

## **LEASE AGREEMENT**

THIS LEASE, made and executed, by and between the COUNTY OF VOLUSIA, a political subdivision of the State of Florida, whose address is 123 West Indiana Avenue, DeLand, Florida, 32720-4613, (hereinafter referred to as "County" or "Lessor"), and the City of Deltona, a municipal corporation of the State of Florida, whose address is 2345 Providence Boulevard, Deltona, Florida, 32725, (hereinafter referred to as "City" or "Lessee").

### **W I T N E S S E T H:**

WHEREAS, the County owns approximately 3.7 acres, Parcel 8130-23-00-0021 as numbered in the County of Volusia's Property Appraiser's Records, in the City of Deltona; and

WHEREAS, the City desires to construct a public park for a walking trail with parking and other amenities to be known as Big Lake Rookery Park utilizing Environmental, Cultural, Historical, and Outdoor funds; and

WHEREAS, the City desires to construct a portion of Big Lake Rookery Park on the County Property; and

WHEREAS, the County desires to support the construction of Big Lake Rookery Park by renting the County Property to the City pursuant to the terms of this lease.

THEREFORE, for and in consideration of the mutual covenants herein the parties hereto agree as follows:

### **SECTION 1. PROPERTY**

The Lessor hereby leases to Lessee that certain real property in Volusia County, Florida, hereinafter referred to as the "Demised Premises," and more particularly described as follows:

SOUTH 310 FEET ON BIG LAKE ROOKERY DRIVE OF WEST  
540.85 FEET MEASURING ON THE NORTH LINE OF TRACT B  
UNIT 23 DELTONA LAKES MB 27 PG 40 PER OR BOOK 4237 PG  
1959.

PARCEL I.D. No.: 8130-23-00-0021

## **SECTION 2. TERM OF LEASE**

This Lease shall be valid upon approval and execution by both the Lessor and Lessee and for so long as Big Lake Rookery Park is constructed on the Demised Property and open to the public.

## **SECTION 3. RENT**

In addition to other good and valuable consideration provided by Lessee under the terms of this Lease Agreement, the Lessor shall receive from the Lessee, the sum of One Dollar (\$1.00), payable within sixty (60) days of execution of this Lease Agreement.

## **SECTION 4. INSURANCE PROVISIONS**

Lessee acknowledges that its use of the Demised Property with a pedestrian walking trail shall be at Lessee's sole risk and expense. Lessor shall in no way be liable to Lessee or any third party for any costs, expenses, losses, damages, or liabilities incurred by Lessee or any third party in its use of the Demised Property. Lessor and Lessee expressly retain all rights, benefits and immunities of sovereign immunity in accordance with Section 768.28, Florida Statutes. Notwithstanding anything set forth in any section of this Agreement to the contrary, nothing in this Agreement shall be deemed as a waiver of immunity or limits of liability of any party beyond any statutory limited waiver or immunity or limits of liability which may have been adopted by

the Florida Legislature or may be adopted by the Florida Legislature and liability of any party for damages shall not exceed the statutory limits of liability, regardless of the number or nature of any claim, which may arise, including, but not limited to, a claim sounding in tort, equity, or contract.

#### **SECTION 5. WARRANTIES OF TITLE AND QUIET POSSESSION**

Lessor covenants that it is seized of the Demised Premises in fee simple and has full right to make this Lease and that Lessee shall have quiet and peaceful possession of the Demised Premises during the term of this Lease.

#### **SECTION 6. DELIVERY OR POSSESSION**

Upon the execution of this Lease Agreement, or as otherwise agreed by the parties in writing, the Lessor shall permit possession of the Demised Premises to the Lessee.

#### **SECTION 7. USES**

Lessor hereby leases the Demised Premises to the Lessee for the use and purpose of a public park only and its customary associated activities. Public park use and related activities includes parking facilities; resource based access, trails and observation; and other ecologically oriented recreational improvements.

#### **SECTION 8. TERMINATION**

Except as otherwise provided in Section 14 of this Lease, in the event that the Demised Property is no longer utilized by the Lessee for a public park, this lease shall terminate. If the Lessee desires to terminate the lease on its own, the Lessee may cancel this Lease Agreement upon one (1) year written notice to the Lessor.

#### **SECTION 9. WASTE AND NUISANCE PROHIBITED**

During the term of this Lease, Lessee shall comply with all applicable laws affecting the

Demised Premises, breach of which might result in penalty on the Lessor or forfeiture of the Lessor's title to the premises. Lessee shall not commit or suffer to be committed any waste, or any nuisance to the Demised Premises.

#### **SECTION 10. LESSOR'S RIGHT OF ENTRY**

Lessee shall permit Lessor and its agents and employees to enter into and upon the Demised Premises at all reasonable times for the purpose of inspecting same.

#### **SECTION 11. GOVERNING LAWS**

All of the rights and remedies of the respective parties to this Lease shall be governed by the provisions of this Lease and by the laws of the State of Florida.

#### **SECTION 12. SUBLETTING AND ASSIGNMENT**

Lessee shall not assign this Lease, in whole or in part, nor sublet all or any part of the Demised Premises.

#### **SECTION 13. NOTICES**

All notices, demands or other writing in this Lease are to be given, or made or sent, or which may be given or made or sent, by either party through this Lease to the other, shall be deemed to have been given, made or sent when made in writing and deposited in the United States mail, certified, return receipt requested and postage prepaid and addressed as follows:

TO LESSEE: County Manager  
County of Volusia, Florida  
County Administration Building  
123 West Indiana Avenue  
DeLand, Florida 32720-4613

TO LESSOR: City Manager  
City of Deltona  
3245 Providence Blvd  
Deltona, FL 32725

The address to which any notice, demand or other writing may be given, or made, or sent, as above provided, may be changed by written notice given by such party as above provided.

#### **SECTION 14. MAINTENANCE, REPAIRS AND IMPROVEMENTS**

Lessee, throughout the term of this Lease, at its own cost, and without any expense to the Lessor, shall keep and maintain the Demised Premises, including any improvements constructed thereon, in good repair. Lessor shall not be obligated to make any repairs, replacements or renewals of any kind, nature or description whatsoever to the Demised Premises, including any buildings or improvements thereon. Lessee shall also comply and abide by all federal, state, municipal and other government statutes, ordinances, laws and regulations to which the Lessee is subject that affect the Demised Premises, including buildings and improvements thereon, or any other activities or condition on or in such Demised Premises.

#### **SECTION 15. SURRENDER OF PREMISES**

At the expiration of the tenancy hereby created, Lessee shall surrender the Demised Premises in the same condition as the Demised Premises were in upon delivery of possession thereto under this Lease, reasonable wear and tear excepted, and damage by unavoidable casualty excepted. Lessee shall remove all of its improvements and equipment, before surrendering the Demised Premises and shall repair any damage to the lease premises caused thereby. Lessee's obligation to observe or perform this covenant shall survive the expiration or other termination of the term of this Lease.

#### **SECTION 16. UTILITIES**

Lessee shall fully and promptly pay all water, gas, heat, light, power, telephone service, garbage, sewer, and any other public utilities of any kind furnished to the Demised Premises throughout the term of this Lease, and other costs and expenses to which the Lessee is subject to, with regard to the use, operation, and maintenance of the Demised Premises. Lessor shall

have no responsibility of any kind for such costs and expenses.

#### **SECTION 17. ATTORNEYS' FEES**

If any action at law or equity shall be brought on breach of, or to enforce or interpret any covenants, terms or conditions of this Lease, or for recovery of possession of the Demised Premises, each party shall be responsible to pay its own attorney's fees.

#### **SECTION 18. REMEDIES CUMULATIVE**

All remedies conferred on either party shall be deemed cumulative and no one exclusive of the other, or any other remedy conferred by law.

#### **SECTION 19. WAIVER**

Waiver by Lessor or Lessee of, or failure of Lessor or Lessee to take action with respect to any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition or subsequent breach of the same, or any other term, covenant, or condition herein contained.

#### **SECTION 20. PARTIES BOUND**

The covenants and conditions herein contained shall, bind the parties to this Lease; and the parties to this Lease shall be jointly and severally liable under this Lease.

#### **SECTION 21. SEVERABILITY**

Should any court of competent jurisdiction hold any section, term, covenant, condition, provision, sentence or part thereof of this Lease invalid or unenforceable, the remaining terms and provisions, shall, nevertheless, remain in full force and effect.

#### **SECTION 22. CONDITION OF PREMISES**

It is understood and agreed that the Lessee herein accepts the Demised Premises in its

present condition, being governed by its own inspection of the Demised Premises.

**SECTION 23. AMENDMENT**

This Lease may be amended upon mutual consent of the Lessor and Lessee.

**SECTION 24. COMPLETE AGREEMENT**

Lessor and Lessee agree and declare it is their intention by this section that all of the foregoing constitutes the complete and final expression of their agreement.

IN WITNESS WHEREOF, the parties have set their hands and official seals to this Lease on this \_\_\_\_ day \_\_\_\_\_ 20\_\_.

Signed, sealed and delivered in the presence of:

ATTEST:  
VOLUSIA

LESSOR: COUNTY COUNCIL  
COUNTY, FLORIDA

BY: \_\_\_\_\_  
George Recktenwald, County Manager

BY: \_\_\_\_\_  
Jeff Brower, County Chair

STATE OF FLORIDA  
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of [ ] physical presence or [ ] online notarization this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by Jeff Brower as Chair of the Volusia County Council, who is personally known and/or produced \_\_\_\_\_ as identification and who being duly sworn, deposes and says that the aforementioned is true and correct to his or her best knowledge.

[SEAL]

\_\_\_\_\_  
Notary Public Commission:



ATTEST:  
FLORIDA

LESSEE: CITY OF DELTONA,

BY: \_\_\_\_\_  
John A. Peters III, PE, Acting City Manager

BY: \_\_\_\_\_  
Heidi Herzberg, Mayor

STATE OF FLORIDA  
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of [☐] physical presence or [☐] online notarization this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by Heidi Herzberg as Mayor of the City of Deltona, who is personally known and/or produced \_\_\_\_\_ as identification and who being duly sworn, deposes and says that the aforementioned is true and correct to his or her best knowledge.

[SEAL]

\_\_\_\_\_  
Notary Public Commission: