RESOLUTION NO. 2018-438

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS AND AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO EXECUTE AN APPLICATION FOR SUBMERGED LAND LEASE AND A SUBMERGED LANDS LEASE ON BEHALF OF THE COUNTY TO EXPAND PUBLIC ACCESS AND TRANSPORTATION OPPORTUNITIES AT THE VILANO FLOATING DOCK.

RECITALS

WHEREAS, the City of St. Augustine, pursuant to the authority of Chapter 11148, Laws of Florida, 1925, claims ownership of all submerged lands existing in 1925 and not otherwise deeded to private parties; and

WHEREAS, in 1996 the City of St. Augustine, as owner of the submerged lands, granted St. Johns County a perpetual Easement for the Vilano Pier; and

WHEREAS, on May 1, 2012, the Board of County Commissioners approved Resolution No. 2012-137 accepting a perpetual Easement from the City of St. Augustine and Marilyn Small Beach for use of submerged land and riparian rights for the proposed Vilano floating dock to be connected to the Vilano Pier; and

WHEREAS, the City of St. Augustine owns and operates a municipal marina for public access to the waterways and has established multi-modal mobility priorities and programs in support of their legislative goals; and

WHEREAS, St. Johns County Parks and Recreation wishes to create a pilot program allowing commercial use of the Vilano floating dock to operate boat tours and water taxi services; and

WHEREAS, the City of St. Augustine, as owner of the submerged lands, has provided an Application for Submerged Land Lease and a Submerged Land Lease, attached hereto as Exhibits “A” and “B”, and by reference incorporated herein; and

WHEREAS, costs for the first year would include a $200.00 non-refundable application processing fee and $1,478.75 Submerged Land Lease fee, for a total of $1,678.75. The Submerged Land Lease fee will increase annually based on the Consumer Price Index. The leasing fee will be passed on to the commercial businesses that will operate their boat tours and water taxi services from the Vilano floating dock; and
WHEREAS, execution of the Submerged Land Lease will allow the City of St. Augustine and St. Johns County to expand public access and transportation opportunities at the Vilano floating dock.

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, as follows:

1. The above Recitals are incorporated by reference into the body of this Resolution and such Recitals are adopted as findings of fact.

2. The Board of County Commissioners hereby authorizes the County Administrator, or Designee, to execute an Application for Submerged Lands Lease and a Submerged Lands Lease on behalf of the County.

3. To the extent that there are typographical, scriveners or administrative errors that do not change the tone, tenor, or concept of this Resolution, then this Resolution may be revised without subsequent approval by the Board of County Commissioners.

4. The Clerk of Court is instructed to file the original Application for Submerged Land Lease and Submerged Land Lease in the Public Records of St. Johns County, Florida.

PASSED AND ADOPTED this 18 day of December, 2018.

BOARD OF COUNTY COMMISSIONERS
ST. JOHNS COUNTY, FLORIDA

By: [Signature]
Paul M. Waldron, Chair

ATTEST: Hunter S. Conrad, Clerk

[Signature]
Deputy Clerk

RENDITION DATE 12/30/18.
City of St. Augustine

APPLICATION FOR SUBMERGED LANDS LEASE

❖ Section 1 - Applicant and Agent Information

Applicant/Riparian Owner (A riparian owner is the deeded owner of the property bordering navigable waters, as recognized by the courts of Florida and common law)

Name: (include name of corporation, if applicable)
St. Johns County, Florida, a political subdivision of the State of Florida by and through its Board of County Commissioners

Address:
500 San Sebastian View, St. Augustine, FL 32084

Telephone:
Gail Oliver, Land Management Systems Director 904-209-0770

E-mail:
goliver@sjcfl.us

Co-Applicant (if applicable) (A co-applicant may be necessary if the structure or activities cross over the riparian rights line between two properties, or when the applicant is not the upland owner. In these cases, the co-applicant would be the adjacent property owner, or the upland property owner respectively.)

Name:

Address:

Telephone:

E-mail:
Agent (if applicable) (An agent is a person or entity who is authorized to negotiate details, submit necessary information, and receive a copy of the lease on the behalf of the applicant. Examples of agents are consultants, project engineers, dock contractors, etc.)

Name:

Address:

Telephone:

E-mail:

❖ Section 2 – Site Location

Name of Affected Waterway:

Tolomato River

Street Address of the Site:

Vilano Beach Fishing Pier Floating Dock, 260 Vilano Road, St. Augustine, FL 32084

Parcel ID (can be found on the County Property Appraiser’s website):

St. Johns County 148101-0000; Marilyn Beach 148830-0000

Subdivision Name (if applicable):

Vilano Beach Unit A, Map Book 4, Page 48

Legal Description:

See attached.
Section 3 – Upland Property

Riparian upland property by which applicant intends to access the leased area:

Street Address:

260 Vilano Road, St. Augustine, FL 32084

Section 4 – Florida Department of Revenue Registration Number

Leases without sales tax exemption certificates shall be subject to Florida State sales tax.

Registration Number:

Certificate of Exemption No: 85-8012740181C-7

Section 5 – Survey

Provide two (2) prints of a survey prepared, signed and sealed by a person properly licensed by the Florida State Board of Land Surveyors, that include the following:

(i) Utilizes an appropriate scale on 8½ × 11” size paper (unless a larger size is necessary to provide sufficient clarity and detail);

(ii) Show the location of ordinary or mean high water;

(iii) Show the location of the shoreline vegetation, if existing;

(iv) Show the location of proposed structures and any existing structures;

(v) Show the applicant’s upland parcel property lines;

(vi) Include a legal description of pre-empted area to be leased.

In the alternative, the applicant may provide and utilize for the purpose of this section a copy of the survey and legal description of the area as attached to any former leases held between the applicant and the State of Florida Board of Trustees of the Internal Improvement Trust Fund for the subject property, providing that applicant provides, by affidavit, that the structures existing or utilized by the applicant are under the aforementioned lease and have not been altered or modified in a manner which would either increase or decrease the total pre-empted area.
Section 6 – Additional Information

The following must be provided along with this application:

- A copy of evidence of title and/or lease for riparian upland property.
- Two hundred dollar ($200.00) non-refundable processing fee.
- A copy of the approved Conservation Overlay Zone Permit.

Section 7 – Certifications

Application is hereby made for a Submerged Lands Lease with the City of St. Augustine, a municipal corporation organized and existing under and by virtue of the laws of the State of Florida.

1. I hereby certify that: (please check the appropriate box)
   - [ ] I am the property owner of record
   - [ ] I am the lessee
   - [ ] I am the record easement holder
   - [ ] I am not the property owner of record, lessee, or record easement holder of the riparian upland property described in Section 3 of this application.

2. I understand I may be required to provide additional information/data necessary to demonstrate reasonable assurance or evidence that the proposed activities will comply with Florida Rules and Statutes and City Code.

3. I agree to provide entry to the project site for inspectors with proper identification or documents, for the purpose of inspecting the site.

4. I am familiar with the information contained in this application and that to the best of my knowledge and belief, such information is true, complete and accurate. I further certify that I possess the authority to undertake the proposed activities or am acting as the duly authorized agent of the applicant. I understand that knowingly making any false statement or representation in this application may result in the revocation of the Submerged Land Lease by the City.

Printed Name of Applicant or Agent ___________________________ Signature of Applicant or Agent ___________________________ Date ______________

Printed Name of Co-Applicant ___________________________ Signature of Co-Applicant ___________________________ Date ______________
AN AGENT MAY SIGN ABOVE IF APPLICANT COMPLETES THE FOLLOWING

I hereby designate and authorize the agent listed above to act on my behalf as my agent in the processing of this application and to furnish, on request, supplemental information in support of the application.

Printed Name of Applicant or Agent

Signature of Applicant or Agent

Date

Printed Name of Co-Applicant

Signature of Co-Applicant

Date

APPROVED. NO CHANGES REQUIRED.

ISABELLE C. LOPEZ, CITY ATTORNEY

DISAPPROVED. SEE NOTES BELOW.

ISABELLE C. LOPEZ, CITY ATTORNEY

NOTES:

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LEGAL DESCRIPTION / VILANO PIER EASEMENT:

A PARCEL OF SUBMERGED LANDS OF THE INTRACOASTAL WATERWAY (NORTH RIVER), LYING IN TOWNSHIP 7 SOUTH, RANGE 30 EAST, ST. JOHNS COUNTY, FLORIDA. ALSO BEING A PART OF THE LANDS AS DESCRIBED IN THE CHARTER OF THE CITY OF ST. AUGUSTINE FLORIDA PASSED IN THE 1925 SESSION OF THE LEGISLATURE, SAID PARCEL OF SUBMERGED LANDS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: FOR A POINT OF REFERENCE, COMMENCE AT THE INTERSECTION OF THE WESTERLY RIGHT OF WAY LINE OF ANAHMA DRIVE, AS NOW ESTABLISHED AS A 80 FOOT RIGHT OF WAY, WITH THE SOUTHERLY RIGHT OF WAY LINE OF VILANO ROAD, AS NOW ESTABLISHED BY THE FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT OF WAY MAP SECTION 78030, DATED DECEMBER 19, 1995; THENCE SOUTH 88°49'00" WEST, ALONG SAID SOUTHERLY RIGHT OF WAY LINE, A DISTANCE OF 200.00 FEET; THENCE SOUTH 89°13'18" WEST, ALONG THE SOUTH LINE OF THE RESOLUTION 96-152 FOR THE PERPETUAL EASEMENT RECORDED IN OFFICIAL RECORDS 1196, PAGE 411, OF THE PUBLIC RECORDS OF ST. JOHNS COUNTY, FLORIDA, A DISTANCE OF 389.46 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 00°00'00" EAST A DISTANCE OF 192.52 FEET; THENCE NORTH 90°00'00" WEST A DISTANCE OF 40.00 FEET; THENCE NORTH 00°00'00" EAST A DISTANCE OF 191.97 FEET TO THE AFORESAID SOUTH LINE; THENCE NORTH 89°13'18" EAST A DISTANCE OF 40.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 7,690 SQUARE FEET, MORE OR LESS.
THIS LEASE is hereby issued by the City of St. Augustine, Florida, a municipal corporation organized and existing under and by virtue of the laws of the State of Florida, hereinafter referred to as the "LESSOR", whose mailing address is P.O. Box 210, St. Augustine, Florida, 32085.

WITNESSETH: That for and in consideration of payment of the annual lease fees hereinafter provided and the faithful and timely performance of and compliance with all terms and conditions stated herein, the Lessor does hereby lease to St. Johns County, Florida, a political subdivision of the State of Florida, hereinafter referred to as the "LESSEE", whose mailing address is 500 San Sebastian View, St. Augustine, Florida 32084, the lands described as follows:

LEGAL DESCRIPTION/VILANO PIER EASEMENT:

A PARCEL OF SUBMERGED LANDS OF THE INTRACOASTAL WATERWAY (NORTH RIVER), LYING IN TOWNSHIP 7 SOUTH, RANGE 30 EAST, ST. JOHNS COUNTY, FLORIDA. ALSO BEING A PART OF THE LANDS AS DESCRIBED IN THE CHARTER OF THE CITY OF ST. AUGUSTINE FLORIDA PASSED IN THE 1925 SESSION OF THE LEGISLATURE, SAID PARCEL OF SUBMERGED LANDS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: FOR A POINT OF REFERENCE, COMMENCE AT THE INTERSECTION OF THE WESTERLY RIGHT OF WAY LINE OF ANAHMA DRIVE, AS NOW ESTABLISHED AS A 80 FOOT RIGHT OF WAY, WITH THE SOUTHERLY RIGHT OF WAY LINE OF VILANO ROAD, AS NOW ESTABLISHED BY THE FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT OF WAY MAP SECTION 78030, DATED DECEMBER 19, 1995; THENCE SOUTH 88°49'00" WEST, ALONG SAID SOUTHERLY RIGHT OF WAY LINE, A DISTANCE OF 200.00 FEET; THENCE SOUTH 89°13'18" WEST, ALONG THE SOUTH LINE OF THE RESOLUTION 96-152 FOR THE PERPETUAL EASEMENT RECORDED IN OFFICIAL RECORDS 1196, PAGE 411, OF THE PUBLIC RECORDS OF ST. JOHNS COUNTY, FLORIDA, A DISTANCE OF 389.46 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 00°00'00" EAST A DISTANCE OF 192.52 FEET; THENCE NORTH 90°00'00" WEST A DISTANCE OF 40.00 FEET; THENCE NORTH 00°00'00" EAST A DISTANCE OF 191.97 FEET TO THE AFORESAID SOUTH LINE; THENCE NORTH 89°13'18" EAST A DISTANCE OF 40.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 7,690 SQUARE FEET, MORE OR LESS.

TO HAVE THE USE OF the hereinaabove described premises for a period of 25 years from the effective date of this lease. The terms and conditions on and for which this lease is granted are as follows:

Renewable for Additional Terms at the Option of the LESSOR
1. **USE OF PROPERTY:** LESSEE is hereby granted the exclusive right to operate and maintain the existing docks, structures and facilities related to the Lessee's operation of a floating dock for public and commercial use, including but not limited to, water transportation, boat tours, and charters on the Leased Premises which are as established by use or permits issued by any governmental agency having jurisdiction over the premises and adjacent uplands. LESSOR is discounting a 60 linear foot area from any commercial lease rates in order to provide both parties with the opportunity to utilize this landing area exclusively as a public water transit pick-up and drop-off area, and LESSEE agrees to maintain this area for that mutually beneficial public purpose.

2. **EXTENT OF USE:** LESSEE shall not erect or construct any improvements upon the Leased Premises or expand the uses currently existing on the Leased Premises without the express written consent of the LESSOR. No construction, alteration or expansion upon the Leased Premises shall be permitted until the LESSEE has obtained the necessary permits and approvals from all applicable federal, state and local agencies.

3. **RENTAL FEES:** The rental of the Leased Premises shall be a base fee of $525.00 per year, plus 5,450 sf easement area of the floating dock at $.175 per square foot per year, and shall be payable annually, in advance, at a rate of $953.75, plus any applicable taxes and assessments, commencing on the ___ day of ____________, 2018, and on that date for each year thereafter during the term of this Lease.

   - The base rental and per square foot rental set forth herein shall be adjusted annually at the same rate as the percentage change in the Consumer Price Index for southern cities having a population under 50,000, utilizing the most recent figures available for the prior twelve-month period.

4. **LATE FEE ASSESSMENTS:** A penalty of ten percent (10%) of the annual lease amount will be assessed for any late payment received thirty (30) days after the due date.

5. **DEFAULT:** If the rent herein reserved to LESSOR, or any part thereof, or any other moneys due LESSOR hereunder, shall not be paid when due, or should LESSEE be in default under any other provision of this Lease and shall remain in default for a period of fifteen (15) days after written notice to LESSEE of said non-payment or for other default, then in such event LESSOR, without further notice, may at any time thereafter:

   - terminate this Lease, re-enter the Leased Premises and hold LESSEE liable in damages; or
   - re-enter the Leased Premises and rent same, with or without the fixtures, furniture and equipment that may be therein, for the account of LESSEE, at such price and on such terms and for such duration of time as LESSOR may determine, and shall receive the rent, applying same to the payment of rent or other moneys due hereunder, and LESSEE shall be liable for any deficiency incurred; or
   - utilize any and all other remedies now or hereafter existing under the common and statutory laws of the State of Florida. All remedies granted hereunder are deemed cumulative and not exclusive.

6. **RENEWAL:** LESSEE shall be allowed a thirty (30) day grace period after expiration of this Lease to apply for a renewal. Renewal of this Lease is at the sole option of
the LESSOR. Such renewal is subject to the terms, conditions and provisions of then-current management standards and applicable laws, rules, regulations and ordinances in effect at that time. LESSEE agrees that upon expiration or cancellation of this Lease, unless renewed, all permission granted to use, occupy and operate the facility, as described in Item 1 of this Lease, upon the Leased Premises shall immediately cease and terminate. LESSEE has a Perpetual Easement recorded at OR 3563, PG 23 of the public records of St. Johns County allowing for a public non-commercial dock. Should LESSEE determine it is in the best interest of the public not to renew this Submerged Lands Lease, LESSEE's failure to exercise its right to renew the Lease shall have no impact on the Perpetual Easement and LESSEE's right to maintain the existing dock, structures and facilities for non-commercial purposes only.

7. INSURANCE: To the fullest extend permissible by law, LESSEE agrees that LESSEE will at all times indemnify and save and keep LESSOR harmless from any and all damage and liability occasioned by the use of the premises and shall indemnify and keep harmless LESSOR from and against any loss, cost, attorney's fees, damage and expense arising out of or in connection with the Leased Premises, and out of any injury or damage to any person or property whatsoever due directly or indirectly to the use or occupancy of said Leased Premises. LESSEE shall, at LESSEE's expense, provide policies of insurance generally known as public liability and property damage insurance, and/or "Owner's Landlord and Tenant Insurance" insuring LESSOR and LESSEE against all claims and demands made by any persons whomsoever for injuries received in connection with the operation and/or maintenance of the Leased Premises or to the Leased Premises to the extent of not less than $100,000 for damages resulting to one person and $300,000 for damages resulting from one casualty, and liability for such injury to person and such damage to property upon or about the Leased Premises. LESSEE shall obtain and deliver to LESSOR within ten (10) days following commencement of this Lease the original policy with the LESSOR as a named insured along with a corresponding certificate of insurance and thereafter all renewals. Failure to so provide such a policy or renewals shall constitute a default hereunder.

Notwithstanding any other term or provision herein, nothing contained in this Lease shall be interpreted or construed as consent to being sued or as a waiver of, or modification to, LESSEE's sovereign immunity as provided under section 768.28, Florida Statutes.

8. ATTORNEY'S FEES AND COURT COSTS: In the event LESSOR incurs any expense in collecting any sum of money due under this Lease for rent or otherwise, or in the event suit shall be brought by LESSOR for the purpose of evicting or ejecting LESSEE from the Leased Premises, or if suit be brought by LESSOR for the purpose of enforcing performance by LESSEE or any of the several agreements, conditions and covenants contained herein, LESSEE covenants and agrees to pay to LESSOR all such expenses and all expenses and costs of litigation, including reasonable attorney's fees.

9. LANDLORD'S LIEN: LESSEE hereby agrees that LESSOR shall have a landlord's lien for rent upon the property found upon or off the Leased Premises usually kept on the Leased Premises or upon other property of the LESSEE, in accordance with the provisions contained within Chapter 83, Florida Statutes.
10. **NON-DISCRIMINATION:** As a condition of obtaining this Lease, LESSEE hereby agrees not to discriminate against any individual because of that individual’s race, color, religion, sex, national origin, age, handicap, or marital status with respect to any activity occurring within the area subject to this Lease or upon lands adjacent to and used as an adjunct of the leased area.

11. **LEASE NOT RECORDABLE:** This Lease shall not be recorded in the public records of St. Johns County, Florida, and in the event that such Lease is recorded contrary to this provision, the Lease shall terminate and LESSEE shall be responsible for all attorney’s fees and court costs incurred by LESSOR in removing said Lease from said public records.

12. **TAXES AND ASSESSMENTS:** LESSEE shall be responsible for all property taxes, excise, use, sales or other taxes or assessments which may be levied for or on account of LESSEE’s occupancy or rental of the property now or at any time during the term of this Lease.

13. **LEASE IS NOT ASSIGNABLE:** LESSEE shall not transfer or assign this Lease without written approval by LESSOR. Such approval shall be at the COMPLETE DISCRETION of LESSOR.

14. **NON-COMPLIANCE:** Non-compliance with any terms of this lease, or with any applicable laws, rules or regulations, as well as, non-compliance with the terms of the conservation overlay zone permit issued for this property shall be grounds for cancellation of the lease by LESSOR. LESSOR may avail itself of all the remedies found herein at Section 5 - DEFAULT.

15. **EXPIRATION OR CANCELLATION OF LEASE:** LESSEE agrees that upon expiration or cancellation of this Lease, all permission granted to use, occupy and operate the facility, as described in Item 1 of this Lease, upon the Leased Premises shall immediately cease and terminate.

16. **SERVICE ADDRESS:** LESSEE, by acceptance of this Lease, agrees to accept service by certified mail of any notice required hereunder at the following address:

   **St. Johns County**
   **Land Management Systems**
   **500 San Sebastian View**
   **St. Augustine, FL 32084**

LESSEE agrees to notify LESSOR by certified mail of any change to this address at least ten (10) days before the change is effective, and shall provide any other notices required to LESSOR at the following address:

   **James C. Piggott**
   **Director, General Services**
   **City of St. Augustine**
   **P.O. Box 210**
   **St. Augustine, Florida 32085**
IN WITNESS WHEREOF, LESSOR has caused this Lease to be executed in its name by its duly authorized officers, and its corporate seal to be hereunto fixed, and LESSEE has hereunto set its hand and seal, this ______ day of ______________________, 2018.

Signed, sealed and delivered in the presence of:

Witness

Witness

“LESSOR”
CITY OF ST. AUGUSTINE, FLORIDA,
a municipal corporation

By: ____________________________
City Manager

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

ISABELLE C. LOPEZ, CITY ATTORNEY

Signed, sealed and delivered in the presence of:

Witness

Witness

“LESSEE”
St. Johns County, Florida, a political subdivision of the State of Florida.

By: ____________________________
Michael D. Wanchick
County Administrator

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

REGINA D. ROSS, DEPUTY COUNTY ATTORNEY