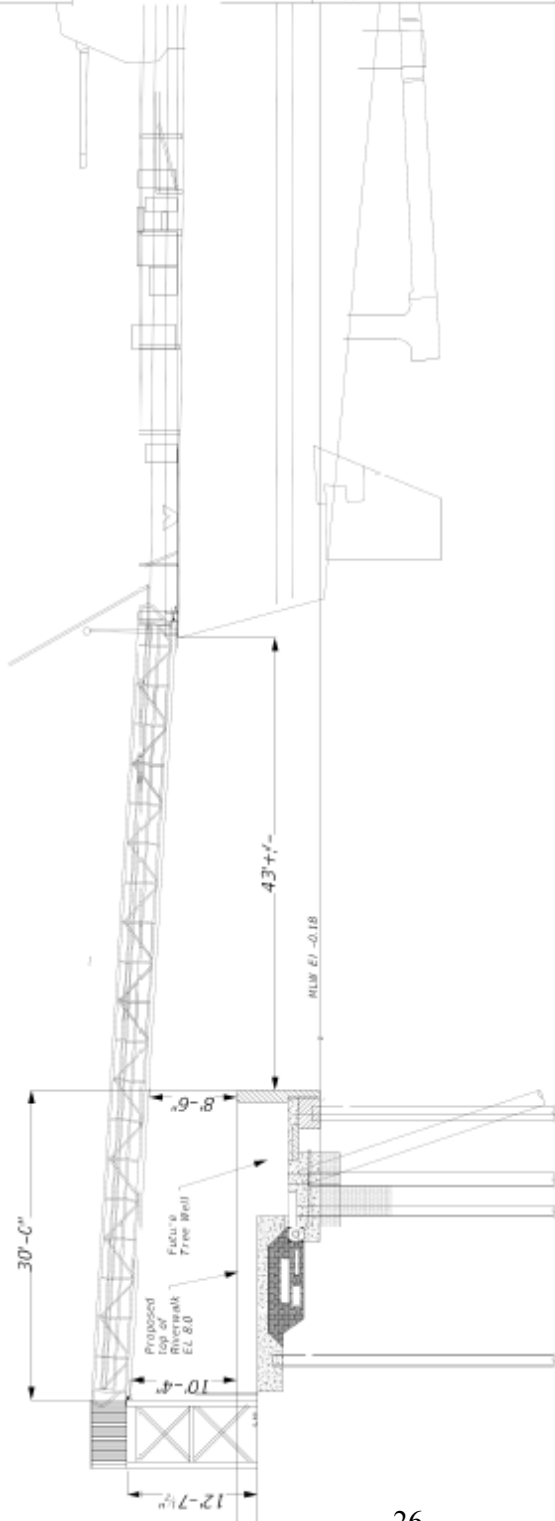


3032-213 Baymeadows Rd,  
Jacksonville, Florida 32217  
Phone: 904.434.1308  
Fax: 904.434.1309  
Certificate of Authorization No. 30712

REVISIONS  
NO. DATE DESCRIPTION BY: DRG

ORLECK ACCESS  
PLAN

PROJECT NO.	10000000000000000000
DATE	05/05/2010
DESIGNER	WILLIAMSON
CHECKER	WILLIAMSON
DATE	05/05/2010
SCALE	AS SHOWN
PROJECT	USS ORLECK
SHIPYARD	JAX SHIPYARD
NO. OF SHEETS	2
SHEET NO.	C-2



ELEVATION

USS ORLECK

Jax Shipyard



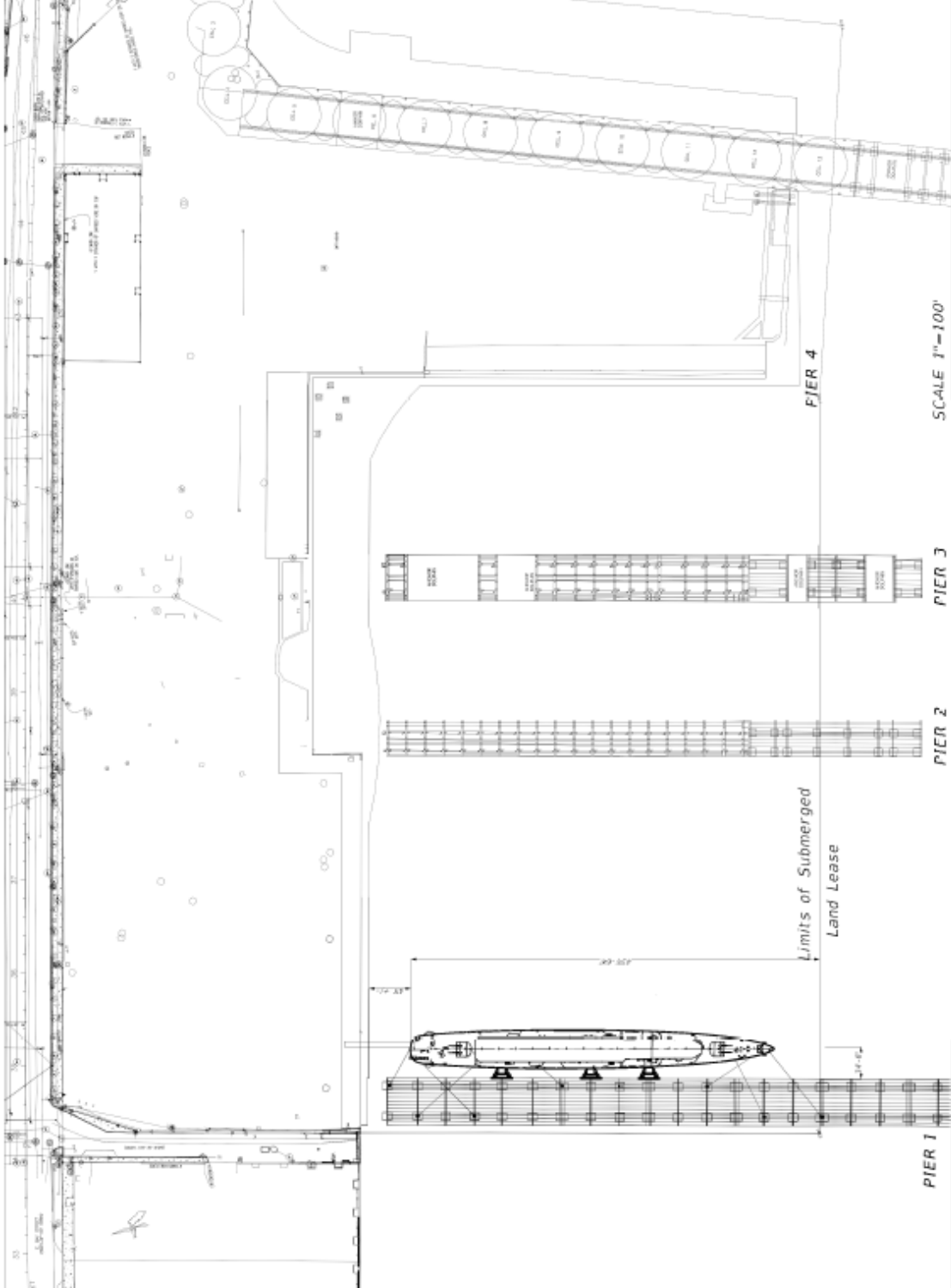
MORALES CONSULTING ENGINEERS  
3850-3113 Magnolia Ave.  
Suite 132  
Jacksonville, Florida 32217  
www.mce-engineers.com  
Certificate of Authorization No. 30712

DATE: 05/11/2010  
DRAWN BY: J. ADAMS  
CHECKED BY: J. ADAMS  
SCALE: 1"=100'

SHIPYARDS  
SITE PLAN  
ORLECK  
& ADAMS

PROJECT NO.	1000000000
DATE	05/11/2010
SCALE	1"=100'
DRAWN BY	J. ADAMS
CHECKED BY	J. ADAMS
PROJECT MANAGER	J. ADAMS
CLIENT	ORLECK & ADAMS
LOCATION	JAX SHIPYARD
PROJECT NAME	USS ORLECK
PROJECT NO.	1000000000
DATE	05/11/2010
SCALE	1"=100'
DRAWN BY	J. ADAMS
CHECKED BY	J. ADAMS
PROJECT MANAGER	J. ADAMS
CLIENT	ORLECK & ADAMS
LOCATION	JAX SHIPYARD
PROJECT NAME	USS ORLECK

5-1



USS ORLECK

Jax Shipyard



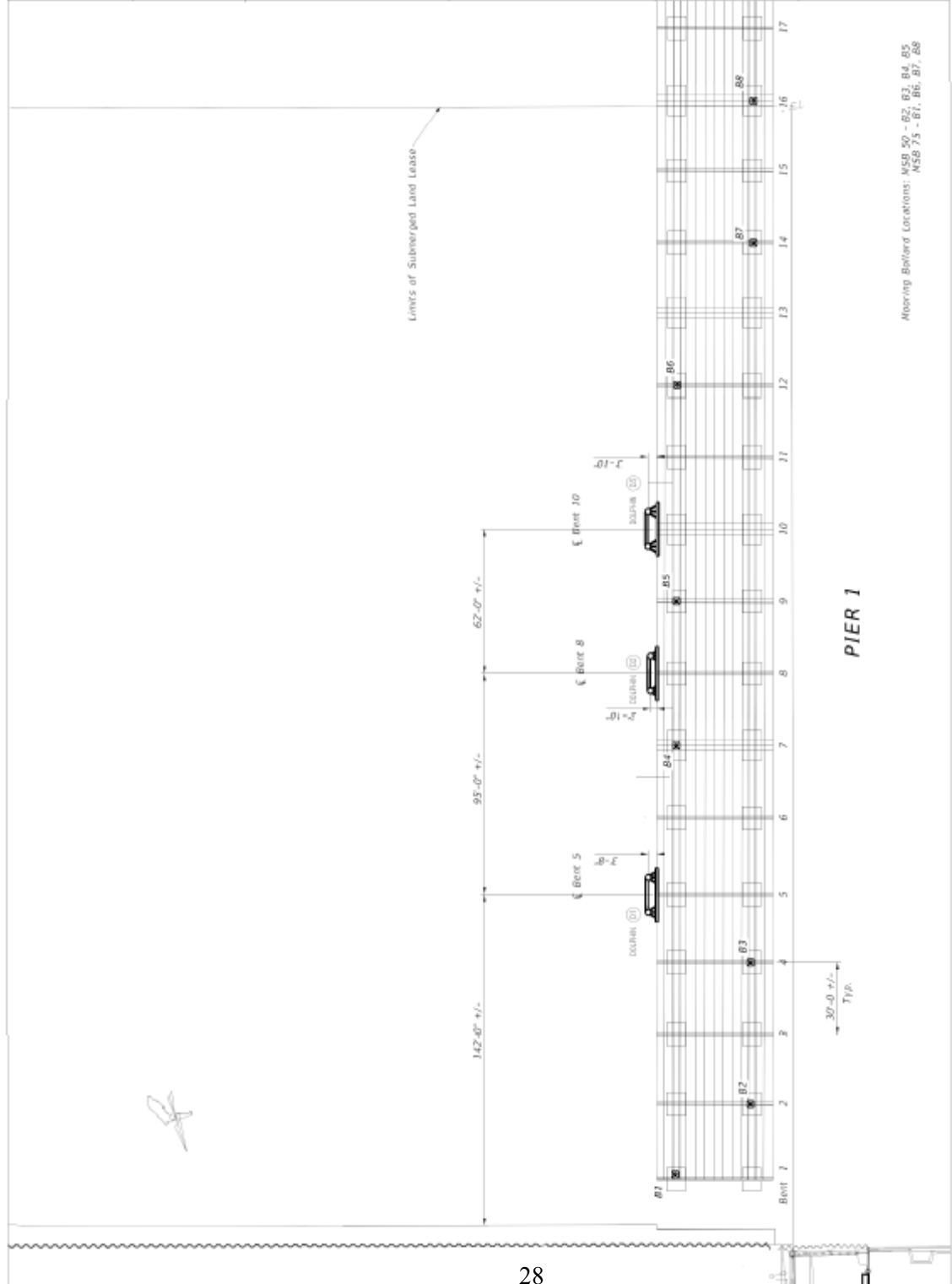
2024-012 Suprastructures Inc.  
2024-012 Suprastructures Inc.  
2024-012 Suprastructures Inc.  
2024-012 Suprastructures Inc.  
2024-012 Suprastructures Inc.

SCALE: 1/8" = 1'-0" (VERTICAL) 1/8" = 30'-0" (HORIZONTAL)

FOUNDATION LAYOUT PLAN

PROJECT NO. 2024-012  
DATE: 01/15/2024  
DRAWN BY: JACOB  
CHECKED BY: JACOB  
APPROVED BY: JACOB

5-7



USS ORLECK

Jax Shipyard



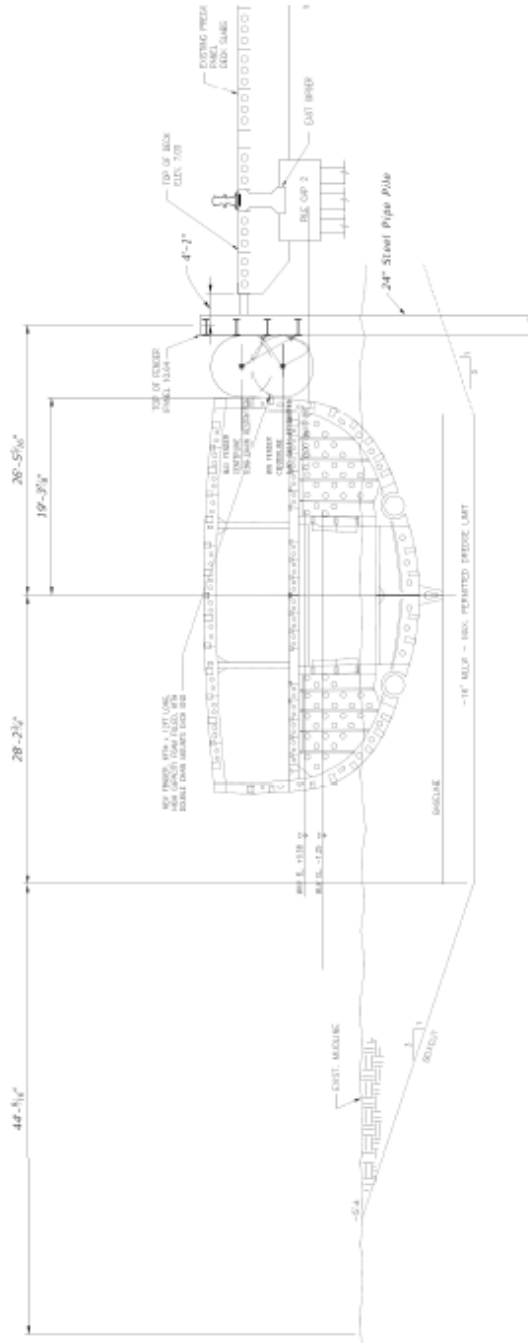
MCE 1418 Supramarines Rd.  
 Suite 112  
 Jacksonville, Florida 32217  
 phone: 904-814-1308  
 fax: 904-814-1309  
 Certificate of Authorization No. 30712

NO. 30712 - EXPIRES: 06/30/2012

DOLPHIN D-1

PROJECT NO.	148
DATE	11/11/11
SCALE	3/16" = 1'-0"
DESIGNED BY	...
CHECKED BY	...
APPROVED BY	...
DATE	...

S-4



SHIP SECTION AT FRAME 148  
 SCALE: 3/16" = 1'-0"

USS ORLECK

Jax Shipyard



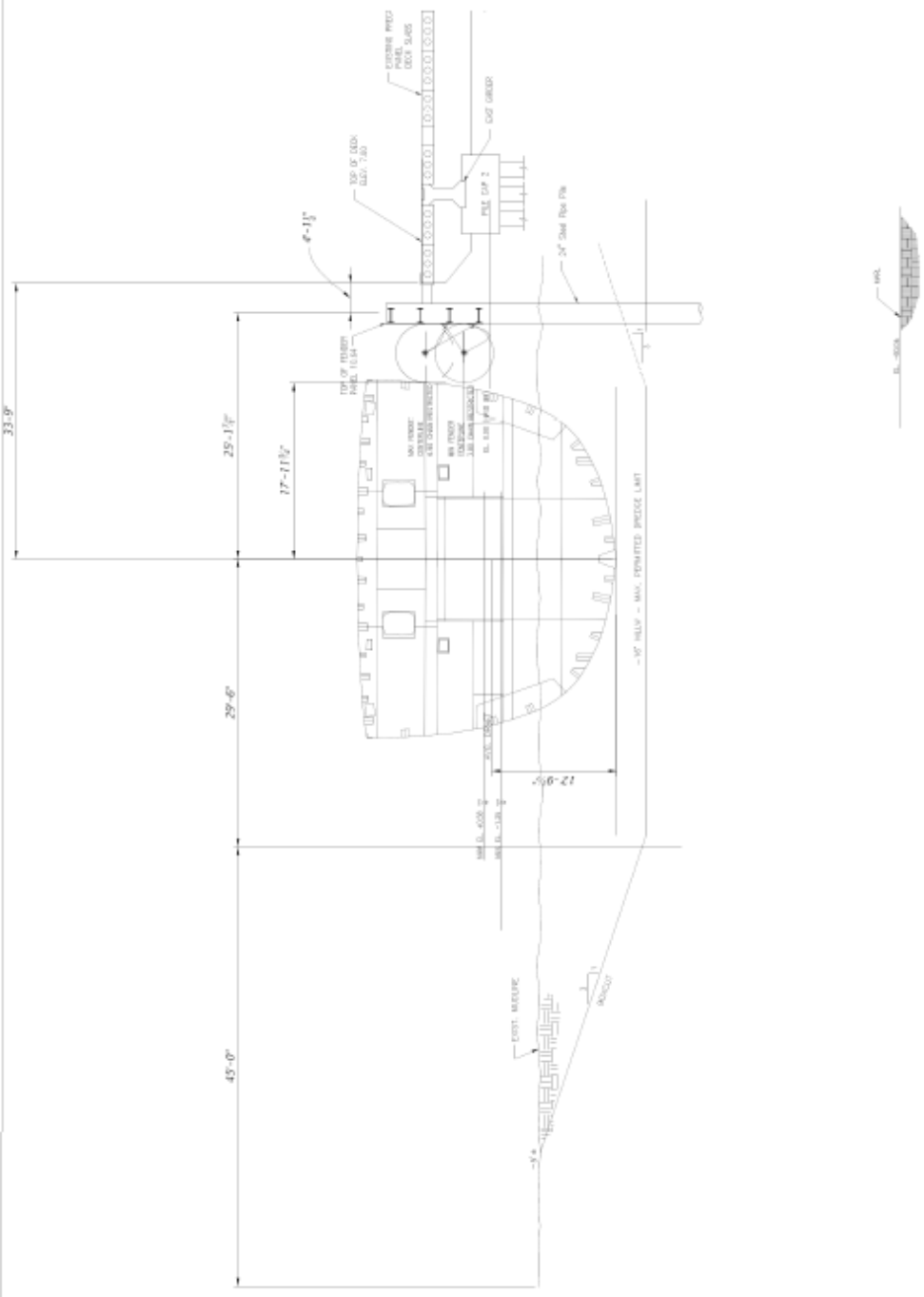
3653-213 Magnolia Ave.  
 Suite 132  
 Houston, Texas 77057  
 www.moralesce.com  
 Certificate of Authorization No. 30712

NO. 30712 - 01/20/2020 - 06/30/2022

DOLPHIN D-2

DATE	DESCRIPTION
01/20/2020	ISSUED FOR PERMIT
01/20/2020	ISSUED FOR PERMIT
01/20/2020	ISSUED FOR PERMIT
01/20/2020	ISSUED FOR PERMIT
01/20/2020	ISSUED FOR PERMIT
01/20/2020	ISSUED FOR PERMIT
01/20/2020	ISSUED FOR PERMIT
01/20/2020	ISSUED FOR PERMIT
01/20/2020	ISSUED FOR PERMIT
01/20/2020	ISSUED FOR PERMIT

S-5



USS ORLECK

Jax Shipyard

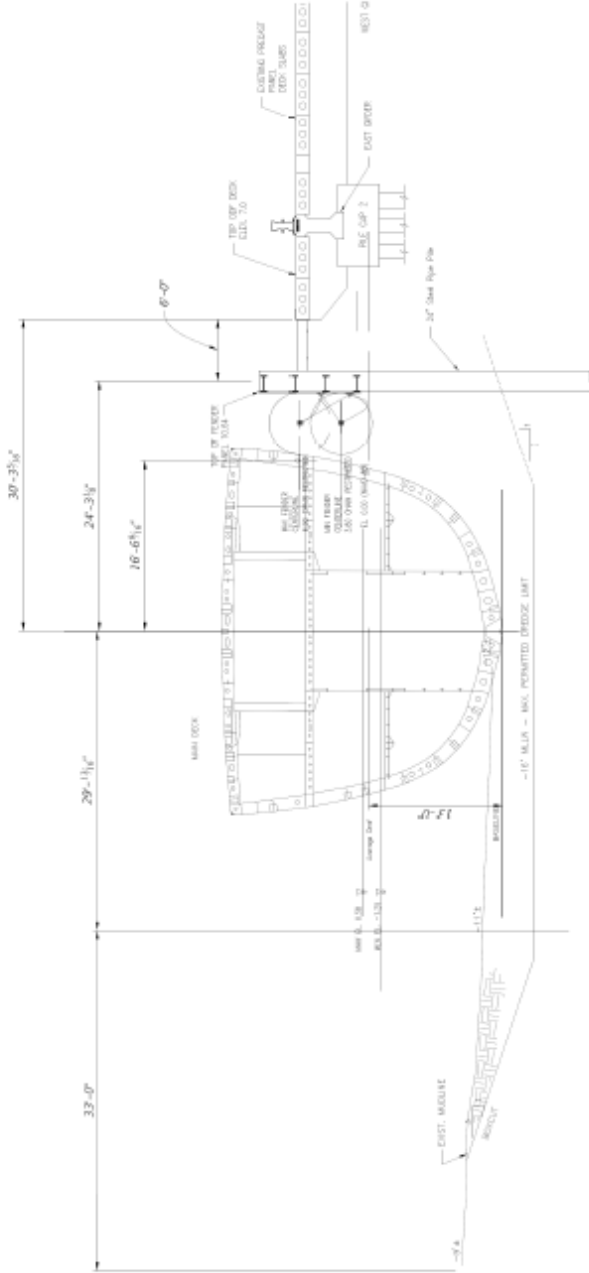


2822-213 Magnolia Ave. Suite 101 Jacksonville, Florida 32217 Office: 904.634.4308 Fax: 904.634.4309 Certificate of Authorization No. 20712

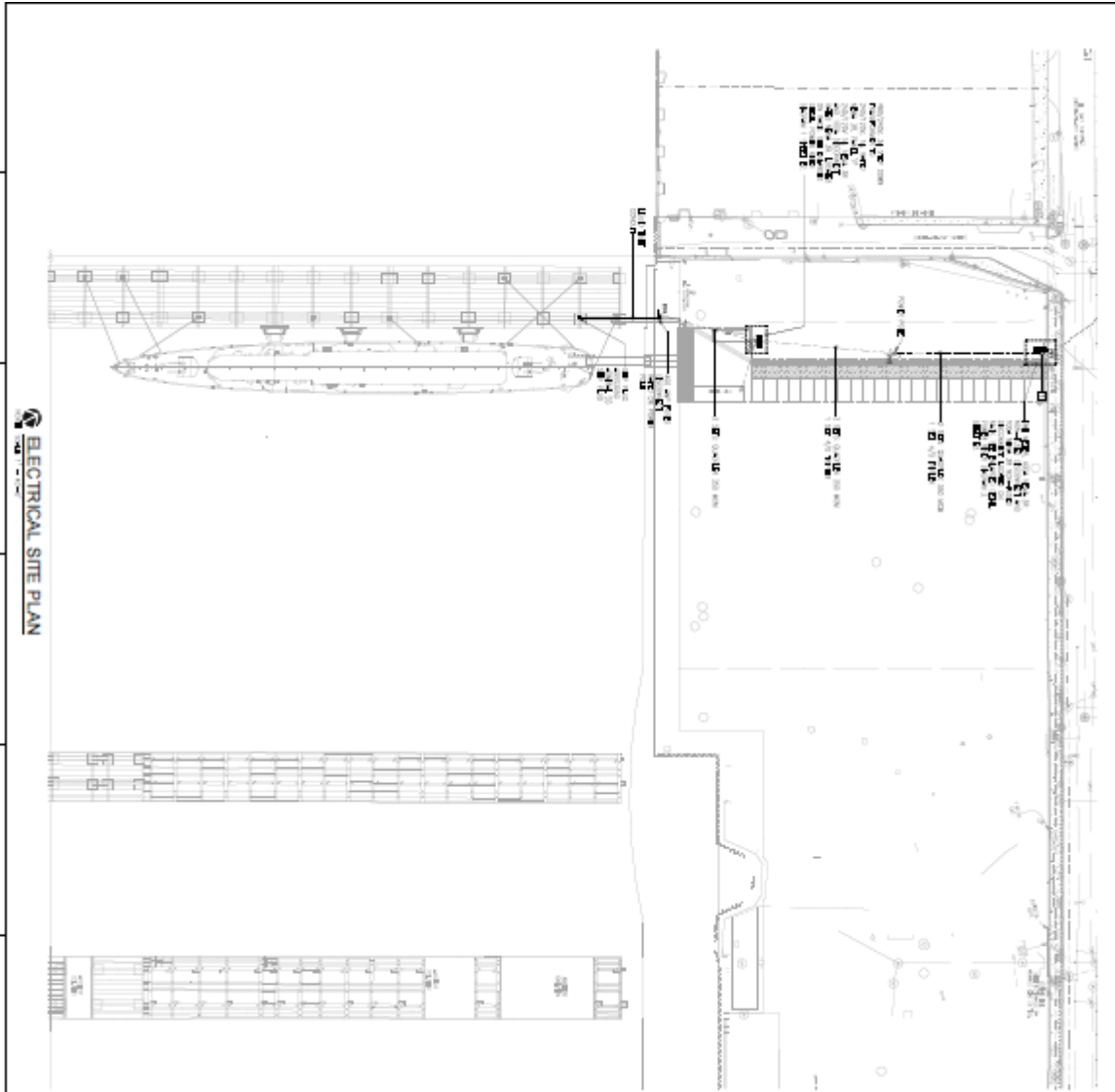
DATE: 08/11/2010 10:58:03 AM 15:00:00 08/11/2010 10:58:03

DOLPHIN D-3

PROJECT NO.	08-001
DATE	08/11/2010
SCALE	AS SHOWN
DESIGNED BY	JAX
CHECKED BY	JAX
APPROVED BY	JAX
DATE	08/11/2010
PROJECT	USS ORLECK
SHIP	DOLPHIN D-3
SECTION	SHIP SECTION AT FRAME 68
SCALE	3/16" = 1'-0"
FIGURE NO.	S-6



SHIP SECTION AT FRAME 68  
SCALE 3/16" = 1'-0"

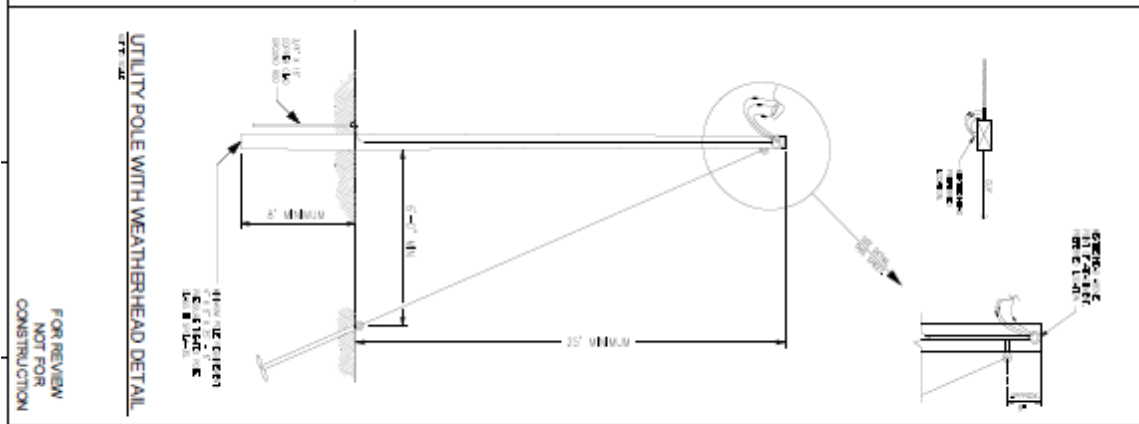
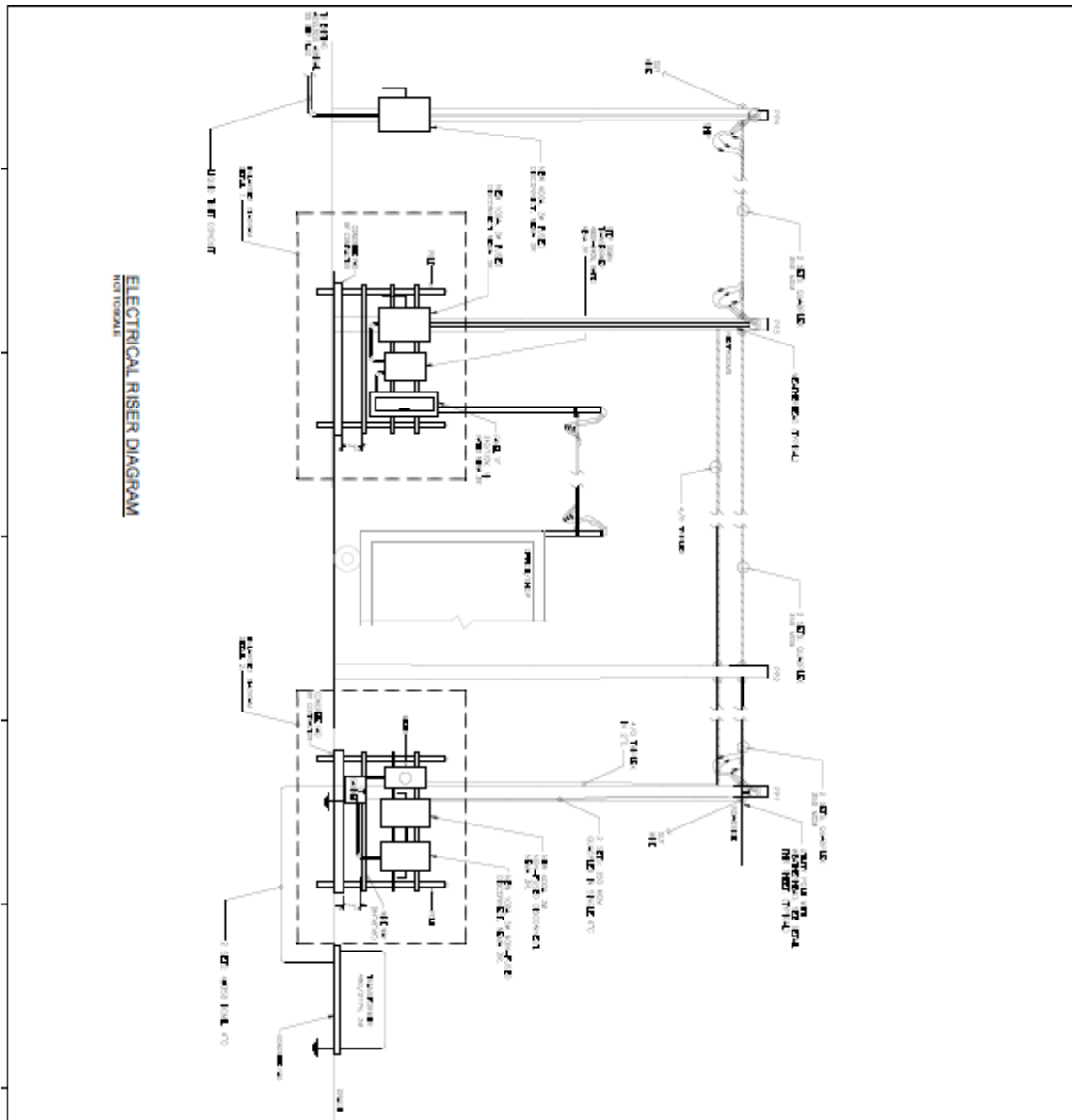


**ELECTRICAL SITE PLAN**

**KEY PLAN**  
FOR REVIEW  
NOT FOR  
CONSTRUCTION

ELECTRICAL SYMBOL LEGEND	
	1/2" CONDUIT
	3/4" CONDUIT
	1" CONDUIT
	1 1/2" CONDUIT
	2" CONDUIT
	3" CONDUIT
	4" CONDUIT
	6" CONDUIT
	8" CONDUIT
	12" CONDUIT
	18" CONDUIT
	24" CONDUIT
	30" CONDUIT
	36" CONDUIT
	42" CONDUIT
	48" CONDUIT
	54" CONDUIT
	60" CONDUIT
	66" CONDUIT
	72" CONDUIT
	78" CONDUIT
	84" CONDUIT
	90" CONDUIT
	96" CONDUIT
	102" CONDUIT
	108" CONDUIT
	114" CONDUIT
	120" CONDUIT
	126" CONDUIT
	132" CONDUIT
	138" CONDUIT
	144" CONDUIT
	150" CONDUIT
	156" CONDUIT
	162" CONDUIT
	168" CONDUIT
	174" CONDUIT
	180" CONDUIT
	186" CONDUIT
	192" CONDUIT
	198" CONDUIT
	204" CONDUIT
	210" CONDUIT
	216" CONDUIT
	222" CONDUIT
	228" CONDUIT
	234" CONDUIT
	240" CONDUIT
	246" CONDUIT
	252" CONDUIT
	258" CONDUIT
	264" CONDUIT
	270" CONDUIT
	276" CONDUIT
	282" CONDUIT
	288" CONDUIT
	294" CONDUIT
	300" CONDUIT
	306" CONDUIT
	312" CONDUIT
	318" CONDUIT
	324" CONDUIT
	330" CONDUIT
	336" CONDUIT
	342" CONDUIT
	348" CONDUIT
	354" CONDUIT
	360" CONDUIT
	366" CONDUIT
	372" CONDUIT
	378" CONDUIT
	384" CONDUIT
	390" CONDUIT
	396" CONDUIT
	402" CONDUIT
	408" CONDUIT
	414" CONDUIT
	420" CONDUIT
	426" CONDUIT
	432" CONDUIT
	438" CONDUIT
	444" CONDUIT
	450" CONDUIT
	456" CONDUIT
	462" CONDUIT
	468" CONDUIT
	474" CONDUIT
	480" CONDUIT
	486" CONDUIT
	492" CONDUIT
	498" CONDUIT
	504" CONDUIT
	510" CONDUIT
	516" CONDUIT
	522" CONDUIT
	528" CONDUIT
	534" CONDUIT
	540" CONDUIT
	546" CONDUIT
	552" CONDUIT
	558" CONDUIT
	564" CONDUIT
	570" CONDUIT
	576" CONDUIT
	582" CONDUIT
	588" CONDUIT
	594" CONDUIT
	600" CONDUIT
	606" CONDUIT
	612" CONDUIT
	618" CONDUIT
	624" CONDUIT
	630" CONDUIT
	636" CONDUIT
	642" CONDUIT
	648" CONDUIT
	654" CONDUIT
	660" CONDUIT
	666" CONDUIT
	672" CONDUIT
	678" CONDUIT
	684" CONDUIT
	690" CONDUIT
	696" CONDUIT
	702" CONDUIT
	708" CONDUIT
	714" CONDUIT
	720" CONDUIT
	726" CONDUIT
	732" CONDUIT
	738" CONDUIT
	744" CONDUIT
	750" CONDUIT
	756" CONDUIT
	762" CONDUIT
	768" CONDUIT
	774" CONDUIT
	780" CONDUIT
	786" CONDUIT
	792" CONDUIT
	798" CONDUIT
	804" CONDUIT
	810" CONDUIT
	816" CONDUIT
	822" CONDUIT
	828" CONDUIT
	834" CONDUIT
	840" CONDUIT
	846" CONDUIT
	852" CONDUIT
	858" CONDUIT
	864" CONDUIT
	870" CONDUIT
	876" CONDUIT
	882" CONDUIT
	888" CONDUIT
	894" CONDUIT
	900" CONDUIT
	906" CONDUIT
	912" CONDUIT
	918" CONDUIT
	924" CONDUIT
	930" CONDUIT
	936" CONDUIT
	942" CONDUIT
	948" CONDUIT
	954" CONDUIT
	960" CONDUIT
	966" CONDUIT
	972" CONDUIT
	978" CONDUIT
	984" CONDUIT
	990" CONDUIT
	996" CONDUIT
	1002" CONDUIT
	1008" CONDUIT
	1014" CONDUIT
	1020" CONDUIT
	1026" CONDUIT
	1032" CONDUIT
	1038" CONDUIT
	1044" CONDUIT
	1050" CONDUIT
	1056" CONDUIT
	1062" CONDUIT
	1068" CONDUIT
	1074" CONDUIT
	1080" CONDUIT
	1086" CONDUIT
	1092" CONDUIT
	1098" CONDUIT
	1104" CONDUIT
	1110" CONDUIT
	1116" CONDUIT
	1122" CONDUIT
	1128" CONDUIT
	1134" CONDUIT
	1140" CONDUIT
	1146" CONDUIT
	1152" CONDUIT
	1158" CONDUIT
	1164" CONDUIT
	1170" CONDUIT
	1176" CONDUIT
	1182" CONDUIT
	1188" CONDUIT
	1194" CONDUIT
	1200" CONDUIT
	1206" CONDUIT
	1212" CONDUIT
	1218" CONDUIT
	1224" CONDUIT
	1230" CONDUIT
	1236" CONDUIT
	1242" CONDUIT
	1248" CONDUIT
	1254" CONDUIT
	1260" CONDUIT
	1266" CONDUIT
	1272" CONDUIT
	1278" CONDUIT
	1284" CONDUIT
	1290" CONDUIT
	1296" CONDUIT
	1302" CONDUIT
	1308" CONDUIT
	1314" CONDUIT
	1320" CONDUIT
	1326" CONDUIT
	1332" CONDUIT
	1338" CONDUIT
	1344" CONDUIT
	1350" CONDUIT
	1356" CONDUIT
	1362" CONDUIT
	1368" CONDUIT
	1374" CONDUIT
	1380" CONDUIT
	1386" CONDUIT
	1392" CONDUIT
	1398" CONDUIT
	1404" CONDUIT
	1410" CONDUIT
	1416" CONDUIT
	1422" CONDUIT
	1428" CONDUIT
	1434" CONDUIT
	1440" CONDUIT
	1446" CONDUIT
	1452" CONDUIT
	1458" CONDUIT
	1464" CONDUIT
	1470" CONDUIT
	1476" CONDUIT
	1482" CONDUIT
	1488" CONDUIT
	1494" CONDUIT
	1500" CONDUIT
	1506" CONDUIT
	1512" CONDUIT
	1518" CONDUIT
	1524" CONDUIT
	1530" CONDUIT
	1536" CONDUIT
	1542" CONDUIT
	1548" CONDUIT
	1554" CONDUIT
	1560" CONDUIT
	1566" CONDUIT
	1572" CONDUIT
	1578" CONDUIT
	1584" CONDUIT
	1590" CONDUIT
	1596" CONDUIT
	1602" CONDUIT
	1608" CONDUIT
	1614" CONDUIT
	1620" CONDUIT
	1626" CONDUIT
	1632" CONDUIT
	1638" CONDUIT
	1644" CONDUIT
	1650" CONDUIT
	1656" CONDUIT
	1662" CONDUIT
	1668" CONDUIT
	1674" CONDUIT
	1680" CONDUIT
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	1692" CONDUIT
	1698" CONDUIT
	1704" CONDUIT
	1710" CONDUIT
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	1758" CONDUIT
	1764" CONDUIT
	1770" CONDUIT
	1776" CONDUIT
	1782" CONDUIT
	1788" CONDUIT
	1794" CONDUIT
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	1848" CONDUIT
	1854" CONDUIT
	1860" CONDUIT
	1866" CONDUIT
	1872" CONDUIT
	1878" CONDUIT
	1884" CONDUIT
	1890" CONDUIT
	1896" CONDUIT
	1902" CONDUIT
	1908" CONDUIT
	1914" CONDUIT
	1920" CONDUIT
	1926" CONDUIT





<b>E-2</b>		<b>USS ORLECK</b> AK SHIPYARD MOBILE, ALA. ELECTRICAL PLAN	33		
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**EXHIBIT C**

**Reserved**

**EXHIBIT D**

**Reserved**

**EXHIBIT E**

**Reserved**

## **EXHIBIT F**

### **PERMITTED USES**

- Operate and maintain a Ship Museum;
- Host overnight camp-aboard activities;
- Host community events and concerts;
- Host children's activities and educational programs;
- Host military, holiday, and private ceremonies and events; and
- Host fundraising events.

## EXHIBIT G INDEMNIFICATION

**JHNSA**, its contractors, subcontractors, consultants and agents (as applicable) (collectively, the “Indemnifying Parties”) shall hold harmless, indemnify, and defend the DIA, City and their respective members, officers, officials, employees and agents (collectively the “Indemnified Parties”) from and against, without limitation, any and all claims, suits, actions, losses, damages, injuries, liabilities, fines, penalties, costs and expenses of whatsoever kind or nature, which may be incurred by, charged to or recovered from any of the foregoing Indemnified Parties for:

1. General Tort Liability, for any negligent act, error or omission, recklessness or intentionally wrongful conduct on the part of the Indemnifying Parties that causes injury (whether mental or corporeal) to persons (including death) or damage to property, whether arising out of or incidental to the Indemnifying Parties’ performance of the obligations, operations, services or work performed hereunder; and

2. Environmental Liability, to the extent this License contemplates environmental exposures, arising from or in connection with any environmental, health and safety liabilities, claims, citations, clean-up or damages whether arising out of or relating to the operation or other activities performed in connection with the License; and

3. Intellectual Property Liability, to the extent this License contemplates intellectual property exposures, arising directly or indirectly out of any allegation that the services provided hereunder, any product generated by said services, or any part of the services as contemplated in this License, constitutes an infringement of any copyright, patent, trade secret or any other intellectual property right. If in any suit or proceeding, the services provided hereunder, or any product generated by said services, is held to constitute an infringement and its use is permanently enjoined, the Indemnifying Parties shall, immediately, make every reasonable effort to secure within sixty (60) days, for the Indemnified Parties a license, authorizing the continued use of the service or product. If the Indemnifying Parties fail to secure such a license for the Indemnified Parties, then the Indemnifying Parties shall replace the service or product with a non-infringing service or product or modify such service or product in a way satisfactory to Buyer, so that the service or product is non-infringing.

If an Indemnified Party exercises its rights under this License, the Indemnified Party will (1) provide reasonable notice to the Indemnifying Parties of the applicable claim or liability, and (2) allow the Indemnifying Parties, at their own expense, to participate in the litigation of such claim or liability to protect their interests. **The scope and terms of the indemnity obligations herein described are separate and apart from, and shall not be limited by any insurance provided pursuant to this License or otherwise. Such terms of indemnity shall survive the expiration or termination of this License.**

In the event that any portion of the scope or terms of this indemnity is in derogation of Section 725.06 or 725.08 of the Florida Statutes, all other terms of this indemnity shall remain in full force

and effect. Further, any term which offends Section 725.06 or 725.08 of the Florida Statutes will be modified to comply with said statutes.

**EXHIBIT H**  
**INSURANCE REQUIREMENTS – APPLY DURING AND UNTIL THE COMPLETION**  
**OF THE CONSTRUCTION OF THE IMPROVEMENTS**

Without limiting its liability under this License, **JHNSA** shall at all times during the term of this License procure prior to commencement of any work and maintain at its sole expense until the completion of the construction of the improvements or **JHNSA** shall require its contractors, subcontractors, laborers, materialmen and suppliers to provide, as applicable, insurance of the types and limits not less than amounts stated below:

**Insurance Coverages**

Schedule	Limits
<b>Worker’s Compensation</b> <b>Employer’s Liability</b>	Florida Statutory Coverage \$ 1,000,000 Each Accident \$ 1,000,000 Disease Policy Limit \$ 1,000,000 Each Employee/Disease

This insurance shall cover **JHNSA** (and, to the extent they are not otherwise insured, its contractors and subcontractors) for those sources of liability which would be covered by the latest edition of the standard Workers’ Compensation policy, as filed for use in the State of Florida by the National Council on Compensation Insurance (NCCI), without any restrictive endorsements other than the Florida Employers Liability Coverage Endorsement (NCCI Form WC 09 03), those which are required by the State of Florida, or any restrictive NCCI endorsements which, under an NCCI filing, must be attached to the policy (i.e., mandatory endorsements). In addition to coverage for the Florida Workers’ Compensation Act, where appropriate, coverage is to be included for the Federal Employers’ Liability Act, USL&H and Jones, and any other applicable federal or state law.

<b>Commercial General Liability</b>	\$2,000,000    General Aggregate \$2,000,000    Products & Comp. Ops. Agg. \$1,000,000    Personal/Advertising Injury \$1,000,000    Each Occurrence \$ 50,000       Fire Damage \$ 5,000        Medical Expenses
-------------------------------------	--

Such insurance shall be no more restrictive than that provided by the most recent version of the standard Commercial General Liability Form (ISO Form CG 00 01) as filed for use in the State of Florida without any restrictive endorsements other than those reasonably required by the DIA’s Office of Insurance and Risk Management. An Excess Liability policy or Umbrella policy can be used to satisfy the above limits.

<b>Automobile Liability</b> (Coverage for all automobiles, owned, hired or non-owned used in performance of the Contract)	\$1,000,000    Combined Single Limit
--	--------------------------------------



Such insurance shall be no more restrictive than that provided by the most recent version of the standard Business Auto Coverage Form (ISO Form CA0001) as filed for use in the State of Florida without any restrictive endorsements other than those which are required by the State of Florida, or equivalent manuscript form, must be attached to the policy equivalent endorsement as filed with ISO (i.e., mandatory endorsement).

**Design Professional Liability** \$5,000,000 per Claim and Aggregate

Any entity hired to perform professional services as a part of this License shall maintain professional liability coverage on an Occurrence Form or a Claims Made Form with a retroactive date to at least the first date of this Contract. If provided on a Claim Made Form, the coverages must respond to all claims reported within three years following the period for which coverage is required and which would have been covered had the coverage been on an occurrence basis.)

**Builders Risk/ Installation Floater** %100 Completed Value of the Project

Such insurance shall be on a form acceptable to the City's Office of Insurance and Risk Management. The Builder's Risk policy shall include the SPECIAL FORM/ALL RISK COVERAGES. The Builder's Risk and/or Installation policy shall not be subject to a coinsurance clause. A maximum \$10,000 deductible for other than windstorm and hail. For windstorm and hail coverage, the maximum deductible applicable shall be 2% of the completed value of the project. Named insured's shall be: the CONTRACTOR, the CITY, DIA and their respective members, officials, employees and agents, the ENGINEER, and the PROGRAM MANAGEMENT FIRM(S) (when program management services are provided). The DIA of Jacksonville, its members, officials, officers, employees and agents are to be named as a loss payee.

**Pollution Liability** \$1,000,000 per Loss  
\$2,000,000 Annual Aggregate

Any entity hired to perform services as part of this License for environmental or pollution related concerns shall maintain Contractor's Pollution Liability coverage. Such Coverage will include bodily injury, sickness, and disease, mental anguish or shock sustained by any person, including death; property damage including physical injury to destruction of tangible property including resulting loss of use thereof, cleanup costs, and the loss of use of tangible property that has not been physically injured or destroyed; defense including costs charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages; coverage for losses caused by pollution conditions that arises from the operations of the contractor including transportation.

**Pollution Legal Liability** \$1,000,000 per Loss  
\$2,000,000 Aggregate

Any entity hired to perform services as a part of this License that require disposal of any hazardous material off the job site shall maintain Pollution Legal Liability with coverage for bodily injury

and property damage for losses that arise from the facility that is accepting the waste under this License.

**Watercraft Liability** \$1,000,000 Per Occurrence  
(to the extent that watercraft is utilized in the services of this License)

**Umbrella Liability** \$5,000,000 Each Occurrence/ Aggregate.

The Umbrella Liability policy shall be in excess of the above limits without any gap. The Umbrella coverage will follow-form the underlying coverages and provides on an Occurrence basis all coverages listed above and shall be included in the Umbrella policy

### **Additional Insurance Provisions**

- A. Additional Insured: All insurance except Worker's Compensation and Professional Liability shall be endorsed to name the DIA, the DIA of Jacksonville and DIA's members, officials, officers, employees and agents as Additional Insured. Additional Insured for General Liability shall be in a form no more restrictive than CG2010 and CG2037, Automobile Liability CA2048.
- B. Waiver of Subrogation. All required insurance policies shall be endorsed to provide for a waiver of underwriter's rights of subrogation in favor of DIA, the DIA of Jacksonville and its members, officials, officers employees and agents.
- C. JHNSA's Insurance Primary. The insurance provided by **JHNSA** shall apply on a primary basis to, and shall not require contribution from, any other insurance or self-insurance maintained by the DIA or any DIA members, officials, officers, employees and agents.
- D. Deductible or Self-Insured Retention Provisions. All deductibles and self-insured retentions associated with coverages required for compliance with this License shall remain the sole and exclusive responsibility of the named insured **JHNSA**. Under no circumstances will DIA, the City of Jacksonville or their respective members, officers, directors, employees, representatives, and agents be responsible for paying any deductible or self-insured retentions related to this License.
- E. JHNSA's Insurance Additional Remedy. Compliance with the insurance requirements of this License shall not limit the liability of **JHNSA** or its contractors, subcontractors, employees or agents to the DIA, the City or others. Any remedy provided to the City, the DIA or their respective members, officials, officers, employees or agents shall be in addition to and not in lieu of any other remedy available under this License or otherwise.
- F. Waiver/Estoppel. Neither approval by the DIA nor failure to disapprove the insurance furnished by **JHNSA** shall relieve **JHNSA** of **JHNSA's** full responsibility to provide insurance as required under this License.
- G. Certificates of Insurance. **JHNSA** shall provide the DIA Certificates of Insurance that shows the corresponding DIA Contract Number in the description, if known, Additional Insureds as

provided above and waivers of subrogation. The certificates of insurance shall be mailed to the DIA of Jacksonville (Attention: Chief of Risk Management), 117 W. Duval Street, Suite 335, Jacksonville, Florida 32202.

- H. Carrier Qualifications. The above insurance shall be written by an insurer holding a current certificate of authority pursuant to chapter 624, Florida State or a company that is declared as an approved Surplus Lines carrier under Chapter 626 Florida Statutes. Such insurance shall be written by an insurer with an A.M. Best Rating of A- VII or better.
- I. Notice. **JHNSA** shall provide an endorsement issued by the insurer to provide the DIA thirty (30) days prior written notice of any change in the above insurance coverage limits or cancellation, including expiration or non-renewal. If such endorsement is not provided, **JHNSA** shall provide said a thirty (30) days' written notice of any change in the above coverages or limits, coverage being suspended, voided, cancelled, including expiration or non-renewal.
- J. Survival. Anything to the contrary notwithstanding, the liabilities of **JHNSA** under this License shall survive and not be terminated, reduced or otherwise limited by any expiration or termination of insurance coverage.
- K. Additional Insurance. Depending upon the nature of any aspect of any project and its accompanying exposures and liabilities, the DIA may reasonably require additional insurance coverages in amounts responsive to those liabilities, which may or may not require that the DIA and the DIA also be named as an additional insured.
- L. Special Provisions: Prior to executing this License, **JHNSA** shall present this License and Exhibits G & H to its insurance agent affirming that: 1) the agent has personally reviewed the insurance requirements of the License, and (2) the agent is capable (has proper market access) to provide the coverages and limits of liability required on behalf of **JHNSA**.

**EXHIBIT H-1**  
**Insurance Requirements for Operation Activities:**

Without limiting its liability under this License, **JHNSA** shall at all times during the term of this License procure prior to commencement of work and maintain at its sole expense during the life of this License (and **JHNSA** shall require its, contractors, subcontractors, laborers, materialmen and suppliers to provide, as applicable), insurance of the types and limits not less than amounts stated below:

**Insurance Coverages**

Schedule	Limits
<b>Worker's Compensation Employer's Liability</b>	Florida Statutory Coverage \$ 100,000 Each Accident \$ 500,000 Disease Policy Limit \$ 100,000 Each Employee/Disease

This insurance shall cover **JHNSA** (and, to the extent they are not otherwise insured, its subcontractors) for those sources of liability which would be covered by the latest edition of the standard Workers' Compensation policy, as filed for use in the State of Florida by the National Council on Compensation Insurance (NCCI), without any restrictive endorsements other than the Florida Employers Liability Coverage Endorsement (NCCI Form WC 09 03), those which are required by the State of Florida, or any restrictive NCCI endorsements which, under an NCCI filing, must be attached to the policy (i.e., mandatory endorsements). In addition to coverage for the Florida Workers' Compensation Act, where appropriate, coverage is to be included for the Federal Employers' Liability Act, USL&H and Jones, and any other applicable federal or state law.

<b>Commercial General Liability</b>	\$2,000,000    General Aggregate \$2,000,000    Products & Comp. Ops. Agg. \$1,000,000    Personal/Advertising Injury \$1,000,000    Each Occurrence \$ 50,000       Fire Damage \$ 5,000        Medical Expenses
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Such insurance shall be no more restrictive than that provided by the most recent version of the standard Commercial General Liability Form (ISO Form CG 00 01) as filed for use in the State of Florida without any restrictive endorsements other than those reasonably required by the DIA's Office of Insurance and Risk Management. An Excess Liability policy or Umbrella policy can be used to satisfy the above limits.

**Vessel Pollution Liability, Pollution Liability, Pollution Legal Liability** (when transportation of pollutants is included in the Work).

All Pollution Coverages shall include clean-up cost \$2,000,000 per Occurrence

Aggregate \$2,000,000 General

**Protection & Indemnity (P&I) and Marine General Liability** \$2,000,000 per occurrence

**Automobile Liability** \$1,000,000 Combined Single Limit  
(Coverage for all automobiles, owned, hired or non-owned used in performance of this License)

Such insurance shall be no more restrictive than that provided by the most recent version of the standard Business Auto Coverage Form (ISO Form CA0001) as filed for use in the State of Florida without any restrictive endorsements other than those which are required by the State of Florida, or equivalent manuscript form, must be attached to the policy equivalent endorsement as filed with ISO (i.e., mandatory endorsement).

**Liquor or Host Liquor Liability** \$1,000,000 Each Occurrence  
(Liquor or Host Liquor Liability to the extent liquor is being sold, served or consumed.)

**Sexual Molestation** \$1,000,000 Per Claim  
\$2,000,000 Aggregate

(Only if program includes direct supervision of children, special needs, and/or senior citizens)

Sexual Molestation Liability coverage will be provided on an Occurrence Form or a Claims Made Form with a retroactive date to at least the first date of this License. If provided on a Claim Made Form, the coverages must respond to all claims reported within three years following the period for which coverage is required and which would have been covered had the coverage been on an occurrence basis.

### **Additional Insurance Provisions**

- A. **Additional Insured:** All insurance except Worker's Compensation shall be endorsed to name the DIA, the City of Jacksonville and DIA's members, officials, officers, employees and agents as Additional Insured. Additional Insured for General Liability shall be in a form no more restrictive than CG2010 and CG2037, Automobile Liability CA2048.
- B. **Waiver of Subrogation.** All required insurance policies shall be endorsed to provide for a waiver of underwriter's rights of subrogation in favor of the DIA, the City of Jacksonville and its members, officials, officers employees and agents.
- C. **JHNSA's Insurance Primary.** The insurance provided by JHNSA shall apply on a primary basis to, and shall not require contribution from, any other insurance or self-insurance maintained by the DIA, the City or any of their respective members, officials, officers, employees and agents.

- D. Deductible or Self-Insured Retention Provisions. All deductibles and self-insured retentions associated with coverages required for compliance with this License shall remain the sole and exclusive responsibility of the named insured **JHNSA**. Under no circumstances will the DIA or the City of Jacksonville or their respective its members, officers, directors, employees, representatives, and agents be responsible for paying any deductible or self-insured retentions related to this License.
- E. JHNSA's Insurance Additional Remedy. Compliance with the insurance requirements of this License shall not limit the liability of **JHNSA** or its contractors, subcontractors, employees or agents to the DIA or others. Any remedy provided to the DIA, City or their respective members, officials, officers, employees or agents shall be in addition to and not in lieu of any other remedy available under this License or otherwise.
- F. Waiver/Estoppel. Neither approval by the DIA nor failure to disapprove the insurance furnished by **JHNSA** shall relieve **JHNSA** of **JHNSA's** full responsibility to provide insurance as required under this License.
- G. Certificates of Insurance. **JHNSA** shall provide the DIA Certificates of Insurance that show the corresponding DIA Contract Number in the Description, if known, Additional Insureds as provided above and waivers of subrogation. The certificates of insurance shall be mailed to the DIA of Jacksonville (Attention: Chief of Risk Management), 117 W. Duval Street, Suite 335, Jacksonville, Florida 32202.
- H. Carrier Qualifications. The above insurance shall be written by an insurer holding a current certificate of authority pursuant to chapter 624, Florida State or a company that is declared as an approved Surplus Lines carrier under Chapter 626 Florida Statutes. Such Insurance shall be written by an insurer with an A.M. Best Rating of A- VII or better.
- I. Notice. **JHNSA** shall provide an endorsement issued by the insurer to provide the DIA thirty (30) days' prior written notice of any change in the above insurance coverage limits or cancellation, including expiration or non-renewal. If such endorsement is not provided, **JHNSA** shall provide said a thirty (30) days' written notice of any change in the above coverages or limits, coverage being suspended, voided, cancelled, including expiration or non-renewal.
- J. Survival. Anything to the contrary notwithstanding, the liabilities of **JHNSA** under this License shall survive and not be terminated, reduced or otherwise limited by any expiration or termination of insurance coverage.
- M. Additional Insurance. Depending upon the nature of any aspect of any project and its accompanying exposures and liabilities, the DIA may reasonably require additional insurance coverages in amounts responsive to those liabilities, which may or may not require that the DIA also be named as an additional insured.
- N. Special Provisions: Prior to executing this Agreement, **JHNSA** shall present this License and Exhibits G & H-1 to its insurance agent affirming that: 1) the agent has personally reviewed the insurance requirements of this License, and (2) the agent is capable (has proper market access) to provide the coverages and limits of liability required on behalf of **JHNSA**.

**EXHIBIT I**

**APPLICABLE PERMITS**

[To be provided prior to execution of this License.]

## EXHIBIT J

### LETTER OF CREDIT REQUIREMENTS

The following requirements (collectively, “**Letter of Credit Requirements**”) shall apply to each standby Letter of Credit given pursuant to this License:

- (i) JHNSA shall submit a proposed sample of each Letter of Credit to the DIA, at least thirty (30) days prior to the date that JHNSA is required to deliver the Letter of Credit to the DIA under the terms of the License for the DIA’s review and approval. Any submission of a proposed sample Letter of Credit to the DIA shall include the name and contact information of a bank officer at the proposed issuer. JHNSA authorizes the DIA to contact and negotiate with the proposed issuing bank regarding any proposed Letter of Credit.
- (ii) The issuer of the Letter of Credit shall be Vystar Credit Union which shall have a full service branch located in Jacksonville, Florida capable of honoring the presentation of a sight draft during normal business hours before 5 p.m. on any business day.
- (iii) The Letter of Credit shall be perpetual (evergreen) with an initial expiration of not less than one (1) year from the date of issuance with automatic one (1) year renewal terms.
- (iv) The Letter of Credit shall be irrevocable by JHNSA.
- (v) The Letter of Credit shall name the DIA as sole beneficiary.
- (vi) The Letter of Credit shall provide that the issuer shall give the DIA and the Office of General Counsel at least ninety (90) days prior written notice of its cancellation or non-renewal.
- (vii) The Letter of Credit shall be freely transferable by the DIA to its successors and assigns one or more times without condition or restriction by the issuer (other than requiring a copy of a duly executed assignment and notice of the assignment). All such transfers may be made without notice to or the consent of JHNSA. JHNSA shall pay all fees and costs of transfer charged by the issuer. A form of assignment and notice of assignment, acceptable to the DIA and the issuer, shall be attached as an exhibit to the Letter of Credit. JHNSA shall, at its sole cost and expense, cooperate with the DIA and take all such actions as the DIA may request with respect to transferring any Letters of Credit including using its best efforts to cause the issuer to deliver any amendments, modifications, or replacements of the Letter of Credit in connection with any transfer.
- (viii) The Letter of Credit shall permit full or partial draws at any time, and from time to time, by a representative of the DIA, without condition or charge, other than delivery of a sight draft substantially in the form approved by the DIA in its sole discretion (“**Sight Draft**”). The approved form Sight Draft shall be attached as an exhibit to the Letter of Credit.
- (ix) The Letter of Credit shall obligate the issuer to, at the request of the DIA (and without notice to or the consent of JHNSA), issue a replacement Letter of Credit to the DIA, meeting all of the Letter of Credit Requirements and on the same terms as the then-current Letter of Credit (including all amendments thereto), if the DIA either returns a mutilated Letter of Credit to the issuer, or certifies to the issuer that the Letter of Credit has been lost, stolen, or destroyed. The Letter of Credit shall require the issuer to issue the replacement Letter of Credit no later



than two (2) business days from the date of the DIA's request, but in no event later than one (1) business day prior to the expiration date. JHNSA shall, at its sole cost and expense, cooperate with the DIA and take such actions as the DIA may request to replace any lost, stolen, or mutilated Letter of Credit. JHNSA hereby grants the DIA the power, coupled with an interest, to cause the issuer to replace a lost, stolen, or mutilated Letter of Credit.

(x) The Letter of Credit shall be otherwise acceptable to The DIA in its sole discretion, including, without limitation, the face amount of the Letter of Credit, which shall not be less than one hundred ten percent (110%) of the most recent DIA approved Estimated Removal Costs.

**Exhibit F**

**Temporary Area License Agreement**

[To immediately follow this page.]

**TEMPORARY AREA LICENSE AGREEMENT  
(Jacksonville Naval Museum)**

THIS LICENSE AGREEMENT (this “**License**”) is made and entered into this \_\_\_ day of \_\_\_\_\_, 2023 (the “**Effective Date**”), by and between the **DOWNTOWN INVESTMENT AUTHORITY (“DIA”)** on behalf of the City of Jacksonville, a Florida municipal corporation, whose address is 117 West Duval Street, Suite 310, Jacksonville, Florida 32202, and **JACKSONVILLE HISTORIC NAVAL SHIP ASSOCIATION, INC.,** a Florida non-profit corporation (“**JHNSA**”), whose address is c/o Abel Bean Law P.A., 100 N. Laura Street, Suite 501, Jacksonville, FL 32202, Attn: Daniel K. Bean.

**RECITALS**

WHEREAS, JHNSA was organized in 2008 as a volunteer-based non-profit Florida corporation exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, as amended, and was created to excite, inspire, educate and entertain the general public, to create a venue dedicated to the mission, memory and men of the Gearing-class destroyers and to promote the role of the U.S. Navy in securing a free and safe world; and

WHEREAS, JHNSA owns the retired naval vessel USS Orleck (DD-886) (the “**Vessel**”) and has agreed to renovate, operate and maintain the Vessel as a Downtown floating museum (“**Ship Museum**”) open to the public; and

WHEREAS, JHNSA’s operation of the Ship Museum will promote educational and recreational programs and provide economic benefits to Jacksonville; and

WHEREAS, the DIA believes the Project will be beneficial to the citizens of Jacksonville and the Jacksonville Downtown area; and

WHEREAS, subject to the terms of the Development Agreement dated \_\_\_\_\_ (the “**Agreement**”) between the DIA and JHNSA, JHNSA has met the Conditions Precedent (as defined in the Agreement) and therefore, the parties desire to enter into a temporary license with no annual license fees, to use the Licensed Area for the Permitted Uses as provided herein.

NOW, THEREFORE, for and in the consideration of the mutual and other good and valuable consideration, including, but not limited to, the covenants, conditions and terms hereof, the sufficiency and receipt of said good and valuable consideration being herewith acknowledged by the respective parties, the DIA and JHNSA stipulate and agree as follows:

1. Recitals. The recitals set forth above are accurate, correct and true and are incorporated herein by this reference.

2. Definitions. As used in this License, the words defined immediately below shall have the meaning stated next to same. Words imparting the singular number include the plural number and vice versa, and the male gender shall include the female gender and vice versa, unless the context clearly requires otherwise. Capitalized terms used but not defined in this License shall

have the meanings ascribed to such terms in the Agreement.

(a) “Approved Plans” shall mean the final plans for the Approved Scope of Work which shall be attached as **Exhibit B** to this License upon approval by the DIA.

(b) “Approved Scope of Work” shall mean the scope of work approved by DIA attached as **Exhibit C** to this License.

(c) “Governmental Requirement” means any permit, law, statute, code, rule, regulation, ordinance, order, judgment, decree, writ, injunction, certificate, license, authorization, or requirement of any governmental and/or regulatory national, state or local entity with jurisdiction over the DIA, City, JHNSA and/or any portion of the Licensed Area. Governmental Requirements shall include all applicable, relevant, or appropriate Florida Statutes and DIA Ordinances, including, without limitation, any regulation found in the Florida Administrative Code, and all Florida Statutes, DIA resolutions, City ordinances and regulations or rules now existing or in the future enacted, promulgated, adopted, entered, or issued, both within and outside the present contemplation of the respective parties to this transaction. Governmental Requirements shall include the BSRA and Consent Order, as defined in Section 7(d) below.

(d) “Hazardous Materials” means any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, asbestos, radon, petroleum products, hazardous or toxic substances or related materials, including, without limitation, those defined in:

(i) The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601 et seq.);

(ii) The Hazardous Materials Transportation Act, as amended (42 U.S.C. § 1808 et seq.);

(iii) The Resource Conservation and Recovery Act of 1976, as amended (42U.S.C. § 6901 et seq.);

(iv) Regulations adopted and publications promulgated pursuant to the foregoing;

(v) Any other Governmental Requirement; and

(vi) Any other material, the use, release, disposal, or presence of which may result in liability under any Governmental Requirement or common law action.

(e) “Improvements” shall mean those improvements made in accordance with the Approved Plans (the “**Temporary Upland Improvements**”) and any other improvements made by JHNSA and approved by the DIA as provided herein.

(f) “License” means collectively this License and any and all exhibits hereto, including any amendments or addenda which may supplement, modify or amend the same, now

or in the future.

(g) “Licensed Area” or “Temporary Area” means an unimproved area to be identified by the DIA, which shall be initially located in the area described on **Exhibit A** attached hereto, but which may be relocated by the DIA from time to time in its sole discretion as necessary to facilitate construction of Shipyards West Park.

(h) “Permitted Uses” means JHNSA’s use of the Licensed Area, which use shall only be for the purposes set forth on **Exhibit F**, attached hereto and incorporated herein by this reference, all in compliance with the terms of this License and all Governmental Requirements.

(i) “Property” shall have the meaning set forth in the Recitals to this License.

(j) “Project” means the installation and use of the Improvements within the Licensed Area.

(k) “Vessel” means the retired naval vessel USS Orleck.

3. License. In consideration of the representations, agreements and covenants contained herein, the DIA shall grant a non-exclusive, revocable license to JHNSA for a term commencing on the Effective Date and expiring on the earlier of (i) one (1) year after the Relocation Date (as defined in the Agreement), and (ii) the date that is two (2) years after the Effective Date (the “**License Term**”), to use the Licensed Area only for the Permitted Uses, together with all Improvements to be installed thereon by JHNSA during the License Term, in accordance with all of the provisions, covenants, conditions and terms herein. The License Term may be extended for a period of up to one (1) year at the sole discretion of the Chief Executive Officer of the DIA if the Relocation Date is delayed due to construction delays associated with the construction of Shipyards West Park. Notwithstanding the foregoing, the License Term shall immediately, and without further action of the parties, terminate if the Submerged Lands License Agreement of even date herewith between JHNSA and the DIA terminates for any reason.

4. As-Is Condition. JHNSA agrees that the Licensed Area is licensed to JHNSA in its “as is, where is” condition, with all faults, and there are no oral agreements, warranties or representations collateral to or affecting the Licensed Area by any of the parties hereto (except as set forth herein). JHNSA further understands and agrees that the DIA hereby disclaims all warranties or representations of any kind or character, express or implied, with respect to the Licensed Area, including but not limited to, warranties or representations as to matters of title, zoning, physical or environmental conditions, availability of access, ingress or egress, operating history, government approvals, governmental regulations or any other matter or thing relating to or affecting the Licensed Area. JHNSA represents that it has conducted such inspections and investigations of the Licensed Area, including, but not limited to, the physical and environmental conditions thereof, and shall rely upon same, and upon the effective date of the License Agreement shall assume the risk of adverse matters, including, but not limited to, adverse physical and environmental conditions, including the existence in or on the Licensed Area of hazardous materials, that may not have been revealed by inspections and investigations.

5. License Fees. JHNSA shall not be charged any annual or monthly license fees during the License Term.

6. Taxes and Other Charges. JHNSA shall bear, pay and discharge, on or before the last day on which payment may be made without penalty or interest, all ad valorem real estate taxes or other taxes, if any, which shall or may during the License Term be charged, laid, levied, assessed, imposed, become payable and due, or become liens upon, or arise in connection with JHNSA's use, occupancy or possession of the Licensed Area, the Improvements, or any part thereof. The real estate taxes, if any, for the calendar year in which the License Term begins and ends shall be paid in full by JHNSA, whether or not the tax bill has been issued at the date the License Term has begun or terminated, and shall not be pro-rated between the respective parties.

7. Maintenance. JHNSA shall, at its sole cost and expense, preserve and maintain the Improvements and the Licensed Area in good and satisfactory condition as determined in the reasonable discretion of the DIA, provided that, such condition shall at least include the following:

- a. The Improvements and the Licensed Area shall be in compliance with all applicable federal, state and local laws, rules, regulations and ordinances and other Governmental Requirements.
- b. The Improvements and the Licensed Area shall be maintained in good repair and in a clean, attractive and safe condition for the public's access and passage.

8. Use of Licensed Area.

(a) The Licensed Area will be used as provided herein by JHNSA only for the Permitted Uses. No other use of the Licensed Area by JHNSA is permitted without the prior written consent of the DIA, which consent may be withheld in its sole and absolute discretion. Without limiting the foregoing, JHNSA agrees that no advertising, banners, placards, or signage (other than as required by law) shall be hung from, attached to, or displayed anywhere on or about the Licensed Area other than standard directional and Vessel identification signage.

(b) JHNSA agrees to comply, and be in compliance at all times, with Governmental Requirements imposed upon the Licensed Area, the Improvements and the use thereof and shall not in any way subject the DIA to liability or exposure for failure to adhere to the same, and hereby indemnifies the DIA therefrom.

(c) JHNSA acknowledges and agrees that the Licensed Area is subject to certain provisions, conditions, terms and use restrictions, including, but not limited to, the Brownfields Site Rehabilitation Agreement ("**BSRA**"), Site ID #BF16000-1002, and a Florida Department of Environmental Protection Consent Order (OGC Case 96-2444) ("**Consent Order**"), copies of which have been provided to the JHNSA, and other federal, state or local governmental and/or regulatory entities requiring that the use of the Licensed Area be in

compliance with the provisions, conditions and terms of the said governmental/regulatory entities. JHNSA agrees to be in compliance at all times and to comply with the BSRA and the Consent Order and any of the conditions of those agreements that affect the Licensed Area, including, but not limited to, non-disturbance of the site-wide, soils cap of two feet, except as allowed and governed by the Site-wide Cover Interim Remedial Action and Operation and Maintenance Plan dated August 12, 1998, and any amendments thereto. Further, JHNSA shall provide DIA and the City with written confirmation from FDEP that any improvements contemplated within the Licensed Area do not violate the BSRA nor require any special remedial action. JHNSA shall provide the DIA and City with immediate written notice of any communication from regulatory or grant authorities concerning contamination or remediation requirements.

(d) JHNSA shall not discriminate against any person on the basis of race, creed, color, sex, religion, ethnic or national origin, age, marital status or disability in its use of the Licensed Area or operation of the Ship Museum.

(e) JHNSA shall comply with the City's Volunteer Background Screening Policy, completing background and security reviews of all employees and volunteers who provide or perform services involving the public for JHNSA at the Licensed Area. Use or employment of any volunteer who has not successfully passed such screening policy will be deemed a breach of this License and may result in immediate termination of the License pursuant to Section 16 hereof. Further, JHNSA shall require any of its employees or volunteers participating in children's programs or activities submit to and successfully pass a Level 2 Background Screening, as contemplated in Section 435.04, Florida Statutes, or other applicable laws regarding children's programs and activities.

9. Improvements to Licensed Area, Personal Property.

(a) JHNSA shall complete the construction of the Temporary Upland Improvements in accordance with the Approved Plans, Approved Scope of Work and Performance Schedule (collectively, the "**Approved Documents**").

(b) All additions, alterations changes or improvements made as part of the Project shall be made in conformance with plans and specifications approved by the DIA and with all applicable federal, state and municipal regulations, ordinances, codes and laws, including, as applicable, the Downtown Development Review Board design guidelines and requirements. Notwithstanding anything to the contrary in this Agreement, JHNSA shall not make any further additions, alterations, changes or improvements in or to the Licensed Area or any part thereof without the prior written consent of the DIA, which consent may be withheld in the DIA's sole discretion. Menial maintenance shall not be included in this provision. All additions, alterations, changes or improvements made by JHNSA to the Licensed Area shall be made at JHNSA's sole expense and shall, upon the termination of this License for any reason, at the option of the DIA, become the property of the City or shall be removed at JHNSA's sole expense and the Licensed Area restored to its prior condition as of the Effective Date. JHNSA shall not place its personal property on or within the Licensed Area during the License Term without approval of the DIA, and all JHNSA personal property that may be on or about the Licensed Area shall be thereon at JHNSA's sole risk.

(c) JHNSA shall comply with the indemnification and insurance requirements contained on **Exhibits G and H** attached hereto.

(d) Any additions, deletions or revisions to the Temporary Upland Improvements, as set forth in the Approved Plans or any other improvements, designs and plans, shall require the prior written approval of the DIA.

(e) JHNSA shall obtain, at its own expense, any permits, changes to existing permits, architectural approvals and zoning approvals as may be required by federal, state and local laws and regulations for the Project and any additional improvements to the Licensed Area, and for JHNSA's use of the Licensed Area.

(f) JHNSA shall if applicable obtain a certificate of occupancy for any Improvements and shall ensure that the Improvements meet all Governmental Requirements, including compliance with the Americans Disabilities Act of 1990, as applicable.

(g) JHNSA shall deliver to the DIA contractor(s)' affidavits and waivers of lien from all those who supplied labor, material or services in connection with the installation of the Improvements, together with satisfactory proof of full payment of the same.

(h) JHNSA agrees to comply, and to require any contractor, subcontractor or supplier to comply, with all applicable Governmental Requirements as well as the indemnification and insurance requirements applicable to the JHNSA hereunder.

(i) JHNSA acknowledges the existence of the BSRA and Consent Order and shall comply with any of the conditions of those agreements that affect the Licensed Area, including, but not limited to, non-disturbance of the site-wide, soils cap of two feet, except as allowed and governed by the Site-wide Cover Interim Remedial Action and Operation and Maintenance Plan dated August 12, 1998, and any amendments thereto. JHNSA shall provide the DIA immediate written notice of any communication from regulatory or grant authorities concerning contamination or remediation requirements. By executing this License, the parties acknowledge that the Florida Department of Environmental Protection has given its written approval of the License as required by Paragraph 20 of the BSRA.

(j) JHNSA shall indemnify, defend and hold harmless the City, the DIA and their respective officers, employees, agents, invitees, guests and contractors from and against all claims, costs, losses and damages, including, but not limited to, all attorney's fees and all court costs, caused by, arising out of, or resulting from the installation of the Improvements, provided that any such claim, cost, loss or damage: (1) is attributable to bodily injury, sickness, disease, death or environmental remediation liability as referenced in Section 8(1) above, or to damage to or destruction of tangible property; and (2) is caused by acts or omissions of JHNSA or any of its contractors, subcontractors, suppliers, or any persons or organizations employed by any of them in the performance of or furnishing of the installation of any Improvements. The provisions of this paragraph shall survive the expiration or termination of this License.



(k) JHNSA and its contractors and subcontractors shall be responsible for damage to any area on or about the Licensed Area.

10. Maintenance, Repairs and Utilities. JHNSA shall, at its sole cost and expense, maintain and keep the Improvements and the Licensed Area, in good repair and satisfactory condition and in accordance with the terms and conditions of the Agreement as determined in the sole but reasonable discretion of the DIA. JHNSA shall be responsible for, and promptly pay, all charges for gas, electric, garbage, water, sewer and other charges or costs which may become payable and due during the License Term for the gas, electric, garbage, water, sewer and other services and utilities used by JHNSA at the Licensed Area. JHNSA shall be responsible for the installation and maintenance charges for any telephone facilities, computer facilities, or other communication facilities utilized by JHNSA at the Licensed Area. JHNSA shall pay, and be responsible for, the costs of all maintenance and repair associated with JHNSA's use of the Licensed Area. JHNSA shall be responsible at its sole cost and expense for the removal of trash from the Licensed Area.

11. Indemnification. JHNSA, its contractors, subcontractors, consultants and agents hereby agree to the indemnification provisions attached hereto as **Exhibit G** and incorporated herein by this reference.

12. Insurance. At all times during the License Term and any extensions thereto, JHNSA, its contractors, subcontractors, consultants and agents (as applicable) agree to obtain and maintain insurance in the forms and amounts provided in **Exhibits H** attached hereto and incorporated herein by this reference.

13. Compliance with Governmental Requirements. During the License Term, JHNSA shall comply with all Governmental Requirements that govern, affect or are applicable to the condition or use of the Vessel, the Ship Museum or the Licensed Area or that are related to or arise out of JHNSA's use thereof. JHNSA shall notify the DIA of its violation of any Governmental Requirement immediately after JHNSA's knowledge thereof, and JHNSA shall diligently and prudently take requisite action to correct any violations of Governmental Requirements which arise out of JHNSA's use of the Licensed Area as soon as reasonably possible after the discovery of same. JHNSA shall assure the DIA from time to time, by written certification, that JHNSA and the Licensed Area are in compliance with all Governmental Requirements affecting same.

14. Title to Licensed Area. Title to the Licensed Area shall remain vested with the City, subject to the covenants, conditions and terms of this License and JHNSA shall have no interest in the title to the Licensed Area but shall only have a license interest thereto. JHNSA shall accept the Licensed Area "as is". Any improvements made to the Licensed Area shall be vested with the City, which shall have the title thereto, subject to the covenants, conditions and terms of this License; however, no furnishings, furniture, equipment or other personal property installed by JHNSA shall be the City's property, but shall be the property of JHNSA. The City shall always remain vested with title to the Licensed Area and in control thereof to ensure, among other things, that neither JHNSA nor any other entity shall have the authority or right to violate Governmental Requirements affecting the Licensed Area and the utilization thereof.

15. Destruction or Damage. In the event the Improvements or any part thereof is destroyed or damaged from any casualty or any cause other than the City's gross negligence or willful misconduct, JHNSA shall be solely responsible for the same.

16. Hazardous Materials.

(a) Except for cleaning supplies and other maintenance supplies (such as paint) in quantities suitable for consumer use, JHNSA shall not knowingly use, handle, store or permit the use, handling or storage of Hazardous Materials on or about the Licensed Area. JHNSA shall not dispose of or permit or allow the disposal, leakage, spillage or discharge on or upon the Licensed Area of any Hazardous Material. If any Hazardous Material should be used, handled or stored (except in accordance with this Section) or if any Hazardous Material is disposed of or permitted to leak, spill or discharge on, about or upon the Licensed Area by accident or otherwise, JHNSA shall provide immediate written notice thereof to the DIA and JHNSA shall immediately commence and diligently pursue the removal of any such Hazardous Material and JHNSA shall remediate, clean and restore the Hazardous Material area in accordance with all applicable Governmental Requirements, and pay all fines, fees, assessments and penalties arising therefrom. JHNSA shall furnish to the DIA, periodically at the DIA's request, certification that JHNSA is in compliance with the provisions of this Section.

(b) JHNSA shall provide written notice to the DIA within three (3) days of:

(i) any change in JHNSA's utilization and operation of the Licensed Area involving the use, handling or storage of Hazardous Materials;

(ii) JHNSA's receipt of any warning, notice, notice of violation, lawsuit or the like from any governmental agency or regulatory authority relating to environmental compliance;

(iii) JHNSA's receipt of any complaint, claim, or lawsuit filed by any third party relating to environmental compliance; or

(iv) releases, spillage, leakage or disposal of any Hazardous Material at, on or about the Licensed Area.

(c) If JHNSA fails to comply with any of the provisions of this Section, the DIA and/or the City shall have the right, but shall not be obligated, to enter into and go upon the Licensed Area without thereby causing or constituting a breach or termination of this License, or ejection of JHNSA, either constructive or otherwise, in whole or in part, from all or any portion of the Licensed Area, or an interference with JHNSA's use of the Licensed Area, and take such steps and incur such expenses as the DIA or City shall deem necessary to correct JHNSA's default, including, without limitation of the generality of the foregoing, the making of all replacements or repairs for which JHNSA is responsible, and JHNSA shall reimburse the DIA and/or City, as applicable, on demand for any expense the DIA and/or City incurs as a result thereof.

17. Default. Each of the following events shall constitute a default hereunder by

JHNSA, as the case may be, and shall constitute a breach of this License:

(a) If JHNSA fails to pay the DIA any charge due hereunder as and when the same shall become payable after the DIA's written notice for payment; or

(b) If JHNSA shall fail to obtain and maintain during the License Term any applicable material licenses or permits; or

(c) If JHNSA shall fail to maintain the proper insurance as required by this License after having received written notice from the DIA or the City; or

(d) If JHNSA shall violate any term or condition of any permits, the BSRA or Consent Order during the License Term; or

(e) If JHNSA shall default under the Agreement; or

(f) If JHNSA fails to perform any of the covenants, conditions and terms of this License on JHNSA's part to be performed and such non-performance shall continue for a period of thirty (30) days after written notice thereof by the DIA to JHNSA; or if JHNSA shall fail to act in good faith to commence and undertake performance within such thirty (30) day period to cure a non-performance which cannot be cured within the initial thirty (30) day period unless JHNSA first designates in writing the reasonable time period to cure such non-performance and its intent to do so, or, JHNSA, having commenced to undertake such performance within the initial thirty (30) day period, shall fail to diligently proceed therewith to completion within the designated reasonable time period to cure such non-performance; or

(g) The occurrence of any one or more of the following events prior to the expiration of the License Term shall constitute an event of default hereunder: (i) a violation of any applicable and governing federal, state or local law, rule, regulation or policy with respect to the subject matter hereof; (ii) if any representation or warranty contained in this License shall be false or misleading in any material respect; (iii) the application by JHNSA for, or consent to, the appointment of a receiver, trustee, liquidator or custodian (or similar official) of its or all or a substantial part of its assets, or if any party shall be unable or admit in writing its inability to pay its debts as they mature, make a general assignment for the benefit of creditors, be adjudicated a bankrupt or insolvent, file a voluntary petition in bankruptcy or a petition or answer seeking reorganization or any arrangement with creditors or agrees to take advantage of any insolvency law, file an answer admitting the material allegations of a petition filed against it in any bankruptcy, reorganization or insolvency proceeding or if any corporate action shall be taken by it for any purpose of effecting any of the foregoing, or if any order, judgment or decree shall be entered by a court of competent jurisdiction approving a petition seeking reorganization or appointing a receiver, trustee, liquidator or custodian (or other similar official) of any party hereto or of all or a substantial part of its assets, and such other judgment or decree shall continue unstayed and in effect for a period of thirty (30) consecutive days; or (iv) an event of default of JHNSA under any other agreement or transaction between JHNSA and the DIA or JHNSA and the City.

Any event of default under subsections 16(b) – (e) shall be deemed a material breach of

this License and upon such default the DIA shall have the right to terminate and cancel the License immediately by providing written notice to JHNSA of the same. If any other event of default shall occur and remain uncured for a period of thirty (30) days, the DIA shall have the right to immediately terminate and cancel this License by giving to JHNSA written notice of such termination and cancellation. Upon such notice, this License shall terminate and the parties shall be released from all obligations under this License that do not specifically survive its termination. The foregoing remedy shall not be the exclusive remedy of the DIA for JHNSA's breach of this License but all remedies hereunder, under the Agreement, and at law and equity shall be cumulative, and the exercise by the DIA of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by JHNSA. JHNSA, at its sole expense, on or prior to the termination date as provided in the written notice of termination remove the Improvements from the Licensed Area and restore the Licensed Area as set forth in Section 22 below. This Section 17 shall survive the termination or expiration of this License.

18. JHNSA Termination. JHNSA shall retain an absolute right to terminate and cancel this License at any time during the License Term. In such event, the License shall terminate and cease as of the effective date of JHNSA's termination hereunder and the parties shall be released from all obligations hereunder which do not specifically survive termination; furthermore, all agreements, contracts or other rights with respect to the Licensed Area or the Improvements between JHNSA and other third parties in existence at the time of such termination shall terminate and cease as of the effective date of JHNSA's termination hereunder. JHNSA, at its sole expense, shall prior to the effective termination date remove the Improvements from the Licensed Area and restore the Licensed Area as set forth in Section 22 below. This Section 18 shall survive the termination or expiration of this License.

19. Reserved.

20. Licenses, Permits. JHNSA will be responsible for obtaining all licenses, permits, inspections and other approvals necessary for the use of the Licensed Area and Improvements. The DIA, at no cost and expense to the DIA, shall cooperate with JHNSA in obtaining all such licenses, permits, inspections and other approvals, including, but not limited to, supplying information and executing applications, forms or other documents necessary for same. Any and all licenses, permits, inspections and other approvals shall be deemed to apply to JHNSA or its use of the Licensed Area in accordance with the covenants, conditions and terms of this License.

21. No Assignment. Notwithstanding anything to the contrary in this License, no property rights or interests are being granted to JHNSA and, therefore, JHNSA cannot assign or transfer this License or its rights and obligations hereunder or encumber the Licensed Area in any way.

22. Expiration of Term. At the expiration or earlier termination of the License Term, JHNSA shall peaceably return to the City the Licensed Area in the original property condition as existed at the time of the Effective Date of this License, reasonable wear and tear excepted. JHNSA shall remove the Improvements in accordance with Section 18 above. It is understood and agreed between the DIA and JHNSA that JHNSA shall have the right, at its sole expense, to remove from

the Licensed Area all personal property of JHNSA situate at the Licensed Area, including, but not limited to, all furnishings, furniture, machinery, equipment, appurtenances and appliances placed or installed on the Licensed Area by same, provided JHNSA restores the Licensed Area after the removal therefrom. The provisions of this paragraph shall survive the expiration or termination of this License.

23. DIA's/City's Right to Enter. Without limiting any other rights retained by the City and the DIA, for purposes of clarity, the DIA and City at all times and without notice may enter into and upon the Licensed Area for the purpose of inspecting same and/or for making improvements and/or for any other purpose.

24. Reserved.

25. Reserved.

26. Force Majeure. If the DIA or JHNSA shall be delayed in, hindered in or prevented from the performance of any act required hereunder (other than performance requiring the payment of a sum of money, the posting of a security deposit or bond, or the delivery of a letter of credit) by reason of strikes, lockouts, epidemic, pandemic, labor troubles, protests, civil unrest, inability to procure materials, failure of power, restrictive governmental laws, regulations or actions, war, riots, insurrection, epidemic, pandemic, adverse weather conditions, the act, failure to act or default of the other party, or other reason beyond such party's reasonable control (excluding the unavailability of funds or financing), then the performance of such act shall be excused for the period of the delay and the period for the performance of any such act as required herein shall be extended for a period equivalent to the period of such delay.

27. Condemnation. If any part of the Licensed Area is taken by eminent domain or condemnation or voluntarily transferred to such authority under the threat thereof, the DIA may, at its sole option, terminate this License by giving written notice to JHNSA within thirty (30) days after the taking, or if by reason of such taking of the Licensed Area, JHNSA's operation on or access to the Licensed Area is substantially and materially impaired, JHNSA shall have the option to terminate this License by giving written notice to the DIA within thirty (30) days after the taking. JHNSA hereby waives any and all rights it may have in all condemnation awards, including, without limitation, loss of or damage to its License, and hereby assigns said claims to the DIA, except such awards as are separately and specifically awarded to JHNSA for its separate personal property, moving expenses and business damages.

28. Mechanics Liens. JHNSA shall immediately after it is filed or claimed, have released, by bonding or otherwise, any mechanics', materialman's or other lien filed or claimed against any or all of the Licensed Area or any other property owned or licensed by the City or the DIA, by reason of labor or materials provided for JHNSA or any of its contractors or subcontractors, or otherwise arising out of JHNSA's use or occupancy of the Licensed Area. Nothing in the provisions of this License shall be deemed in any way to give JHNSA any right, power or authority to contract for or permit to be furnished any services or materials which would give rise to the filing of any mechanics' or materialman's lien against the City's estate or interest in and to the Licensed Area, it being expressly agreed that no estate or interest of the City in and

to the Licensed Area shall be subject to any lien arising in connection with any alteration, addition or improvement made by or on behalf of JHNSA. At the City's or DIA's request, JHNSA shall execute a written instrument to be recorded for the purpose of providing notice of the existence of the provisions of the preceding sentence in accordance with Section 713.10, Florida Statutes.

29. Annual Report and Financial Audit. On August 1<sup>st</sup> of each year of the License Term, JHNSA shall present an Annual Report and pro forma budget for the upcoming year to the DIA. Such Report shall illustrate and explain JHNSA's financial statements, liabilities, assets, revenue, activities, officers' names and addresses, rules and regulations, by-laws, and election date(s) and shall also give a detailed summary of JHNSA's compliance with background screening, events, and attendance figures. JHNSA shall also provide the DIA annually with a copy of JHNSA's audited financials on or before August 1<sup>st</sup> of each year.

30. Audit. With reasonable notice, the DIA, including but not limited to City Council auditors, shall have the right to conduct an audit of the JHNSA.

31. Reserved.

32. Miscellaneous:

(a) Notices. Any and all notices which are permitted or required in this License shall be in writing and shall be duly delivered and given when personally served or mailed to the person at the address designated below. If notice is mailed, the same shall be mailed, postage prepaid, in the United States mail by certified or registered mail - return receipt requested. Notice shall be deemed given on the date of personal delivery or mailing and receipt shall be deemed to have occurred on the date of receipt; in the case of receipt of certified or registered mail, the date of receipt shall be deemed to be within three (3) business days of mailing. Failure to accept certified or registered mail shall be deemed a receipt thereof within ten (10) days after the first notice of delivery of the certified or registered mail. Any entity may change its address as designated herein by giving notice thereof as provided herein.

If to DIA:                      Downtown Investment Authority  
   Attention: CEO  
   City Hall at St. James  
   117 West Duval Street, Suite 310  
   Jacksonville, Florida 32202

With copies to:                Department of Parks, Recreation and Community Services  
   City of Jacksonville  
   214 N. Hogan Street, 4th Floor  
   Jacksonville, FL 32202  
   Attn: Director

and

Office of General Counsel  
Government Operations Dept.

117 West Duval Street, Suite 480  
Jacksonville, Florida 32202  
Attn: Division Chief

If to JHNSA: Jacksonville Historic Naval Ship Association, Inc.  
c/o Abel Bean Law P.A.  
100 N. Laura Street, Suite 501  
Jacksonville, FL 32202  
Attn: Daniel K. Bean

With a copy to: Jacksonville Historic Naval Ship Association, Inc.  
2220 County Road 210 West  
Suite 108  
PMB 314  
Jacksonville, Florida 32259

(b) Legal Representation. Each respective party to this License has been represented by counsel in the negotiation of this License and, accordingly, no provision of this License shall be construed against a respective party due to the fact that it or its counsel drafted, dictated or modified this License or any covenant, condition or term thereof.

(c) Further Instruments. Each respective party hereto shall, from time to time, execute and deliver such further instruments as any other party or parties or its counsel may reasonably request to effectuate the intent of this License.

(d) Severability of Invalid Provision. If any one or more of the agreements, provisions, covenants, conditions and terms of the License shall be contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such agreements, provisions, covenants, conditions or terms shall be null and void with no further force or effect and shall be deemed separable from the remaining agreements, provisions, covenants, conditions and terms of the License and shall in no way affect the validity of any of the other provisions hereof.

(e) No Personal Liability. No representation, statement, covenant, warranty, stipulation, obligation or agreement contained herein shall be deemed to be a representation, statement, covenant, warranty, stipulation, obligation or agreement of any member, officer, employee or agent of the City, DIA or JHNSA in his or her individual capacity and none of the foregoing persons shall be liable personally or be subject to any personal liability or accountability by reason of the execution or delivery thereof.

(f) Third Party Beneficiaries. Nothing herein express or implied is intended or shall be construed to confer upon any entity other than the City, DIA and JHNSA any right, remedy or claim, equitable or legal, under and by reason of this License or any provision hereof, all provisions, conditions and terms hereof being intended to be and being for the exclusive and sole

benefit of the City, DIA and JHNSA.

(g) Successors and Assigns. This License shall be binding upon and inure to the benefit of the DIA's successors and assigns.

(h) Survival of Representations and Warranties. The respective indemnifications, representations and warranties of the respective parties to this License shall survive the expiration or termination of the License and remain in effect.

(i) Governing Law and Venue. This License shall be governed by and construed in accordance with the laws of the State of Florida and the Ordinances of the City of Jacksonville. Wherever possible, each provision, condition and term of this License shall be interpreted in such manner as to be effective and valid under applicable law; but if any provision, condition or term of this License, or any documentation executed and delivered hereto, shall be prohibited by or invalid under such applicable law, then such provision, condition or term shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision, condition or term or the remaining provisions, conditions and terms of this License or any documentation executed and delivered pursuant hereto. JHNSA acknowledges, consents and agrees that all legal actions or proceedings arising out of or related to this License shall lie exclusively in a state court in Duval County, Florida.

(j) Section Headings. The section headings inserted in this License are for convenience only and are not intended to and shall not be construed to limit, enlarge or affect the scope or intent of this License, nor the meaning of any provision, condition or term hereof.

(k) Counterparts. This License may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one (1) and the same document.

(l) Entire Agreement. This License contains the entire agreement between the respective parties hereto and supersedes any and all prior agreements and understandings between the respective parties hereto relating to the subject matter hereof. No statement or representation of the respective parties hereto, their agents or employees, made outside of this License, and not contained herein, shall form any part hereof or bind any respective party hereto. This License shall not be supplemented, amended or modified except by written instrument signed by the respective parties hereto.

(m) Attorney's Fees and Costs. In any litigation arising out of or pertaining to this License, each party shall be responsible for their own attorney's fees and costs, whether incurred before, during or after trial, or upon any appellate level.

(n) Time. Time is of the essence for this License. When any time period specified herein falls upon a Saturday, Sunday or legal holiday, the time period shall be extended to 5:00 P.M. on the next ensuing business day.

(o) Waiver of Defaults. The waiver by either party of any breach of this License



by the other party shall not be construed as a waiver of any subsequent breach of any duty or covenant imposed by this License.

**[The remainder of this page was intentionally left blank. Signature pages to follow.]**

**IN WITNESS WHEREOF**, the respective parties hereto have hereunto executed this License for the purposes expressed herein effective the day and year first above written.

**DOWNTOWN INVESTMENT  
AUTHORITY** on behalf of the CITY OF  
JACKSONVILLE, a Florida municipal  
corporation

By: \_\_\_\_\_  
Lori Boyer, CEO

WITNESSES:

**JACKSONVILLE HISTORIC NAVAL  
SHIP ASSOCIATION, INC.**, a Florida  
non-profit corporation

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

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

Form Approved:

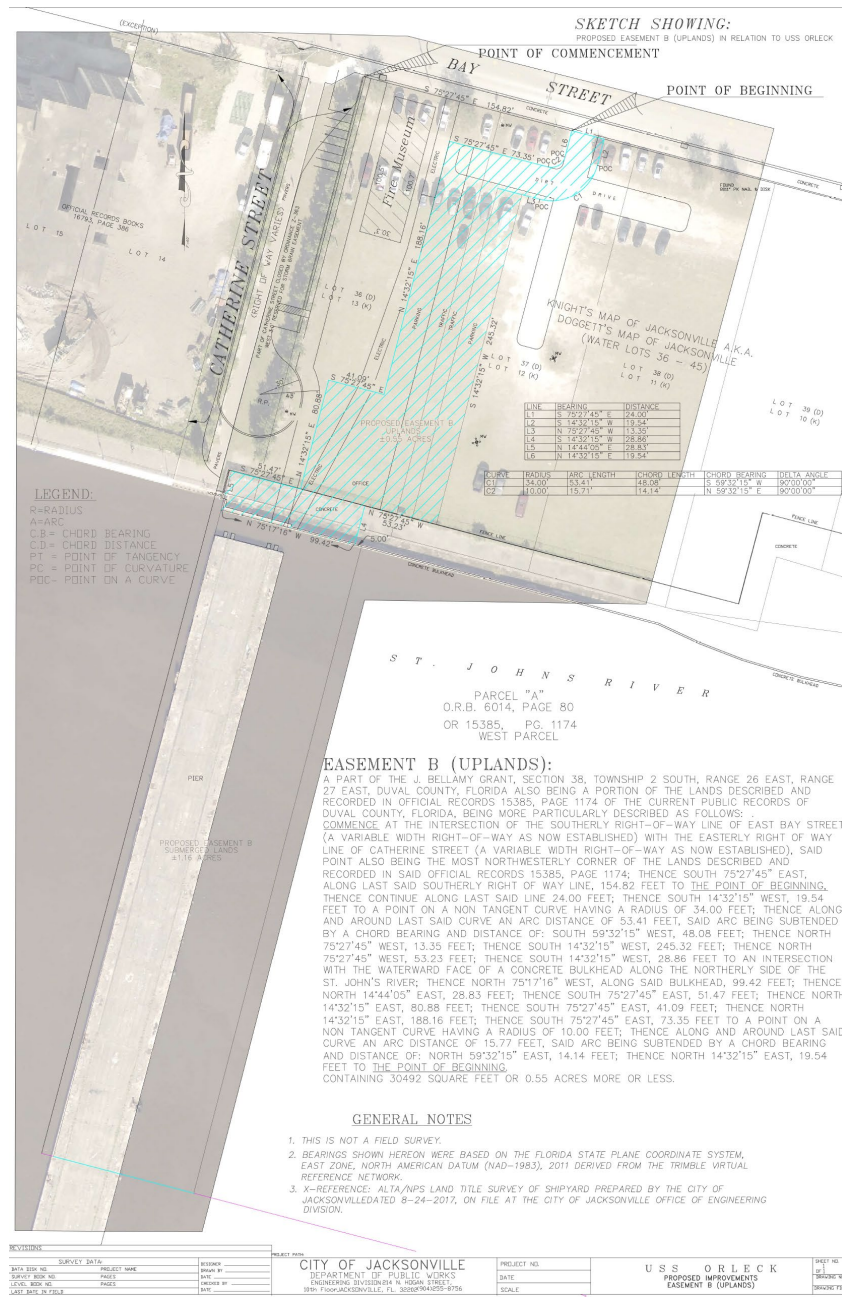
\_\_\_\_\_  
Office of General Counsel

GC-#1544920-v5-USS\_Orleck\_-\_JHNSA\_-\_Temporary\_Area\_License\_Agreement\_2023.docx

# EXHIBIT A

## LICENSED AREA DESCRIPTION

**Upland Area** – An approximately 0.55 acre parcel of unimproved land located in the northwest portion of Duval County Tax Parcel 073354 0000 commonly known as the “Shipyards” in downtown Jacksonville, Duval County, Florida, which northwest portion is generally bounded by Catherine Street to the West, Bay Street to the North, and the St. Johns River to the South, and as more particularly depicted below as the “Proposed Easement B Uplands”. Notwithstanding the foregoing, no easement rights are being granted.



**EXHIBIT B**  
**APPROVED PLANS**

The Approved Plans shall be attached hereto after the same are submitted by JHNSA and approved by the DIA in accordance with License.

## **EXHIBIT C**

### **APPROVED SCOPE OF WORK**

- Installation of a trailer office and portable restroom in a location to be approved by the DIA.
- Erection of a barricade or other temporary barrier that is not affixed to the land to segregate the Licensed Area (other than the Bay Street entrance and drive) from the remainder of the site.
- Installation of a ramp or gangway from the upland to the stern of the Vessel to provide visitor access.
- Temporary signage indicating that the parking area within the Licensed Area is for Vessel visitors only.
- Temporary matting or similar material on any temporary pedestrian access from the Bay Street sidewalk to the upland adjacent to the Vessel.

**EXHIBIT D**

**Reserved**

**EXHIBIT E**

**Reserved**

## **EXHIBIT F**

### **PERMITTED USES**

- Vehicular parking serving the Vessel in such location within the Licensed Area as the DIA shall approve, it being understood that the Bay Street entrance and drive will need to remain unobstructed so that it may be used to access other City property including in connection with the construction of the Shipyards West Park;
- Restrooms serving the Vessel;
- Ticketing office for the Ship Museum; and
- Office for operational staff for the Vessel and Ship Museum



## EXHIBIT G INDEMNIFICATION

**JHNSA**, its contractors, subcontractors, consultants and agents (as applicable) (collectively, the “Indemnifying Parties”) shall hold harmless, indemnify, and defend the DIA, City and their respective members, officers, officials, employees and agents (collectively the “Indemnified Parties”) from and against, without limitation, any and all claims, suits, actions, losses, damages, injuries, liabilities, fines, penalties, costs and expenses of whatsoever kind or nature, which may be incurred by, charged to or recovered from any of the foregoing Indemnified Parties for:

1. General Tort Liability, for any negligent act, error or omission, recklessness or intentionally wrongful conduct on the part of the Indemnifying Parties that causes injury (whether mental or corporeal) to persons (including death) or damage to property, whether arising out of or incidental to the Indemnifying Parties’ performance of the obligations, operations, services or work performed hereunder; and

2. Environmental Liability, to the extent this License contemplates environmental exposures, arising from or in connection with any environmental, health and safety liabilities, claims, citations, clean-up or damages whether arising out of or relating to the operation or other activities performed in connection with the License; and

3. Intellectual Property Liability, to the extent this License contemplates intellectual property exposures, arising directly or indirectly out of any allegation that the services provided hereunder, any product generated by said services, or any part of the services as contemplated in this License, constitutes an infringement of any copyright, patent, trade secret or any other intellectual property right. If in any suit or proceeding, the services provided hereunder, or any product generated by said services, is held to constitute an infringement and its use is permanently enjoined, the Indemnifying Parties shall, immediately, make every reasonable effort to secure within sixty (60) days, for the Indemnified Parties a license, authorizing the continued use of the service or product. If the Indemnifying Parties fail to secure such a license for the Indemnified Parties, then the Indemnifying Parties shall replace the service or product with a non-infringing service or product or modify such service or product in a way satisfactory to Buyer, so that the service or product is non-infringing.

If an Indemnified Party exercises its rights under this License, the Indemnified Party will (1) provide reasonable notice to the Indemnifying Parties of the applicable claim or liability, and (2) allow the Indemnifying Parties, at their own expense, to participate in the litigation of such claim or liability to protect their interests. **The scope and terms of the indemnity obligations herein described are separate and apart from, and shall not be limited by any insurance provided pursuant to this License or otherwise. Such terms of indemnity shall survive the expiration or termination of this License.**

In the event that any portion of the scope or terms of this indemnity is in derogation of Section 725.06 or 725.08 of the Florida Statutes, all other terms of this indemnity shall remain in full force

and effect. Further, any term which offends Section 725.06 or 725.08 of the Florida Statutes will be modified to comply with said statutes.

**EXHIBIT H  
INSURANCE REQUIREMENTS**

Without limiting its liability under this License, **JHNSA** shall at all times during the term of this License procure prior to commencement of work and maintain at its sole expense during the life of this License (and **JHNSA** shall require its, contractors, subcontractors, laborers, materialmen and suppliers to provide, as applicable), insurance of the types and limits not less than amounts stated below:

**Insurance Coverages**

Schedule	Limits
<b>Worker’s Compensation Employer’s Liability</b>	Florida Statutory Coverage \$ 100,000 Each Accident \$ 500,000 Disease Policy Limit \$ 100,000 Each Employee/Disease

This insurance shall cover **JHNSA** (and, to the extent they are not otherwise insured, its subcontractors) for those sources of liability which would be covered by the latest edition of the standard Workers’ Compensation policy, as filed for use in the State of Florida by the National Council on Compensation Insurance (NCCI), without any restrictive endorsements other than the Florida Employers Liability Coverage Endorsement (NCCI Form WC 09 03), those which are required by the State of Florida, or any restrictive NCCI endorsements which, under an NCCI filing, must be attached to the policy (i.e., mandatory endorsements). In addition to coverage for the Florida Workers’ Compensation Act, where appropriate, coverage is to be included for the Federal Employers’ Liability Act, USL&H and Jones, and any other applicable federal or state law.

<b>Commercial General Liability</b>	\$2,000,000    General Aggregate \$2,000,000    Products & Comp. Ops. Agg. \$1,000,000    Personal/Advertising Injury \$1,000,000    Each Occurrence \$ 50,000        Fire Damage \$ 5,000         Medical Expenses
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Such insurance shall be no more restrictive than that provided by the most recent version of the standard Commercial General Liability Form (ISO Form CG 00 01) as filed for use in the State of Florida without any restrictive endorsements other than those reasonably required by the DIA’s Office of Insurance and Risk Management. An Excess Liability policy or Umbrella policy can be used to satisfy the above limits.

**Vessel Pollution Liability, Pollution Liability, Pollution Legal Liability** (when transportation of pollutants is included in the Work).

All Pollution Coverages shall include clean-up cost	\$2,000,000 per Occurrence
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Aggregate \$5,000,000 General

**Protection & Indemnity (P&I) and Marine General Liability** \$2,000,000 per occurrence

**Automobile Liability** \$1,000,000 Combined Single Limit  
(Coverage for all automobiles, owned, hired or non-owned used in performance of this License)

Such insurance shall be no more restrictive than that provided by the most recent version of the standard Business Auto Coverage Form (ISO Form CA0001) as filed for use in the State of Florida without any restrictive endorsements other than those which are required by the State of Florida, or equivalent manuscript form, must be attached to the policy equivalent endorsement as filed with ISO (i.e., mandatory endorsement).

**Liquor or Host Liquor Liability** \$1,000,000 Each Occurrence  
(Liquor or Host Liquor Liability to the extent liquor is being sold, served or consumed.)

**Sexual Molestation** \$1,000,000 Per Claim  
\$2,000,000 Aggregate

(Only if program includes direct supervision of children, special needs, and/or senior citizens)

Sexual Molestation Liability coverage will be provided on an Occurrence Form or a Claims Made Form with a retroactive date to at least the first date of this License. If provided on a Claim Made Form, the coverages must respond to all claims reported within three years following the period for which coverage is required and which would have been covered had the coverage been on an occurrence basis.

### **Additional Insurance Provisions**

- A. **Additional Insured:** All insurance except Worker's Compensation shall be endorsed to name the DIA, the City of Jacksonville and DIA's members, officials, officers, employees and agents as Additional Insured. Additional Insured for General Liability shall be in a form no more restrictive than CG2010 and CG2037, Automobile Liability CA2048.
- B. **Waiver of Subrogation.** All required insurance policies shall be endorsed to provide for a waiver of underwriter's rights of subrogation in favor of the DIA, the City of Jacksonville and its members, officials, officers employees and agents.
- C. **JHNSA's Insurance Primary.** The insurance provided by JHNSA shall apply on a primary basis to, and shall not require contribution from, any other insurance or self-insurance

maintained by the DIA, the City or any of their respective members, officials, officers, employees and agents.

- D. Deductible or Self-Insured Retention Provisions. All deductibles and self-insured retentions associated with coverages required for compliance with this License shall remain the sole and exclusive responsibility of the named insured **JHNSA**. Under no circumstances will the DIA or the City of Jacksonville or their respective its members, officers, directors, employees, representatives, and agents be responsible for paying any deductible or self-insured retentions related to this License.
- E. **JHNSA's Insurance Additional Remedy.** Compliance with the insurance requirements of this License shall not limit the liability of **JHNSA** or its contractors, subcontractors, employees or agents to the DIA or others. Any remedy provided to the DIA, City or their respective members, officials, officers, employees or agents shall be in addition to and not in lieu of any other remedy available under this License or otherwise.
- F. Waiver/Estoppel. Neither approval by the DIA nor failure to disapprove the insurance furnished by **JHNSA** shall relieve **JHNSA** of **JHNSA's** full responsibility to provide insurance as required under this License.
- G. Certificates of Insurance. **JHNSA** shall provide the DIA Certificates of Insurance that show the corresponding DIA Contract Number in the Description, if known, Additional Insureds as provided above and waivers of subrogation. The certificates of insurance shall be mailed to the DIA of Jacksonville (Attention: Chief of Risk Management), 117 W. Duval Street, Suite 335, Jacksonville, Florida 32202.
- H. Carrier Qualifications. The above insurance shall be written by an insurer holding a current certificate of authority pursuant to chapter 624, Florida State or a company that is declared as an approved Surplus Lines carrier under Chapter 626 Florida Statutes. Such Insurance shall be written by an insurer with an A.M. Best Rating of A- VII or better.
- I. Notice. **JHNSA** shall provide an endorsement issued by the insurer to provide the DIA thirty (30) days' prior written notice of any change in the above insurance coverage limits or cancellation, including expiration or non-renewal. If such endorsement is not provided, **JHNSA** shall provide said a thirty (30) days' written notice of any change in the above coverages or limits, coverage being suspended, voided, cancelled, including expiration or non-renewal.
- J. Survival. Anything to the contrary notwithstanding, the liabilities of **JHNSA** under this License shall survive and not be terminated, reduced or otherwise limited by any expiration or termination of insurance coverage.
- K. Additional Insurance. Depending upon the nature of any aspect of any project and its accompanying exposures and liabilities, the DIA may reasonably require additional insurance coverages in amounts responsive to those liabilities, which may or may not require that the DIA also be named as an additional insured.

- L. Special Provisions: Prior to executing this Agreement, **JHNSA** shall present this License and Exhibits G & H to its insurance agent affirming that: 1) the agent has personally reviewed the insurance requirements of this License, and (2) the agent is capable (has proper market access) to provide the coverages and limits of liability required on behalf of **JHNSA**.

## Exhibit G

### Letter of Credit Requirements

The following requirements (collectively, “**Letter of Credit Requirements**”) shall apply to each standby Letter of Credit given pursuant to this Agreement:

- (i) The Association shall submit a proposed sample of each Letter of Credit to the DIA, at least thirty (30) days prior to the date that the Association is required to deliver the Letter of Credit to the DIA under the terms of this Agreement for the DIA’s review and approval. Any submission of a proposed sample Letter of Credit to the DIA shall include the name and contact information of a bank officer at the issuer. The Association authorizes the DIA to contact and negotiate with the proposed issuing bank regarding any proposed Letter of Credit.
- (ii) The issuer of the Letter of Credit shall be Vystar Credit Union which shall have a full service branch located in Jacksonville, Florida capable of honoring the presentation of a sight draft during normal business hours before 5 p.m. on any business day.
- (iii) The Letter of Credit shall be perpetual (evergreen) with an initial expiration of not less than one (1) year from the date of issuance with automatic one (1) year renewal terms.
- (iv) The Letter of Credit shall be irrevocable by the Association.
- (v) The Letter of Credit shall name the DIA as sole beneficiary.
- (vi) The Letter of Credit shall provide that the issuer shall give the DIA and the Office of General Counsel at least ninety (90) days prior written notice of its cancellation or non-renewal.
- (vii) The Letter of Credit shall be freely transferable by the DIA to its successors and assigns one or more times without condition or restriction by the issuer (other than requiring a copy of a duly executed assignment and notice of the assignment). All such transfers may be made without notice to or the consent of the Association. The Association shall pay all fees and costs of transfer charged by the issuer. A form of assignment and notice of assignment, acceptable to the DIA and the issuer, shall be attached as an exhibit to the Letter of Credit. The Association shall, at its sole cost and expense, cooperate with the DIA and take all such actions as the DIA may request with respect to transferring any Letters of Credit including using its best efforts to cause the issuer to deliver any amendments, modifications, or replacements of the Letter of Credit in connection with any transfer.
- (viii) The Letter of Credit shall permit full or partial draws at any time, and from time to time, by a representative of the DIA, without condition or charge, other than delivery of a sight draft substantially in the form approved by the DIA in its sole discretion (“**Sight Draft**”). The approved form Sight Draft shall be attached as an exhibit to the Letter of Credit.
- (ix) The Letter of Credit shall obligate the issuer to, at the request of the DIA (and without notice to or the consent of the Association), issue a replacement Letter of Credit to the DIA, meeting all of the Letter of Credit Requirements and on the same terms as the then-current Letter of Credit (including all amendments thereto), if the DIA either returns a mutilated Letter of Credit to the issuer, or certifies to the issuer that the Letter of Credit has been lost, stolen, or destroyed. The Letter of Credit shall require the issuer to issue the replacement Letter of Credit no later than two (2) business days from the date of the DIA’s request, but in no event later than one (1) business day prior to the expiration date. The Association shall, at

its sole cost and expense, cooperate with the DIA and take such actions as the DIA may request to replace any lost, stolen, or mutilated Letter of Credit. The Association hereby grants the DIA the power, coupled with an interest, to cause the issuer to replace a lost, stolen, or mutilated Letter of Credit.

(x) The Letter of Credit shall be otherwise acceptable to the DIA in its sole discretion, including, without limitation, the face amount of the Letter of Credit, which shall not be less than one hundred ten percent (110%) of the most recent DIA approved Estimated Removal Costs.