

LICENSE AGREEMENT

THIS LICENSE AGREEMENT is made and entered into this ____ day of _____, 2017, by and between the CITY OF CLEARWATER, FLORIDA, a Florida Municipal Corporation, P.O. Box 4748, Clearwater, Florida 33758-4748 (herein, "City" or Licensor), and CLEARWATER AUDUBON SOCIETY, a 501C3 not for profit organization (herein, "CAS" or "Licensee").

WHEREAS, the property at 2750 Park Trail Lane, Clearwater, FL 33759, hereafter the "Property," is public park property under the jurisdiction of the City of Clearwater, Florida; and

WHEREAS, the City identifies the Property as the Moccasin Lake Environmental Education Center also known as Moccasin Lake Nature Park; and

WHEREAS, the CAS desires to operate and maintain, bird of prey program including the enclosures on the Property.

NOW, THEREFORE, in consideration of the covenants herein contained, the City hereby grants a License to the CAS for the purposes of operating and maintaining the Bird of Prey program located on the Property.

1. **TERM AND FEE**: This License shall commence upon the date that this License is fully executed by the parties hereto and continue for a primary term of seven (7) years. This License shall automatically renew for an additional seven year period unless terminated by either party as provided for herein.

2. **USE OF PREMISES**: The CAS shall have use of the existing bird of prey enclosures and supporting program space within the Property.

This License shall **not** confer upon the Licensee ownership interest in the Property.

Licensee's independent contractors, agents, servants, employees, guests, invitees, or other persons making legal and proper use of the Property, shall promptly comply with all statutes, ordinances, rules, orders, regulations, and requirements of any governmental agency with authority over the Property.

3. CAS DUTIES AND RESPONSIBILITIES

The CAS shall operate and maintain the Bird of Prey Program at the property.

The enclosures and supporting space will remain assets of the City of Clearwater. The State of Florida Fish and Wildlife Commission and the U.S. Fish and Wildlife Service recognizes the City of Clearwater Moccasin Lake Park as a nature park and as such operates as an exempt facility under Title 50 Chapter 1 Subchapter B Part 21.12 of the

rules proposed by the Fish and Wildlife Services, thus allowing the birds of prey to reside at Moccasin Lake Park.

- a) The CAS shall be responsible for all animal care, including all associated costs.
- b) The CAS will ensure that the program is operated by properly trained employees or volunteers and that Licensee has provided any necessary and appropriate technical, safety and operational training for its employees/volunteers to carry out operations in a safe manner. By entering into this License Agreement, Licensee represents that each employee/volunteer has specific technical, safety, and operational training.
- c) The CAS will provide educational programming in addition to the exhibits on a regular basis at the Property, but no less than once a month.
- d) All volunteers and employees of the CAS will ensure that Local Law Enforcement Background checks are performed and appropriately screened. For those specific volunteers or employees who work or will work with children, the elderly or disabled, CAS will request a LEVEL II background screening to be performed.
- e) The CAS shall maintain all Bird of Prey program equipment and animal enclosures. The CAS will provide appropriate security for the animal enclosures. Any alteration or additions require approval from the Parks and Recreation Parks Planning and Project Manager.
- f) The CAS will acquire and maintain all applicable required Bird of Prey Licenses/Permits and be responsible for compliance thereof.
- g) The CAS will provide an Annual Report of activities due for the previous calendar year, no later than January 30th of the following year. The CAS will also provide a monthly reporting of volunteers hours performed on site as part of the annual report.

4. COSTS OF OPERATIONS: Licensee shall pay all costs of its License operations, including, but not limited to, any costs resulting from facility/amenity upgrades requested by CAS, including signage, which must be authorized by the City in writing.

5. CITY DUTIES RESPONSIBILITIES: To support the program, the City will be responsible for the following:

- a) Provide upgraded enclosures at the beginning of the agreement
- b) Provide space to support the program
- c) Provide sand for the interior of the animal enclosures as requested

- d) Process background screening as required for volunteers
- e) Fund utilities (electricity and water) on site at time of agreement

6. INDEPENDENT CONTACTOR. This License does not create a partnership, joint venture, or any affiliation other than Licensor and Licensee. The Licensee agrees that persons employed by Licensee for purposes related to the installation, operation or other purposes under this License are not employees of the Licensor for any purpose whatsoever, including unemployment tax, social security contributions, income tax withholding or workers compensation, whether state or federal. Licensee agrees to pay and be solely responsible for all applicable taxes, both state and federal, in connection with its operations and the License Fee paid by Licensee to Licensor.

7. PROGRAM PROMOTION: To support the efforts of the program, the City will promote the program through the Public Communication methods available such as the City's social media, website and MyClearwater Magazine.

8. PROPERTY ACCESS: The City will grant access and a gate code to the property for registered and screened volunteers of the CAS. Access request must be made in writing to the Park Supervisor. The CAS must notify the Park Supervisor when the volunteer is no longer part of the program.

9. PROGRAM ACCESS TO OTHER SPACE: The CAS will be provided free access to other space on the Property provided the space is available. Request for use of other space for programming shall be made to the Park Supervisor at least 7 days in advance.

10. PARTIES' LIABILITY: Each Party hereto agrees to be responsible for their own acts of negligence or their respective agents' acts of negligence under this Agreement.

Assumption of Risk and Disclaimer of Liability:

The designated areas and the Property, as a whole, are to be used at the sole risk of the Licensee, Licensee's independent contractors, agents, servants, employees, guests, invitees, or other persons making legal and proper use of the designated spaces, and the City of Clearwater shall not be liable or responsible for the care or protection of vehicles and contents, or for any loss of damage or whatever kind of nature to said vehicle, howsoever occasioned. There is no guarantee or warranty of any kind as to the condition of the designated spaces, nor shall the City be responsible for injuries to persons or property occurring thereon for any reason whether herein specifically stated or not.

Licensee, Licensee's independent contractors, agents, servants, employees, guests, invitees, or other persons making legal and proper use of the Property shall assume the duty to report all activities to Park's Supervisor.

11. **TERMINATION**: Either party may terminate this License for any reason at any time upon written notice to the other party upon sixty (60) days written notice. Upon termination, CAS shall remove/transfer all birds to other facilities within 60 (sixty) days.

12. **NOTICES**: Any notice shall be in writing and shall be delivered by hand or sent by United States registered or certified mail, postage prepaid, addressed as follows:

CITY:

Parks Planning and Project Manager
City of Clearwater Parks and Recreation Department
P.O. Box 4748
Clearwater, Florida 33758-4748

CAS:

President
Clearwater Audubon Society
PO Box 97
Clearwater, FL 33757

13. **ASSIGNMENT AND SUBLETTING**: Neither party hereto may assign or sublet its rights hereunder without the prior written consent of the other party.

14. **OTHER PROVISIONS**: Integral to the rights and privileges herein granted, the parties further agree as follows:

- a) Licensee, at its sole expense, shall comply with all applicable Federal, State and Local laws and ordinances.
- b) Should any provision of this License or any of the Exhibits attached hereto be deemed by a Court of competent jurisdiction to be unenforceable, such determination shall not affect the enforceability of the remaining provisions.
- c) Use of one gender shall include all other genders; use of the singular shall include the plural; and use of the plural shall include the singular, all as may be appropriate. Where applicable, use of the term Licensee shall include Licensee's independent contractors, agents, servants, employees, or invitees.

15. **MAINTENANCE**: Licensee shall not make any improvements, alterations or add any structures to the Property without the prior written approval of the City, which approval may be withheld at City's sole discretion

City shall not be required to make any repairs of animal enclosures, and others not deemed necessary by the City.

In as much as the appliances (washer, dryer, refrigerator, freeze, etc.) are the property of the City, the City will repair/replace the appliances in the event of a malfunction within 7 days.

16. ENTIRE AGREEMENT: This License, together with any additional Addenda and/or Exhibits attached hereto, shall constitute the entire Agreement between the City and Licensee. No other Agreements unless incorporated and made a part herein, shall be binding on either party. No amendment or modification of this License shall be effective unless agreed to in writing by Licensee and the City.

17. APPLICABLE LAW & VENUE: Parties agree that Florida Statutes shall apply in enforcing provisions of this License and waive trial by jury in any action or proceeding brought to enforce the terms of this License. The venue for any proceedings brought to enforce this License is in Pinellas County, Florida.

18. NO 3RD PARTY RIGHTS: Parties hereto do not intend nor shall this Agreement be construed to grant any rights, privileges or interest to any person not a party to this Agreement.

19. INSURANCE: The CAS shall, at its own cost and expense, acquire and maintain (and cause contractors and subcontractors, if applicable, to acquire and maintain) during the term with the City, sufficient insurance, or self-insurance, to adequately protect the respective interest of the parties. Specifically the CAS must carry the following minimum types and amounts on an occurrence basis, or in the case of coverage that cannot be obtained on an occurrence basis, then coverage can be obtained on a claims-made basis with a minimum three (3) year tail following the termination or expiration of this Agreement:

- a) Commercial General Liability Insurance in the amount of \$1,000,000 per occurrence and \$1,000,000 general aggregate.
- b) Statutory Workers' Compensation Insurance and Employer's Liability Insurance in the minimum amount of \$100,000 each employee each accident, \$100,000 each employee by disease and \$500,000 aggregate by disease with benefits afforded under the laws of the State of Florida. Coverage should include Voluntary Compensation and U.S. Longshoremen's and Harbor Worker's Act coverage where applicable. Coverage must be applicable to employees, contractors, and subcontractors, if any.

The above insurance limits may be achieved by a combination of primary and umbrella/excess liability policies.

Other Insurance Provisions:

- 1. The City is to be specifically included as an "Insured" on the Commercial General Liability Insurance policy listed.

2. Prior to the execution of this Agreement then annually upon the anniversary date(s) of the insurance policy's renewal date(s), the CAS will furnish the City with a Certificate of Insurance or letter evidencing the coverage set forth above and naming the City as an "Insured" on the CAS's Commercial General Liability Insurance policy listed above. In addition, CAS will provide the City with certified copies of all applicable policies when requested in writing from the City. The address where such certificates or letters and certified policies shall be sent or delivered is as follows:

Parks Planning and Project Manager
City of Clearwater Parks and Recreation Department
P.O. Box 4748
Clearwater, Florida 33758-4748

3. CAS shall provide thirty (30) days written notice of any cancellation, non-renewal, termination, material change or reduction in coverage.
4. CAS's insurance as outlined above shall be primary and non-contributory coverage for CAS's negligence.
5. CAS will hold the City harmless and provide indemnification for any injuries and/or property damage caused by automobiles owned and used on the property by its volunteers and employees.
6. CAS is responsible for confirming that same automobiles are also insured with bodily injury and property damage insurance coverage by their owners.

The stipulated limits of coverage above shall not be construed as a limitation of any potential liability to the City, and failure to request evidence of this insurance shall not be construed as a waiver of CAS's obligation to provide the insurance coverage specified.

20. LIABILITIES AND INDEMNITY: Licensee agrees to indemnify and hold the City harmless from all claims (including costs and expenses of defending against such claims) arising or alleged to arise from the negligence or willful misconduct of Licensee or Licensee's agents, employees or contractors occurring during the term of this License or any extensions in or about the Licensed Premises. Licensee agrees to use and occupy the Licensed Premises at its own risk and hereby releases the City, its agents and employees, from all claims for any damage or injury brought on by Licensee to the full extent permitted by law. Notwithstanding anything contained herein to the contrary, this indemnification provision shall not be construed as a waiver of any immunity to which City is entitled or the extent of any limitation of liability pursuant to § 768.28, Florida Statutes. Furthermore, this provision is not intended to nor shall be interpreted as limiting or in any way affecting any defense City may have under § 768.28, Florida Statutes or as consent to be sued by third parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first written above.

Countersigned:

CITY OF CLEARWATER, FLORIDA

George N. Cretekos
Mayor

By: _____
William B. Horne II
City Manager

Approved as to form:

Attest:

Matthew M. Smith
Assistant City Attorney

Rosemarie Call
City Clerk

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

COUNTY:
PINELLAS COUNTY, FLORIDA

WITNESSES:

CLEARWATER AUDOBON SOCIETY

Lisa F. Post
Print Name: Lisa F. Post

By: _____
President
Print Name: JOHN HOOD

Alice McClanahan
Print Name: ALICE MCCLANAHAN

APPROVED AS TO FORM
CAS ATTORNEY

By: _____
Sr. Asst. County Attorney

STATE OF FLORIDA
COUNTY OF PINELLAS

The foregoing instrument was acknowledged before me this 10 day of April, 2017, by John Hood,

who is personally known to me or who has produced _____
as identification.



DONNA A.B. SCHOLL
NOTARY PUBLIC
STATE OF FLORIDA
Comm# FF063259
Expires 10/15/2017

Donna A.B. Scholl
NOTARY

Donna A.B. Scholl
Print Name
Commission Number: FF063259

My Commission Expires: 10/15/17