

**ORDINANCE NO. 7254-16**

AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY MANAGER TO EXECUTE AND THE CITY CLERK TO ATTEST, ON BEHALF OF THE CITY OF NEWPORT NEWS, VIRGINIA, THAT CERTAIN LEASE BY AND BETWEEN THE CITY OF NEWPORT NEWS, VIRGINIA, AND PACIFIC-GULF MARINE, INC. DATED THE 23<sup>RD</sup> DAY OF FEBRUARY, 2016, FOR THE 23<sup>RD</sup> STREET PIER.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Newport News:

1. That it hereby authorizes and directs the City Manager to execute and the City Clerk to attest, on behalf of the City of Newport News, Virginia, that certain Lease by and between the City of Newport News, Virginia, and Pacific-Gulf Marine, Inc. dated the 23<sup>rd</sup> day of February, 2016, for the 23<sup>rd</sup> Street Pier.
2. That a copy of the said Lease is attached hereto and made a part hereof.
3. That this ordinance shall be in effect on and after the date of its adoption, February 23, 2016

PASSED BY THE COUNCIL OF THE CITY OF NEWPORT NEWS ON FEBRUARY 23, 2016

Mabel Washington Jenkins, MMC  
City Clerk

McKinley L. Price, DDS  
Mayor

A true copy, teste:

City Clerk

**THIS LEASE**, made this 23<sup>rd</sup> day of February, 2016, by and between the **CITY OF NEWPORT NEWS**, a Municipal Corporation in the Commonwealth of Virginia, hereinafter called "City", and **PACIFIC-GULF MARINE, INC.**, a corporation organized and existing under the laws of the state of Louisiana, hereinafter called "Lessee".

**WITNESSETH:** That in consideration of the provisions, agreements and other consideration herein contained, which the Lessee, its successors and assigns, expressly agree to be done, performed and paid, the City does grant and lease unto the Lessee the real property and the pier commonly described as the 23<sup>rd</sup> Street Pier, and adjacent bulkhead, and related facilities and improvements thereto situated in the City of Newport News, Virginia, at a point one-half mile north of where the James River converges with the Hampton Roads Harbor at the terminus of 23<sup>rd</sup> Street at the James River, including any additional parcel(s) required to comply with off-street parking regulations (hereinafter "Leased Premises").

The term of this lease shall be for a period of five years beginning March 1, 2016, and ending February 28, 2021, the Termination Date, subject to receipt by the City of adequate consideration therefor. Lessee's responsibility under this Lease is subject to congressional appropriation in support of its contract with the United States to maintain vessels for the ready reserve fleet. In the absence of such congressional appropriation, or in the event of a change in the program's mission resulting in the relocation of the ships, Lessee may terminate this Lease upon sixty (60) days written notice to the City; however, any cancellation shall not relieve the Lessee from any obligation under this lease, including but not limited to any unpaid rent, that accrued prior to and on the sixtieth (60<sup>th</sup>) day after said written notice was received by the City. The Lessee shall vacate the Leased Premises subject to this Lease as otherwise provided herein on or before the Termination Date. In as much

as this Lease was not contemplated to be or advertised as a lease exceeding five (5) years, no further renewals of this Lease after the Termination Date shall be allowed.

The Lessee shall pay to the City for the use and occupancy of the premises a daily sum of EIGHT HUNDRED FIFTY DOLLARS (\$850.00), commencing on March 1, 2016, due and payable on the fifth (5th) day of the month following the month in which an invoice was mailed by the City to the Lessee. Payments not received on or before the fifth (5th) day of the month following the month in which the invoice was mailed to the Lessee shall be assessed a ten percent (10%) late charge. Failure to fully pay rental payments and all late charges for two consecutive months shall result in termination of this lease at the sole option of the City.

It is further covenanted and agreed between the parties hereto as follows:

1. The use of the Leased Premises shall be subject to the Virginia Uniform State-wide Building Code as adopted by or mandated on the City, and the City's Fire Code, Zoning Ordinance, Site Plan Ordinance, and health regulations. The Lessee's use of the Leased Premises shall be subject to applicable environmental protection regulations, whether they be federal, state or local. In addition, no flammable items, explosives, radioactive materials, hazardous or toxic substances, material or waste, or related materials, including any substances defined as, or included in, the definition of "hazardous substances", "hazardous wastes", "infectious wastes", "hazardous materials" or "toxic substances now subsequently regulated under any federal, state or local laws, regulations or ordinances including, without limitation, oil, petroleum-based products, paints, solvents, lead, cyanide, DDT, printing inks, acids, pesticides, ammonia compounds and other chemical products, asbestos, PCBs and similar compounds, and including any different products and materials which are subsequently found to have adverse affects on the environment or the health and safety of

persons, shall be stored or permitted on the Leased Premises by the Lessee or its agents, employees, or invitees.

2. The Lessee covenants and agrees to pay all taxes, levies, and licenses related to this lease and for the conduct of layberthing services at the Leased Premises; and will not use or employ the Leased Premises or any part thereof for any purpose or in any manner which might, under the law, be construed as a nuisance or contrary to the laws of the land.

3. Neither the whole nor any portion of the Leased Premises shall be sublet or assigned.

4. The Lessee accepts the Leased Premises “as is” and agrees to maintain and keep it in good repair during the continuance of this lease according to applicable federal, state and local requirements. It is understood that the City has no responsibility to improve or to maintain the Leased Premises.

5. As additional rent, and at no cost to the City, the Lessee shall maintain the electrical and potable water facilities at the Leased Premises. In addition, the Lessee shall be responsible for the payment of all utility services consumed at the Leased Premises, including, but not limited to, electricity, gas, water and sewage. The Lessee shall provide a sufficient number and size of waste disposal containers so as to accommodate the waste generated by the use of the Leased Premises.

6. It is further covenanted and agreed by the parties hereto that in the case of default or breach of any of the covenants and agreements herein contained to be performed by the Lessee, as herein set out to be observed, kept and performed by it, the City reserves the right unto itself to cancel this lease, and it shall have the right, at any time afterward to enter into and upon the Leased Premises, or any part thereof, and the same again have, repossess and enjoy as of its former estate. Prior to the exercise of its option to cancel this lease pursuant to this paragraph, the City agrees to

give notice of such default or breach to the Lessee. In the event the Lessee cures the default or breach within ten (10) days, no basis for action pursuant to this paragraph will lie. Repeated defaults, breaches and violations of laws or regulations by the Lessee will not be tolerated, and the Lessee agrees that the notice-to-cure provision of this paragraph may be, after thirty (30) days written notice, unilaterally withdrawn by the City Council if it finds that the provision has been abused.

7. It is understood and agreed that the Lessee will defend, indemnify, protect and save harmless the City of Newport News, Virginia, from and against all losses and claims of physical damages to property, and bodily injury or death to any person or persons, and environmental damages which may arise out of or be caused by the use and maintenance of said Leased Premises by the Lessee, or any claim as aforesaid growing out of the Lessee's business or businesses referred to herein. The Lessee agrees to obtain, and continuously keep in force, an insurance policy with a company qualified to do business in the Commonwealth of Virginia to provide the required coverage. The policy shall at least provide for the following coverage:

- a. Bodily injury or death to any person or persons \$ 2,000,000.00
- b. Physical damage to property, including environmental damage \$ 10,000,000.00

At no cost to the City, the policy shall provide that the City of Newport News is named as an additional insured under the terms of the policy which shall first be reviewed and approved by the Newport News Office of Self-insurance.

8. The Lessee agrees that it will maintain the landscaping along the exterior boundary of its parking area. As additional rent and at no cost to the City, the Lessee agrees to maintain the existing eight (8) foot high wrought iron security fence and the twenty (20) foot motorized gate. The Lessee shall not make or permit any alterations or improvements to the Leased Premises without the prior written consent of the City.

9. It is mutually agreed that the Lessee shall have exclusive use and control of the Leased Premises and shall be permitted to moor such vessels as are reasonably required in furtherance of the Lessee's operation of the layberthing facility. The mooring of vessels shall not encroach upon the channel or in any way impair riparian rights of other abutting property owners, if any. In addition to any security requirements imposed by federal law or regulation, the Lessee shall take all reasonable measures to protect and safeguard the moored vessels and the Leased Premises.

10. It is mutually agreed that, subject to federal security requirements, the City has the right to enter onto the Leased Premises during reasonable business hours for the purpose of insuring that the Lessee complies with applicable laws, as well as the terms of this lease.

11. Written notice as required by this lease, which may be either hand delivered or sent by First Class or Certified United States Mail, shall be given to the following addressees:

**To the City:**

City Manager  
City of Newport News  
2400 Washington Avenue  
Newport News, Virginia 23607

**Copy to:**

Port Development Administrator  
Department of Development  
2400 Washington Avenue  
Newport News, Virginia 23607

**To the Lessee:**

Pacific-Gulf Marine, Inc.  
P.O. Box 6479  
New Orleans, Louisiana 70174

12. Any dispute arising under this lease shall be interpreted and adjudicated under the provisions of the laws of the Commonwealth of Virginia, and the jurisdiction and venue for any litigation therefrom shall be in the courts of the City of Newport News, Virginia.

**IN WITNESS WHEREOF**, the CITY OF NEWPORT NEWS, VIRGINIA has caused these presents to be executed by its City Manager, with its seal hereto affixed, duly attested by its City Clerk, both in that behalf first duly authorized; and PACIFIC-GULF MARINE, INC., has caused these presents to be executed by Todd B. Johnson, President and Chief Executive Officer, an officer thereof authorized by law to so bind said corporation, as of the day and year first above written.

**SIGNATURE PAGES FOLLOW**

CITY OF NEWPORT NEWS, VIRGINIA

\_\_\_\_\_  
City Manager

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

REVIEWED:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Senior Assistant City Attorney

COMMONWEALTH OF VIRGINIA  
CITY OF NEWPORT NEWS, to wit:

I, \_\_\_\_\_, a Notary Public in and for the City and Commonwealth aforesaid, whose commission expires on the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, do hereby certify that the CITY OF NEWPORT NEWS, VIRGINIA by James M. Bourey, City Manager, and attested by Mabel Washington Jenkins, City Clerk, whose names are signed to the foregoing Lease, bearing date on the 23<sup>rd</sup> day of February, 2016, have acknowledged the same before me in my Commonwealth and city aforesaid.

GIVEN under my hand this \_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public

Registration No. \_\_\_\_\_

PACIFIC-GULF MARINE, INC.

\_\_\_\_\_  
Todd B. Johnson  
President & Chief Executive Officer

STATE/Commonwealth of \_\_\_\_\_

CITY/COUNTY OF \_\_\_\_\_ to wit:

I, \_\_\_\_\_, a Notary Public in and for the jurisdiction aforesaid, whose commission expires on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, do hereby certify that PACIFIC-GULF MARINE, INC., by Todd B. Johnson, its President and Chief Executive Officer, whose name is signed to the foregoing Lease, bearing date on the 23<sup>rd</sup> day of February, 2016, has acknowledged the same before me in my state and city/county aforesaid.

GIVEN under my hand this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public

Registration No. \_\_\_\_\_

sdm14120