

STATE OF TEXAS       §  
COUNTY OF NUECES   §

**LEASE AGREEMENT**

**BETWEEN NUECES COUNTY BOARD OF PARK COMMISSIONERS AND  
Texas Sealife Center**

This lease agreement (hereinafter "Lease") is hereby entered into by Nueces County Board of Park Commissioners, 15820 Park Road 22 (S.P.I.D), Corpus Christi, Texas, 78418 (hereinafter "Lessor or Nueces County") and Texas Sealife Center, a Texas nonprofit corporation, 14721 Whitecap Blvd #241, Corpus Christi, Texas, 78418 (hereinafter "Lessee").

**RECITALS:**

The purpose of this Lease is to state the terms and conditions under which Texas Sealife Center will develop and operate a wildlife rescue and rehabilitation facility/environmental education facility.

In consideration of the mutual promises contained in this Lease, the Park Commissioners and the Texas Sealife Center agree as follows:

**I.**

**PURPOSE OF LEASE**

The purpose of this Lease is to provide for the rental by Lessee of a County facility (commonly known as Visitor's Center) and parking lot located at 14220 Park Road 22, Corpus Christi, TX 78418, Corpus Christi, Nueces County, Texas, and owned by Nueces County, Texas. The Leased Premises shall be used for the operation of a wildlife rescue and rehabilitation facility/environmental education facility in accordance with all services and duties required pursuant to RFP no. 2918-12 and the Texas Sealife Center Proposal for RFP No. 2918-12.

**II.**

**DESCRIPTION OF LEASED PROPERTY**

Nueces County in consideration of the Lessee's faithful performance of the covenants described herein, leases to the Lessee a building and reasonable use of the parking lot and points of egress and ingress described in Exhibit "A" attached hereto and incorporated by reference, hereinafter called the "Leased Premises". It is expressly understood that the leased premises do not include the entire tract of land described in Exhibit "A" but only the building, the wooded area behind the building, and reasonable use of the parking lot and points of egress and ingress.

**III.**  
**USE OF PROPERTY**

1. The Lessee shall use the Leased Premises for the operation of a wildlife rescue and rehabilitation facility. Lessee is restricted to this use of the Leased Premises. In connection with such use, the Lessee shall provide the following:
  - a. Lessee shall be responsible for the operation of a wildlife rehabilitation and conservation division, limited to the rehabilitation of shorebirds, raptors and sea turtles.
  - b. Lessee shall be responsible for the operation of a tourism and educational division, including facility tours, bird programs, tours of the bird and sea turtle exhibits and educational programs within the regulations set forth by the state and federal permits.
  - c. Lessee shall not discriminate in the provision of these services against tourists and/or visitors based on religion, race, creed, national origin, or handicap.
  - d. Texas Sealife Center shall be open to the public a minimum of 2-3 days a week, 6 hours a day until growth allows for an increase in the number of days open to the public. Any operation less than the requisite hours or days shall be approved in writing by the Director of Coastal Parks.
  - e. Lessee shall be responsible for the staffing and management of the wildlife rehabilitation center. All personnel engaged in the work at the Texas Sealife Center shall be fully qualified and authorized under State and local law to perform such services. Lessee is responsible for the compensation of the staff and management of the Texas Sealife Center. All employees of the Texas Sealife Center shall be covered by Workers' Compensation Insurance carried at the expense of Lessee. All employees, staff, and volunteers of the Texas Sealife Center shall be solely under the supervision of the Lessee and shall never be considered employees of the Nueces County Park Board or Nueces County.
  - f. Lessee shall obtain and maintain throughout the lease term any and all necessary permits, including but not limited to all permits required under the Texas Parks and Wildlife Code for wildlife rehabilitation, scientific research, educational display, and zoological collection. Permitted activities shall be in accordance with 31 TAC §69.44.

**IV.**  
**LEASE TERM**

1. This lease shall be for a term of five (5) years, commencing on 12<sup>th</sup> day of March, 2013, or until either party (1) defaults as provided in Subparagraph 2B, or (2) terminates as provided in Subparagraph 2.
2. Termination of the Lease

- A. Notwithstanding any provision to the contrary, either Nueces County or Lessee may terminate this Lease at any time and for any reason or no reason upon fifteen (15) days written notice sent by certified to the other party at the location provided in Paragraph XV, Miscellaneous, Subparagraph 4. At the time of termination of this Lease, the condition of the property made the basis of this Lease must comply with the property condition requirements of Paragraph X, Repairs, Maintenance and Restoration.
- B. Should Lessee default in the performance of any covenant, condition, or agreement in this Lease, and not correct the default within thirty days after receipt of written notice from Lessor to Lessee, Lessor may declare this Lease, and all rights and interest created by it, to be terminated. Upon Lessor's electing to terminate, this Lease shall cease and come to an end as if the day of Lessor's election were the day originally fixed in the lease for its expiration. Lessor or Lessor's agent or attorney may resume possession of the premises.
- C. Any termination of this Lease as provided in this agreement shall not relieve Lessee from the payment of any sum or sums that are due and payable to Lessor under the Lease at the time of termination, or any claim for damages then, or previously accruing against Lessee under this Lease, and any such termination shall not prevent Lessor from enforcing the payment of any such sum or sums or claim for damages by any remedy provided for by law, or from recovering damages from Lessee for any default under the Lease. All rights, options, and remedies of Lessor contained in this Lease shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and Lessor shall have the right to pursue any one or other, or all of such remedies or any other remedy or relief which may be provided by law, whether or not stated in this Lease. No waiver by Lessor of a breach of any of the covenants, conditions, or restrictions of this Lease shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition, or restriction contained in this Lease.

## V.

### RENT

1. Monthly Rent. Texas Sealife Center agrees to pay Nueces County one hundred dollars (\$100.00) per month as monthly rent for the use and occupancy of the Property.
2. Time and Manner of Payment. Lessee shall pay, in full, one hundred dollars (\$100.00) upon execution of this Lease. Thereafter, Lease payments will be made on the first of every month to the Coastal Parks Office located at Padre Balli Park, and in the amount of \$100.00 per month.

Additionally, Lessee shall be responsible for payments of utilities according to the attached Exhibit "B" for the Leased Premises.

**VI.**  
**UTILITIES**

1. Lessee shall pay or cause to be paid according to the attached Exhibit "B" for utilities, including but not limited to connection fees and all other utilities used or utility charges assessed against the leased property throughout the existence of this Lease, and any extensions thereof.
2. Nueces County shall not be responsible for any charges, as described above in VI. Utilities, subparagraph 1., incurred at the site made the basis of this Lease.

**VII.**  
**ASSIGNMENT AND SUBLEASE**

Lessee shall not sell or assign its leasehold estate in its entirety or any portion of it, nor sublet the leased premises, or any portion of the realty, or any portion of any building.

**VIII.**  
**IMPROVEMENTS**

The Lessee shall retrofit the existing facility at its own expense to accommodate a wildlife rescue and rehabilitation/environmental education facility. This includes placement of a fence between the existing County maintenance yard and the outdoor bird pens. The County shall not be responsible for the payment of any contracts, claims, or expenses in connection with such.

**IX.**  
**RIGHT TO REMOVE TRADE FIXTURES**

Lessee shall have the right at any time during Lessee's occupancy of the leased premises or within a reasonable time thereafter, to remove any and all furniture, machinery, equipment, or other trade fixtures, owned or placed by Lessee, in, under, or on the leased premises, or acquired by Lessee. Whether before or during the lease term, but prior to the termination of the lease, Lessee must repair any damage to any buildings or improvements on the premises resulting from their removal. Any such items, which are not removed by the termination of the Lease, shall become the property of Lessor as of the termination date of the Lease.

**X.**  
**REPAIRS, MAINTENANCE AND RESTORATION**

Lessee accepts the Leased Premises in their present condition, AS IS and WITH ALL FAULTS. At all times during the term of this Lease, Lessee will keep and maintain, or cause to be kept and maintained, the leased premises in a good state of appearance and repair.

**XI.**  
**MECHANICS LIEN**

Lessee shall not cause or permit any mechanics' liens or other liens to be filed against the title of the leased premises or against Lessee's leasehold interest in the land or any buildings or improvements on the leased premises by reason of any work, labor, services, or materials supplied, or claimed to have been supplied to Lessee or to anyone holding the leased premises, or any part of them through or under Lessee. If such a mechanic's lien or materialman's lien is recorded against the leased premises or any buildings or improvements on the premises, Lessee shall either cause the same to be removed, or, if Lessee in good faith desires to contest the lien, take timely action to do so, at Lessee's sole expense. If lessee contests the lien, **LESSEE AGREES TO INDEMNIFY LESSOR AND HOLD LESSOR HARMLESS FROM ALL LIABILITY FOR DAMAGES OCCASIONED BY THE LIEN OR THE LIEN CONTESTS, AND SHALL, IN THE EVENT OF A JUDGMENT OF FORECLOSURE ON THE LIEN, CAUSE THE LIEN TO BE DISCHARGED AND REMOVED PRIOR TO EXECUTION OF THE JUDGMENT.**

**XII.**

**INSPECTION**

The County, and its employees and designated agents, shall have the right to enter upon the Leased Premises at all times for the purposes of inspection and to otherwise protect its interests as landlord hereunder. County employees and agents shall make contact with Texas Sealife Center personnel upon entrance to Property.

**XIII.**

**SIGNS**

All signs placed on the Leased Premises by the Lessee shall be kept in a continual state of good repair, and failure to do so may result in removal of said signs from the Leased Premises.

**XIV.**

**INSURANCE**

Lessee shall carry and pay the premiums for liability insurance of the types and in the limits stated below.

**1.A. Commercial General Liability:**

Bodily Injury / Property Damage

Each	Annual
Occurrence	Aggregate

\$1,000,000	\$2,000,000
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A designated Project or Premises Endorsement (CG 25 01 11 85) which applies the general aggregate to the project must be provided. **Nueces County and Nueces County Board of Park**

**Commissioners are to be named as additional insured and a waiver of subrogation is required for this policy.**

**B. Automobile Liability Covering:**

Owned Automobiles

Non-owned Automobiles

including Hired Automobiles

and those of independent contractors. All must be marked on Certificate of Liability Form as applicable to vehicles that will be utilized on the job site. Only those vehicles that are insured under the Certificate of Insurance are permitted at the job site.

Bodily Injury / Property Damage

Per Occurrence

\$1,000,000

**Nueces County and Nueces County Board of Park Commissioners are to be named as additional insured and a waiver of subrogation is required for this policy.**

C. Umbrella (excess liability policy) or additional limits on foregoing risks \$1,000,000.00. Policy must be a Commercial General Liability "follow form."

D. Professional Liability: covering all individuals performing under the contract:

\$1,000,000.00

E. Workers Compensation Insurance Certificate

Employer's Liability Coverage Limit: \$500,000.

All insurance must be written by insurance companies which are rated in the A.M. Best Rating Guide – Property & Casualty with a policyholder's rating of A, and a financial size category of Class VII. A waiver of subrogation is required for this policy.

2. Certificate of Insurance.

Lessee shall furnish Lessor with a certificate of insurance required by this agreement within fifteen (15) days of the execution of this Lease. Lessee agrees that if it does not keep this insurance in full force and effect, Lessor may notify Lessee of this failure, and if Lessee does not deliver to Lessor a certificate showing all such insurance to be in full force and effect within thirty (30) days after this notice, Lessor may declare the Lessee in default and proceed according to Subsection IV, 2 (B).

3. **Indemnification of Lessor.**

**LESSOR SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM ANY USE OF THE LEASED PREMISES, INCLUDING PARKING LOT OR ANY PART OF THE LEASED PREMISES, OR CAUSED BY ANY DEFECT IN ANY BUILDING, STRUCTURE, IMPROVEMENT, EQUIPMENT, OR FACILITY ON THE LEASED PREMISES OR CAUSED BY ANYTHING ARISING FROM ANY ACT OR OMISSION OF LESSEE, OR OF ANY OF ITS AGENTS, EMPLOYEES, LICENSEES, OR INVITEES, OR BY, OR FROM, ANY ACCIDENT, FIRE, OR OTHER CASUALTY ON THE LAND, OR OCCASIONED BY THE FAILURE OF LESSEE TO MAINTAIN THE PREMISES IN A SAFE CONDITION. LESSEE WAIVES ALL CLAIMS AND DEMANDS ON ITS BEHALF AGAINST LESSOR FOR ANY SUCH LOSS, DAMAGE, OR INJURY, AND AGREES TO INDEMNIFY AND HOLD LESSOR ENTIRELY FREE AND HARMLESS FROM ALL LIABILITY FOR ANY SUCH LOSS, DAMAGE, OR INJURY OF PERSONS, AND FROM ALL COSTS AND EXPENSES INCLUDING BUT NOT LIMITED TO ATTORNEY'S FEES ARISING FROM ANY CLAIMS OR DEMANDS OF OTHER PERSONS CONCERNING ANY SUCH LOSS, DAMAGES, OR INJURY**

**XV.**

**MISCELLANEOUS**

1. **No Partnership or Joint Venture.**

The relationship between Lessor and Lessee, at all times, shall remain and is solely that of landlord and tenant and not deemed a partnership or a joint venture.

2. **Force Majeure.**

It is expressly understood and agreed that if the curing of any default, (other than failure to pay rent, or insurance premiums) or the performance of any other covenant, agreement, obligation, or undertaking contained in this Lease is delayed by reason of war, civil commotion, act of God, governmental restrictions, regulations, or interference, fire or other casualty, or any other circumstances beyond Lessee's control or beyond the control of the party obligated or permitted under the terms of this Lease to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated or not, each party so delayed shall be excused from doing or performing the same during the period of delay.

3. **No Waiver.**

No waiver by either party of any default or breach of any covenant, condition, or stipulation contained in this lease shall be treated as a waiver of any subsequent default or breach of any covenant, condition, or stipulation of this lease.

4. **Delivery of Monies and/or Notices.**

- A. All payments, notices, demands, or requests from Lessee to Lessor shall be given or mailed to Lessor at Nueces County Board of Park Commissioners, 15820 Park Road 22 (S.P.I.D), Corpus Christi, Texas, 78418 or at such other address as requested by Lessor in writing.
- B. All payments, notices, demands; or requests from Lessor to Lessee shall be given or mailed to Lessee at 14721 Whitecap Blvd #241, Corpus Christi, Texas, 78418.

**5. Parties Bound.**

This agreement shall be binding upon and inure to the benefit of the parties to the lease and their respective heirs, executors, administrators, legal representatives, successors, and assigns.

**6. Texas law to Apply.**

This agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created by this lease are performable in Nueces County, Texas.

**7. Legal Construction.**

In the event any one or more of the provisions contained in this agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the lease, and this agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in the lease.

**8. Prior Agreements Superseded.**

This agreement constitutes the sole and only agreement of the parties to the lease and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter of the lease.

**9. Amendment/Modification of Lease.**

By mutual agreement, the Lessor and Lessee may modify any and all terms of this Lease. Any and all modifications to this Lease must be in writing and dated subsequent to the date of this Lease. Notwithstanding signed and written modification to this Lease, the entire agreement of the Lessee and Lessor is encompassed within the four corners of this Lease.

**10. Rights and Remedies Cumulative.**

The rights and remedies provided by this Lease are cumulative, and the use of any one right or remedy by either party shall not preclude or waive its right to use any or all other remedies. The rights and remedies provided in this Lease are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.



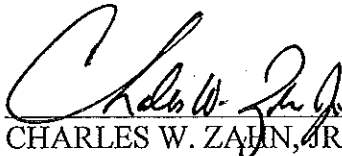
11. **Time of Essence.**

Time is of the essence in this agreement.

12. **Laws.**

Lessee will at all times be compliant with Federal, State, County, and City laws, rules, ordinances, regulatory requirements, and all other applicable regulations.

This Lease has been executed by all parties on the 12<sup>th</sup> day of March, 2013.


  
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CHARLES W. ZAHN, JR.  
Chair, Nueces County Board Park Commissioners

ATTEST:

  
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JANE BELL  
Secretary, Nueces County Board of Park Commissioners

  
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Texas Sealife Center  
Lessee

**EXHIBIT "A"**

A building known currently as the "Visitor's Center" building and reasonable use of the parking lot and ingress and egress into the same, physically located at the address:

14252 South Padre Island Drive  
Corpus Christi, Nueces County, Texas

The building, parking lot, and points of ingress and egress are situated on the West portion of a tract of land described as follows:

Land containing 1.401 acres out of the West portion of Lot 11, Block 30, Padre Island Drive Number 1, a map of which is recorded in Volume 13, Pages 1 through 8, Map Records of Nueces County, Texas:

**BEGINNING** at a 1 inch iron pipe found on the East right-of-way line of So South Padre Island Drive (Park Road No. 22) for the Northwest corner of Lot 10A, Block 30 and the Southwest corner of said Lot 11 for the Southwest corner of this survey;

THENCE with said right-of-way, along a circular curve to the left whose radius point bears South 72° 04' 42" West 2, 392.01 feet, a tangent distance of 53.33 feet, 106.74 feet to a concrete right-of-way monument found for the Southwest corner of Nueces County Park No. 2 and the Northwest corner of said Lot 11 for the Northwest corner of this survey;

THENCE North 68° 43' 51" East, along the common boundary line of said Nueces County Park No. 2 and Lot 11, Block 30, 389.89 feet for the Northeast corner of this survey;

THENCE South 01° 16' 30" West 249.47 feet to a point on the common boundary line of said Lots 11 and 10A for the Southeast corner of this survey;

THENCE North 88° 43' 30" West, with said common boundary line, 322.76 feet to the POINT OF BEGINNING.

The Leased Premises are understood to contain the above described building and reasonable use of the parking lot, the wooded area behind the building, and points of ingress and egress, and NOT the entire tract described above.

EXHIBIT "B"

Lessee shall pay fifty (\$50) dollars a month for water usage. Any remaining amount exceeding \$1704.44 (average water usage for the entire County Property) for water usage shall be paid annually by Lessee. County shall notify Lessee in writing of the amount due by January 15<sup>th</sup> of each lease year and Lessee shall pay the utility amount within 30 days of the date of the notice.