

## Office of the Administrator

---

Frederick L. Russell, Administrator  
Tameka Allen, Deputy Administrator  
William Shanahan, Deputy Administrator

Room 801 - Municipal Building  
530 Greene Street - AUGUSTA, GA. 30901  
(706) 821-2400 - FAX (706) 821-2819  
[www.augusta.gov](http://www.augusta.gov)

June 4, 2013

Ms. Tonya Bonitalibus  
Savannah Riverkeeper  
105 Riverfront Dr.  
Augusta, GA 30901

Dear Tonya:

The Augusta-Richmond County Commission, at their regular meeting held on Tuesday, June 4, 2013 approved finalizing the 100-year property lease with the Savannah Riverkeeper regarding public/private partnership. (Approved by Finance Committee May 28, 2013)

If you have any questions, please contact me.

Yours truly,



Frederick L. Russell  
Administrator

08-04-13: #34

cc: Ms. Donna Williams

STATE OF GEORGIA

COUNTY OF RICHMOND

LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Agreement"), made and entered into effective the 1st day of May, 2014, by AUGUSTA, GEORGIA, a \_\_\_\_\_ ("Lessor"), and SAVANNAH RIVERKEEPER, INC., a Georgia non-profit corporation ("Lessee").

WITNESSETH:

WHEREAS, Lessor is the owner of approximately 13.89 acres land (the "Land") improved with an approximately 15,000 square foot building (the "Building") adjacent to the Savannah River in Augusta, Georgia, with an address of 386 Prep Phillips Drive according to the present system of street numbering in Augusta, Georgia and a tax parcel number of 062-0-008-00-0; and

WHEREAS, Lessee is a nonprofit corporation devoted to the protection and management of the Savannah River; and

WHEREAS, Lessor wishes to lease to Lessee, and Lessee desires to lease from Lessor the Land and Building;

NOW THEREFORE, the parties hereto, for and in consideration of the mutual promises herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, DO HEREBY AGREE, each for itself and its successors and assigns, as follows:

1. **LEASED PREMISES.** Lessor does hereby lease and demise unto Lessee, and Lessee does hereby lease and take from Lessor the Land and Building (collectively, the "Leased Premises") for the purposes set forth herein. "Leased Premises" shall also include any changes, additions, modifications and other improvements made in accordance with this Agreement.
2. **TERM.** This Agreement shall commence on May 1, 2014. The initial term of this Agreement shall be through December 31, 2114. This Agreement shall (i) terminate absolutely and without further obligation on the part of Augusta each and every December 31<sup>st</sup>, as required by OCGA § 36-60-13, as amended, unless terminated earlier in accordance with the termination provisions in this Article of this Agreement; (ii) automatically renew on each January 1<sup>st</sup>, unless terminated in

accordance with the termination provisions of this Article of this Agreement; and (iii) terminate absolutely, with no further renewals, on December 31, 2114. Lessor does hereby lease and demise unto Lessee and Lessee does hereby lease and take from Lessor the Leased Premises, for the rental and upon and subject to the terms and conditions set forth herein, for a term of one hundred (100) years, commencing on *May 1, 2014* and terminating at midnight on *December 31, 2114* (the "Lease Term").

3. **USE AND DEVELOPMENT OF PHASE I.** As soon as reasonably practicable after the commencement of the Lease Term, Lessee will renovate, improve and develop the Building together with approximately two (2) acres of the Land adjacent thereto (collectively "Phase I") for the following purposes:

3.1. **Building.** The Building will be improved and used for the following purposes:

- (a) An education center, including a classroom and a Savannah River museum.
- (b) Labs for geological, chemical and biological research pertaining to water quality and native, aquatic plants and animals.
- (c) Six (6) offices and a board/conference room to be used by Lessee for administrative purposes and promotion of its civic goals.
- (d) Boat storage and kayak and canoe rentals.
- (e) Use and demonstration of "green" building practices and materials, including energy conservation and self-sufficiency.
- (f) Use and demonstration of state of the art solar energy harvesting.

3.2. **Land.** The Phase I portion of the Land will be developed and used for the following purposes:

- (a) Invasive species will be removed and replaced with native plantings appropriate to the locale.
- (b) Innovative surface water management techniques, including bioswales and vegetative buffers will serve the Leased Premises and be designed for public demonstration.
- (c) A river access path will be cleared to provide a launch for three (3) water trails to be established providing access to river and creek waterways for recreational and research purposes.
- (d) Promotion of the Riverkeeper canine sewage detection program and training of "sewage dogs."

4. **USE AND DEVELOPMENT OF PHASE II.** As soon as reasonably practicable after the development of Phase I and subject to the terms of Section 12 herein Lessee will endeavor to clean up or cause to be cleaned up the remaining portion of the Land ("Phase II") and to develop Phase II as a community recreation resource.
5. **RENTAL.** In addition to the consideration and benefit Lessor shall enjoy as a result of Lessee's activities described in Sections 3 and 4 above, Lessee shall pay to Lessor annual rental in the amount of One and 00/100 Dollars (\$1.00), payable each year in advance during the Lease Term. Unless instructed otherwise in writing by Lessor, Lessee shall remit annual rental payments to Lessor at its address for notices set forth in subsection 17.1 below on or before ***May 1*** of each year during the Lease Term.
6. **REPAIRS AND MAINTENANCE.** Lessee shall, at its expense, maintain or cause to be maintained the Building in good condition and repair, including any changes, additions, alterations, modifications and/or improvements made by Lessee as provided in this Agreement, normal wear and tear and casualty excepted. Notwithstanding that an integral part of the mission of Lessee is to restore the Land to its natural condition, Lessee shall maintain or cause to be maintained the portions of the Land that are improved for recreation and education of the public in a good condition.
7. **CHANGES. ADDITIONS. ALTERATIONS. MODIFICATIONS. IMPROVEMENTS.** Lessee shall have the right from time to time, at its expense and subject to the prior written consent of Lessor, to make changes, additions, alterations, modifications and/or additional improvements in or upon any part of the Leased Premises, including without limitation docks, piers and boat ramps. Lessee agrees to submit such plans and specifications as may be reasonable under the circumstances to Lessor for approval before any such work begins. Lessor shall not unreasonably withhold, delay or condition its approval of said plans, and any disapproval shall provide detailed reasons therefor. Failure of Lessor to respond to a request for approval of plans and specifications within thirty (30) days following request therefor shall be deemed approval. Lessee shall cause all such changes, additions, alterations, modifications and/or additional improvements to be completed without the imposition of liens or claims thereof on the Leased Premises.
8. **TITLE TO CHANGES. ADDITIONS. ALTERATIONS. MODIFICATIONS. IMPROVEMENTS.** Title to any changes, additions, alterations, modifications and/or additional improvements of a permanent nature, whether existing on the Leased Premises as of the effective date of this Agreement or added to the Leased Premises during the Lease Term by Lessee, shall remain the property of Lessor, and fee simple title to the same shall be vested in Lessor. Lessee shall have the right to remove Lessee's personal property, including any trade or

business fixture, from the Leased Premises at any time, provided that Lessee shall repair any damage to the Leased Premises caused by such removal.

9. **INSPECTION BY LESSOR.** Lessor, through its authorized agents and representatives, shall have the right to enter upon the Leased Premises to make inspections during regular business hours when a representative of Lessee is present to determine whether Lessee has complied with the terms and conditions of this Agreement or at any time in case of an emergency; provided, however, that said inspection shall in no event unreasonably interfere with the activities of Lessee. Any deficiencies with respect to Lessee's obligations under this Agreement observed during an inspection shall be corrected within thirty (30) days following receipt by Lessee of written notice thereof, provided that if Lessee has commenced and is diligently pursuing such cure, then such thirty (30) day period will be extended as reasonably necessary for completion thereof.

10. **TAXES.** Lessee shall pay all personal property taxes that may be assessed against its equipment, merchandise, or other property located on or about the Leased Premises and any franchise fees or other taxes which may be imposed or assessed against Lessee or its leasehold interest.

11. **COMPLIANCE.**

- 11.1. **Rules and Regulations.** Lessee agrees that use of the Leased Premises shall be conducted in compliance with all local, state and federal laws, the ordinances of Augusta, Georgia, and the rules and regulations of the Augusta-Richmond County Commission. Lessee shall endeavor to conduct its business in a manner to develop and maintain the good will and active interest of the general public.

- 11.2. **Environmental.** Lessee shall conduct its operation in compliance with all federal, state and local environmental laws, rules and regulations, and subject to and limited by Section 12 below, agrees to indemnify and hold harmless Lessor (and each of Lessor's elected officials, officers, agents, employees and representatives), from and against any claims, actions, demands or liabilities of any kind arising out of or relating to Lessee's use of the Leased Premises.

12. **HAZARDOUS OR TOXIC MATERIALS.**

- 12.1. **Hazardous Materials.** As used in this Lease, the term "Hazardous Materials" shall mean and include any substance that is or contains petroleum, asbestos, or any other regulated substance under the Comprehensive Environmental response, Compensation and liability Act ("CERCLA"), 42U.S. § 9601 et seq.; the Resource Conservation and Recovery Act ("RCRA"), 42 U. S. C. A. § 6901; the Toxic Substances Control Act, 15 U.S.C. §2601 et. Seq.; Emergency Planning and Community Rights to Know Act, 42 U.S.C. § 11001 et. seq.; Georgia

Underground Storage Tank Act, O.C.G.A. § 12-13-1 *et seq.* ("Georgia UST Act"); the Hazardous Site Response Act, O.C.G.A. § 12-8-90 *et seq.*; and the Georgia Hazardous Waste Management Act, O.C.G.A. §§ 12-860 *et seq.*, and rules and regulations now or hereafter promulgated thereunder (collectively "Environmental Laws").

12.2. Storage and Use of Hazardous Material. Lessee, at its sole cost shall comply with all laws relating to storage, use and disposal of hazardous materials (as defined by such laws) at the Leased Premises and shall not knowingly dispose of at the Leased Premises any hazardous materials in concentrations or levels sufficient to require regulation or reporting under the then-applicable government standards as set by the United States Environmental Protection Agency ("EPA"), the Georgia Environmental Protection Division ("EPD") or other applicable governmental standards. Subject to Section 12.4 of this Lease, Lessee shall indemnify and hold Lessor harmless from and against all claims, costs, damages and liabilities, including reasonable attorney's fees and costs, as well as reasonable costs of any removal, cleanup and restoration work required by any government agency having jurisdiction, arising out of or in connection with;

- (a) Lessee's violation of, or failure to comply with the Environmental Laws;
- (b) Any discharge or release by Lessee in or from the Leased Premises or any portion thereof of any hazardous materials;
- (c) Lessee's use, storage, transportation, generation or disposal of any hazardous materials to, in, on, under, about or from the Leased Premises or any portion thereof; or

The indemnification in this section 12.2 shall survive the termination of this Agreement.

12.3. Removal of Hazardous Material. Lessee at the termination of the lease shall remove any and all hazardous materials stored or used in the Building in compliance with current regulation and good housekeeping practices.

12.4. Potential Existing Impacts. Notwithstanding anything to the contrary in this Agreement, Lessor and Lessee acknowledge the potential existence of soil and or groundwater impacts by hazardous materials from the past use of Phase II. With respect to any contamination existing as of the date of execution of this Agreement, the following provisions shall apply and take precedence over any conflicting provisions herein:

- (a) Existing Impacts shall be defined as any contamination of or hazardous materials impacting the Leased Premises identified by the first environmental investigation conducted by or under the direction of Lessee after the execution of this Agreement.
- (b) With respect to any Existing Impacts, Lessor agrees to be responsible for any and all financial costs or liabilities for any response, remediation and/or clean-up of the Leased Premises. Furthermore, Lessor shall defend, indemnify and hold Lessee harmless from and against all claims, costs, damages and liabilities, including reasonable attorneys' fees and costs, as well as reasonable costs of any removal, cleanup and restoration work required by any governmental agency having jurisdiction, arising out of or in connection with the Existing Impacts. This indemnification shall survive the termination of this Agreement.
- (c) Lessee will cooperate fully and work in conjunction with Lessor and its agents with respect to any response, remediation and/or clean-up of the Leased Premises.
- (d) Subject to subsection (b) of this section, Lessee shall seek coverage and any financial assistance available under the United States Environmental Protection Agency's ("USEPA") Brownfield Program in Lessee's name for any Existing Impacts. Lessee will manage any response, remediation and/or clean-up of the Leased Premises under the USEPA Brownfield Program. Such management shall include the right to select, hire, or terminate any necessary third-parties to complete the work required under the USEPA Brownfield Program. Notwithstanding anything to the contrary, Lessee and Lessor agree that any financial assistance received from the USEPA Brownfield Program or similar source shall be applied or utilized first before any payments by Lessor under subsection (b) above, excluding the reasonable costs of the initial investigation necessary to apply for coverage under the USEPA Brownfield Program.

**13. INDEMNITY: INSURANCE**

- 13.1. Indemnity.** Subject to Section 12 above, Lessee shall indemnify and hold harmless Lessor from any and all claims related to or arising out of the failure of Lessee to perform its obligations hereunder or related to or arising out of any damage or injury to property or persons, occurring or allegedly occurring in, on or about the Leased Premises during the Lease Term, including reasonable attorney's fees and expenses of litigation incurred by Lessor in connection therewith. Lessee further agrees that the foregoing agreement to indemnify and hold harmless applies to any claim for damage or injury to individuals employed or retained by it in connection

with any changes, additions, alterations, modifications and/or improvements made to the Leased Premises, and hereby releases Lessor from liability in connection with any such claims.

- 13.2. Liability Insurance. Without limiting the foregoing, Lessee agrees to maintain at all times during the Lease Term, at Lessee's expense: (i), commercial general liability insurance coverage against claims for personal injury, death and/or property damage occurring in connection with the use and occupancy by Lessee of the Leased Premises with limits of coverage of not less than **\$1,000,000 per occurrence, \$2,000,000 aggregate, and (ii) hired and non-owned automobile liability coverage with limits of coverage of not less than \$1,000,000.**
- 13.3. Property Insurance. Lessee shall also maintain in effect during the Lease Term, coverage against casualty (all-risk) to the Buildings and, to the extent insurable at a commercially reasonable cost, other improvements in the full replacement value thereof from time to time.
- 13.4. Other Insurance. Lessee shall provide, or shall cause its contractors to provide, such other insurance as Lessor may reasonably request at any time that construction or other improvements to the Leased Premises are in progress. Lessee shall maintain workers compensation in accordance with applicable law.
- 13.5. Requirements.
- (a) The cost of premiums for all policies of insurance required by this Agreement shall be paid by Lessee. The policies shall name Lessor as an additional insured as appropriate. Upon request therefor, certificates or duplicate copies of the policies shall be delivered to Lessor.
  - (b) All policies providing insurance coverage required to be maintained by Lessee hereunder shall be issued by an insurance carrier or carriers licensed to do business in the State of Georgia and reasonably acceptable to Lessor. As appropriate, the policies shall provide that no act or omission of Lessee or its agents, servants or employees shall in any way invalidate any insurance coverage for the other insured. No insurance policy providing any insurance coverage required to be provided by Lessee hereunder shall be cancelable without at least fifteen (15) days advance written notice to Lessor.

#### 14. CASUALTY.

- 14.1. Partial Damage. If improvements on the Leased Premises are partially damaged by fire or other casualty during the Lease Term, Lessee or its



representative shall give immediate notice thereof to Lessor and Lessee shall cause the same to be promptly repaired, or, if reasonable under the circumstances, Lessee may cause the damaged portion of the improvements on the Leased Premises to be razed and/or returned to a natural condition.

- 14.2. **Substantial Damage.** If improvements on the Leased Premises are damaged by fire or otherwise to an extent that the restoration cost is greater than fifty percent (50%) of the value immediately prior to the damage and Lessee elects not to restore the same to substantially the same condition as immediately prior to such fire or other casualty, then Lessee may terminate this Lease by delivering written notice thereof to Lessor within forty-five (45) days following such casualty. The proceeds of any casualty insurance payable because of damage to the improvements, (but not Lessee's trade or business fixtures and personal property therein) shall be paid to Lessor if not used for restoration.
15. **ASSIGNMENT.** Lessee shall not, without the prior written consent of Lessor, assign this Agreement or any interest hereunder or sublet the Leased Premises or any part thereof. Any consent to one assignment or sublease shall not destroy or waive this provision, and all later assignments and subleases shall likewise be made only upon prior written consent of Lessor. No assignment or subletting shall relieve Lessee of its obligations hereunder.
16. **DEFAULT.** In the event that Lessee should fail to observe any of its covenants and obligations as herein expressed or should Lessee abandon the Leased Premises or cease to operate the Leased Premises for the purposes set out herein, then upon the happening of such event, Lessor shall give Lessee thirty (30) days' notice to comply with the provisions of this Agreement, or if the conditions cannot be remedied within said thirty (30) day period, to commence the remedy within said thirty (30) day period and diligently pursue it to completion; and should Lessee fail to do so, Lessor shall have the option to declare this Agreement terminated and at once take possession of the Leased Premises. The rights and options given to Lessor under this Paragraph 14 shall not be construed to be in lieu of, nor does restrictive of, any other right which Lessor may have under the law for the enforcement of this Agreement. The failure of Lessor to exercise any remedy which it may have hereunder shall not be construed as a waiver of Lessor's rights.
17. **QUIET ENJOYMENT, INGRESS AND EGRESS.** Lessor covenants and warrants that Lessee, so long as it shall perform the duties and obligations herein agreed to be performed by it, shall peaceably and quietly have, hold and occupy and shall have the exclusive use and enjoyment of the Leased Premises during Lease Term.
18. **LEASED PREMISES ACCEPTED "AS IS".** Subject to the provisions of Section 12 above, Lessee acknowledges and agrees that it has inspected the Leased

Premises prior to execution of this Agreement, that it is aware of the condition of the Leased Premises as of the date of execution of this Agreement, and Lessee leases the Leased Premises "as-is."

**19. MISCELLANEOUS.**

- 19.1. Notices. All notices, demands, and requests which may or are required to be given by either party to the other shall be in writing and shall be deemed to have been properly given when sent postage pre-paid by registered or certified mail (with return receipt requested) addressed as follows:

To Lessor:                   Augusta, Georgia  
                                  530 Greene Street  
                                  Augusta, Georgia 30901  
                                  Attention: Office of the Administrator

To Lessee:                   Savannah Riverkeeper, Inc.  
                                  P.O. Box 14908  
                                  Augusta, Georgia 30919  
                                  Attention: Executive Director

Either party may change the address and name of addressee to which subsequent notices are to be sent by notice to the other given as aforesaid.

- 19.2. Covenants Bind and Benefit Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. The person(s) signing this Agreement on behalf of Lessor and Lessee each represent by their signatures hereto that they have full authority from such entity to sign this Agreement and obligate the entity hereunder.
- 19.3. Governing Law. This Agreement shall be governed and interpreted by the laws of the State of Georgia.
- 19.4. Venue. All claims, disputes and other matters in question between all parties arising out of or relating to this Agreement shall be decided in the Superior Court of Richmond County, Georgia. All parties, by executing this Agreement, specifically consent to venue and jurisdiction in the Richmond County and waive any right to contest venue in the Superior Court of Richmond County, Georgia.
- 19.5. Liens. No provision in this Agreement shall create a right of any contractor, subcontractor, mechanic, materialman or any other party to file a lien or claim of lien against Lessor's interest in the Leased Premises in connection with construction, labor or materials contracted for or by

Lessee or otherwise delivered or performed on behalf of Lessee. Lessee shall indemnify, defend and hold harmless Lessor against liens for any work performed, material furnished or obligations incurred, by or on behalf of Lessee and shall discharge or bond any lien filed within thirty (30) days after the filing thereof.

19.6. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

20. ENTIRE AGREEMENT. This Agreement contains the entire agreement of the parties, and no representations, inducements, promises or agreements, oral or otherwise, between the parties not embodied herein shall be of any force or effect. No failure of either party of any obligations hereunder, and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

[Signatures Begin on Next Page]

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed as of the day and year first above written.

Lessor:

AUGUSTA, GEORGIA

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

Deke S. Copenhaver, Mayor

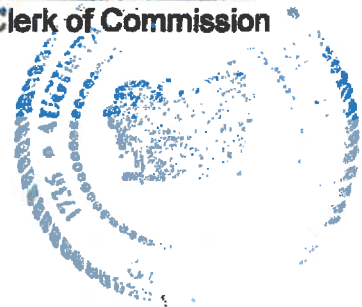
Attest: \_\_\_\_\_

Nancy W. Morawski

Lena J. Bonner, Clerk of Commission

NANCY MORAWSKI

[Signatures Continue on Next Page]



**Lessee:**

**SAVANNAH RIVERKEEPER, INC., a Georgia  
non-profit corporation**

By:   
Name: Tonya Bonitatibus  
Title: Executive Director