

RESOLUTION NO. 5003-12
TERMINATES LAND USE AGREEMENT
WITH COASTAL WILDLIFE RESCUE CENTER
OF SOUTH ALABAMA, INC.

WHEREAS, the Foley City Council approved entering into a Land Use Agreement with Coastal Wildlife Rescue Center of South Alabama, Inc. July 19, 2010 under enabling Resolution 4161-10, and

WHEREAS, during the February 6, 2012 Work Session Ms. Janet Ripp reported that they were still in violation of the handicapped ramp not being up to code and the grinder pump was still an ongoing issue, and

WHEREAS, Ms. Ripp further reported that if they could not get up and running by spring or early summer then she would get back to the City for a tentative moving date, and

WHEREAS, there was a consensus by Council to have Ms. Ripp report back to them to present a business plan that covered ongoing operational costs, funding, permits, and an evacuation plan, and to date she has not responded.

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Foley, Alabama, as follows:

SECTION 1: Terminates the Land Use Agreement approved under enabling Resolution 4161-10 with Coastal Wildlife Rescue Center of South Alabama, Inc. effective immediately.

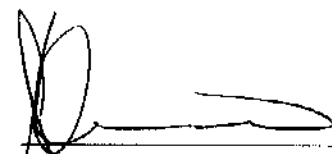
SECTION 2: This Resolution shall become effective immediately upon its adoption as required by law.

PASSED, ADOPTED AND APPROVED THIS 2nd day of July, 2012.



ATTEST:


Victoria Southern, CMC


John E. Koniar, Mayor

AGENDA REQUEST FORM

DATE OF WORK SESSION: 07-02-12DATE OF COUNCIL MEETING: 07-02-12

DEPARTMENT AND PERSON SUBMITTING ITEM: Charlie Ebert

DESCRIPTION OF TOPIC: (who, what, when, where, why, and how much)

Discuss agreement between City of Foley and Coastal Wildlife Rescue Center.

DESCRIPTION FOR PUBLISHED AGENDA: Discuss agreement between City of Foley and Coastal Wildlife Rescue Center.IS DOCUMENTATION ATTACHED (See attached list): ☒ Yes ☐ NoIf item was previously approved under a Resolution or Ordinance have you included the number in the documentation? ☒ Yes ☐ No ☐ N/AIs a copy of the Resolution/Ordinance attached? ☒ Yes ☐ No ☐ N/A**SOURCE OF FUNDING:**

Please provide the amount requested: _____

Is this a budgeted item? ☐ Yes ☐ No

Please provide the budgeted amount: \$ _____ Account No. _____

If budgeted, is this a capital purchase, capital project, or special fund? _____

Was this item included in the Fiscal Year Capital Projects Plan? ☐ Yes ☐ No

If yes, please provide the amount included in Capital Projects Plan: \$ _____

=====Do Not Write Below This Line=====

Verified by the Finance Department:

Reviewed by: _____ Date: _____

Clerk's Office: Received by: _____ Date: _____ Time: _____

(see back for required backup documentation)

COUNCIL WORK SESSION AGENDA MINUTES
CITY OF FOLEY
CONFERENCE ROOM, 407 E. LAUREL AVENUE
FOLEY, ALABAMA
MONDAY, FEBRUARY 6, 2012 4:00 P.M.

Mayor Koniar called the work session to order at 4:05 p.m. Council members present: Wayne Trawick, Ralph Hellmich, Rick Blackwell, and Charles Ebert, III. Absent: Vera Quaites. Others present: City Administrator Mike Thompson, Sandra Pate, City Clerk Vickey Southern, Paul Adams, Joey Darby, Jeff Rouzie, Guy Busby, LaDonna Hinesley, Steve Smith, David Wilson, David Thompson, Leslie Lassitter, Butch Stokes, Hannah Garcia, Suzanne Kellams, Carolyn Byrne, Maggie Boudreaux, Joe Bouzan, and Janet Ripp.

ACTION ITEMS:

1. Approve Work Session Minutes of January 17, 2012.

Councilman Hellmich made a motion to approve the minutes and Councilman Blackwell seconded the motion. Mayor Koniar abstained. The vote passed by a majority vote.

2. Consider Consent Agenda of February 6, 2012.

Consent Agenda
Consider GCN Special "Baldwin Marketplace" edition ad in the amount of \$275.
Appropriates \$5,382 for purchase of bar coding system and scanner and amends 01-608-7010
Consider renewing a field banner ad for Foley Lion's Baseball in the amount of \$250.
Memorializes transfer of \$452 from Beautification Board's Account 01-619-7100 (New Decorations) to Account 01-619-5040 (Maintenance).
Memorializes capital purchase to Dekra-Lite in the amount of \$4,627.75 from Revitalization and Beautification Board budget Account 01-619-7100 for LED lights and approves the expenditure of the remaining \$5,372.25 for lights. The total FY12 budgeted amount is \$10,000.
Memorialize US Fish and Wildlife grant application for additional funds for Graham Creek Nature Preserve invasive plant removal program. This is an existing grant.
Amends Resolution 4709-11 which should stated Account 01-608-7010 instead of 01-608-2020 in the amount of \$48,958.71.
Amends Resolution 4778-12, Section 4, to state Account No. 12-600-9600 Q20 59/24 instead of Account No. 12-600-9365 A05 59/24.
Restates Resolution 4781-12 approving a total of \$19,582.25 under Account 12-665-7280 Q63 DOP for Southern Maintenance's proposals.

Mayor Koniar made a recommendation to move item "C" to Chamber Foundation for them to consider. A resolution was moved to the Council meeting agenda.

Terry Burkle handed out a report which identified the various pool of funds and what amounts were requested and awarded, as well as the school's name and grant titles. Thirty six applications were considered and 25 were awarded. They had a total of \$41,000 and still have \$2,935 remaining for emergency items. Mayor Koniar asked, "Do you have a committee?" Ms. Burkle reported that each application is given a score and are judged by three retired school teachers. The scores are totaled and awards go to the highest score. They also take into consideration the funds that are available and make it as competitive as possible.

3. Consider Foley Mardi Gras Association's request to hold a Mardi Gras Parade on Saturday, February 18th with line up starting at 9:00 a.m. and parade ending around noon.

This item was moved under New Business item #3.

4. Consider the American Heart Association's request to use Heritage Park and Pavilion on October 5, 2012 from 6:00 p.m. until 9:00 p.m. for set up and October 6, 2012 from 6:00 a.m. until 2:00 p.m.

This item was moved under New Business item #4.

5. Consider resolution reappointing Joe Cabaniss to the Board of Adjustments and Appeals.

A resolution was moved to the Council meeting agenda.

6. Consider resolution reappointing Jerry Davis and Brock Wells to the IDB. These 6-year terms need to be re-staggered terms so that all are not due in the same year.

A resolution was moved to the Council meeting agenda.

7. Consider resolution reappointing Roddy Burkle to Planning Commission for another term.

A resolution was moved to the Council meeting agenda.

8. Consider resolution reappointing Jimmy Donaldson to the YMCA Public Parks & Recreation Board for another term. This Board is currently inactive.

A resolution was moved to the Council meeting agenda.

9. Consider YMCA's request to hold 4th Annual Kids Need Heroes 5K Run/Walk and One Mile Fun Run on Saturday, February 25, 2012 from 8:00 a.m. until 11:00 a.m.

Chief Wilson reported Lt. Bullock has already looked at the route. This item was moved to Council meeting agenda under New Business.

10. Consider Blue Cross Blue Shield's request to hold education seminars, which are free to the public, in the Council Chambers at no charge. They have used the Chambers at no charge for the past two years.

This item was carried over to wait for Pam Harris' recommendation.

DISCUSSION ITEMS:

11. Joe Bouzan: Consider resolution approving herbicide application contract renewal.

A discussion regarding the cost of the contract renewal versus the cost of staff applying the herbicide ensued. The City hired a new employee not long ago trained in proper application of herbicides, pesticides, etc. The idea at that time was that this employee would train other employees in how to apply herbicides and pesticides and take a train-the-trainer approach. This was supposed to save the City money. Joe Bouzan reported that the cost of the contract was up \$3,000 due to adding some additional properties and tasks to the contract. David Thompson reported that the employee that was hired does apply herbicide, etc. to the land at the Sportsplex but not the other areas of the City such as the Airport and certain roadways. Leslie Lassitter reported that the Federal government now has more stricter regulations and she is required to report usage of chemical applications such as pesticides, herbicides, etc. The Council ended by saying that they would like for David Thompson and Joe Bouzan to take another look into the utilization of the employee who was hired for pesticide/herbicide application in the scope of the costs of the contract renewal and to report back to the Council at the next work session. A resolution was moved to the Council meeting agenda.

- 12. Janet Ripp/Leslie Lassitter: Discuss Coastal Wildlife Rescue Center's Lease Agreement.

Ms. Ripp reported that they are still in violation of the handicapped ramp not being up to code and the grinder pump is still an ongoing issue. Their intention is to try to get it up and running by the spring or early summer. If they cannot get these items worked out, then they would like to have a tentative date for moving their items off of the property. They have a meeting with BP on Wednesday and requested to meet with the Council after that time if the Council would be agreeable. There was a consensus to bring this back at the first meeting in March

when Ms. Ripp will be expected to present to the Council a business plan that covers ongoing operational costs, funding, permits, and an evacuation plan. Carried over.

13. Mike Thompson: Consider ordinance setting salaries for elected officials for the four-year term beginning in November, 2012.

The ordinance was moved to the Council meeting agenda for a first reading.

14. Vickey Southern: Consider resolution accepting Legislative annexations. This is a housekeeping item.

A resolution was moved to the Council meeting agenda.

15. Leslie Lassitter: **A)** Request to move \$2000 from the Graham Creek Preserve Operating Account (01-620-8150) to a new Graham Creek Preserve Event Expense Account (01-620-8155). **B)** Request to create a Graham Creek Preserve Donations and Events Revenue Account (01-550). **C)** Discuss construction of a comfort station at Graham Creek Nature Preserve. **D)** Discuss acquisition of property for a waterfront park.

A) Leslie reported the new account will help track funds for various events at Graham Creek Nature Preserve. A resolution was moved to the Council meeting agenda.

B) A resolution was moved to the Council meeting agenda.

C) Leslie reported the port a lets are costing the City money and we could build it without stipulations if they did not utilize grant funds. She obtained prices for a pre-fab and regular construction for three stalls for both men and women and a utility sink and fountain which will accommodate the cross country events. The pre-fabricated option will cost more. Councilman Trawick preferred to let out for bids rather than go with a pre-fabricated construction unit. The Council's consensus was to go out to bid.

D) Leslie reported there is the possibility that the City could obtain 25 acres of waterfront property. If everything works out, then she would like to utilize this property for a City park and construct a canoe launch and fishing piers, etc. She could apply for a grant to purchase the property contingent upon getting the property. Currently they are waiting on the county. All the commissioners were in favor of this at a meeting but the City/County needs to be sure that the grant would be satisfied if the City took possession. Jeff Rouzie reported he spoke with David Brewer who is trying to get it finalized with commissioners but has not heard back from him. Leslie noted that this item is a precursor to the next item on the agenda which is requesting permission to apply for the ADCNR 306A Grant which would provide funding for these improvements.

16. Leslie Lassitter/Suzanne Kellams: **A)** Request permission to apply for the ADCNR 306A Public Access Improvement Grant for improvements to a future

City waterfront park. **B)** Request permission to apply with the Baldwin County Commission for the ADCNR Coastal Planning Grant for a Bon Secour River watershed study and an update for the management plan.

A) Leslie reported the grant funds would be used to construct a kayak/canoe launch, not a motorized boat launch, and picnic areas. The parking lot would be done by staff as part of in-kind service. A resolution was moved to the Council meeting agenda. As a side note Councilman Hellmich reminded Butch that the City has an obligation to pave Wilhelmina Holmes Road.

B) This request is for approving the City's partnership with the County on an ADCNR Coastal Planning Grant for a Bon Secour River watershed study and to update the management plan. There would be no cost to the City in exchange for Leslie's services as an Environmental Specialist on the project. The total cost of the project is \$140,000 and would cost the County half of the cost. There was a consensus to approve.

17. David Thompson: **A)** Request permission to purchase Frontier Core Aerifier CA2072 with 3 pt. trailer hitch attachment. This is a 6' wide ¾" steel coring tines aerifier. **B)** Request permissions to go to bid on a new Sportsplex turf mower. **C)** Request permission to go to bid on a new Ford F-150 pickup truck. **D)** Consider request to purchase a John Deere Gator TX for \$7,860.22 to be used at Sportsplex to transport patrons, empty garbage, transport conditioner and quick dry.

A) A resolution was moved to the Council meeting agenda.

B) There was a consensus to go to bid.

C) There was a consensus to go to bid.

D) A resolution was moved to the Council agenda.

18. Consider acceptance of public projects: **A)** Drainage Improvements; **B)** Miscellaneous Capital Projects, and **C)** Bike Path Extension.

This item was moved under New Business on the Council meeting agenda.

19. Joey Darby/Suzanne Kellams: Consider applying for FY2011 Safer grant.

A resolution was moved to the Council meeting agenda.

20. Sandra Pate: **A)** Consider resolution approving the creation of one Temporary Full-Time Records Clerk for the Foley Police Department **B)** Consider resolution converting one Corporal Patrol position to one Community Services Officer in the City's Pay Classification Plan for the Foley Police Department.

A resolution was moved to the Council meeting agenda for Item A and Item B.

21. Randy Kurtts: Consider resolution approving the purchase of two water meters from Riviera Utilities in connection with the Streetscape III project in the amount of \$1,350.00.

A resolution was moved to the Council meeting agenda.

22. Butch Stokes: *A) Consider resolution accepting R&S Paving and Grading, Inc.'s quote for repair of paving cuts in the amount of \$21,000.00; B) Consider resolution approving Christian Testing Laboratories, Inc.'s proposal for Bearing Soil Evaluation in the amount of \$700.00; C) Consider resolution approving Randy Arp's proposal for Pavilion Foundation Designs in the amount of \$1,350.00; D) Consider resolution accepting bid for construction material for Pavilion Shelters, and E) Discuss resurfacing projects and funding for same.*

A-C) Resolutions were moved to the Council meeting agenda for items A through C.

D) Butch recommended accepting J.A. Dawson's low bid in the amount of \$36,324 for construction materials for the pavilion shelters. Resolution moved to Council Agenda.

E) There was a consensus of the Council to go to bid on the top three items listed in the handout distributed by Butch. These were based on Volkert's recommendations.

23. Jeff Rouzie: Discuss setting the sale price of the Industrial Park property.

Jeff reported the Industrial Development board met and came up with a \$29,000 per acre price for the property at the Foley Beach Express Industrial Park in conjunction with the Advantage Site program. This price is for a two year period. The property on the west side has no infrastructure but the east side has infrastructure. Comparable prices are Baldwin EMC's park is listed at \$18,000 per acre; Fairhope Tech is \$40,000 per acre; and the others are \$35,000 per acre. The City as well as the IDB, as property owners of the parcels, have to send letters of support and letters setting the agreeable price per acre. A resolution authorizing the Mayor to sign a support letter and a letter defining the per acre price was moved to the Council meeting agenda.

INFORMATION ITEMS:

24. Thank you letter from National Breast Cancer Foundation.

ADD ON'S

25. Joey Darby: Consider resolution rejecting all bids received on February 1, 2012 for Brush Truck Body and Equipment.

A resolution rejecting all bids was moved to the Council meeting agenda.

26. Butch Stokes: Consider resolution accepting R&S Paving & Grading, Inc.'s estimate for parking on the southwest corner of Pine Street in the amount of \$15,430.00.

A resolution was moved to the Council meeting agenda.

HELMSING, LEACH, HERLONG, NEWMAN & ROUSE

FREDERICK G. HELMSING (1940-2011)

JOHN N. LEACH

WARREN C. HERLONG

JAMES B. NEWMAN

ROBERT H. ROUSE

JOSEPH P. H. BABINGTON **

R. ALAN ALEXANDER

JOHN T. DUKES

JEFFERY J. HARTLEY

A. ERWIN STUARDI, III *

CHARLES R. MIXON, JR.

J. CASEY PIPES

RUSSELL C. BUFFKIN

PATRICK C. FINNEGAN †

LESLIE G. WEEKS *

CHRISTOPHER T. CONTE †

THOMAS RYAN LUNA

D. ANDREW STIVENDER

ANNIE J. DIKE

A PROFESSIONAL CORPORATION

LAWYERS

150 GOVERNMENT STREET

MOBILE, ALABAMA

T. K. JACKSON, III
OF COUNSEL

MAILING ADDRESS
POST OFFICE BOX 2767
MOBILE, ALABAMA 36602

STREET ADDRESS
SUITE 2000 LACREE BUILDING
150 GOVERNMENT STREET
MOBILE, ALABAMA 36602

TELEPHONE (251) 432-5521
FACSIMILE (251) 432-0833

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* ALSO ADMITTED IN FLORIDA
** ALSO ADMITTED IN LOUISIANA
† ALSO ADMITTED IN MISSISSIPPI
‡ ALSO ADMITTED IN NEW YORK

October 27, 2011

Janet Ripp
Coastal Wildlife Rescue Center of
South Alabama, Inc.
12078 Fernwood Drive West
Foley, AL 36535

RE: Land Use Agreement – City of Foley

Dear Ms. Ripp:

The purpose of this letter is to give you formal notice on behalf of the City of Foley that the Coastal Wildlife Rescue Center of South Alabama, Inc. is in default under multiple provisions of its Land Use Agreement, including but not limited to Paragraphs 3, 8, 9 and 11.

If you would like to dispute these grounds or if you wish to attempt to cure all of the various defaults, you must contact me immediately. All rights are hereby reserved.

Very truly yours,


CASEY PIPES

JCP/mcg

cc: Leslie Lassiter
Mayor Koniar
Mike Thompson

RESOLUTION NO. 4161-10

**RESCINDING RESOLUTION 4123-10 AND APPROVING
ENTERING INTO A LAND USE AGREEMENT
WITH COASTAL WILDLIFE RESCUE CENTER OF SOUTH ALABAMA, INC.**

WHEREAS, the Foley City Council adopted Resolution 4123-10 on June 21, 2010 accepting a donation from Coastal Wildlife Rescue Center of South Alabama, Inc., and

WHEREAS, the Coastal Wildlife Rescue Center received a donation of a 12x50' portable building and \$10,000 to start a wildlife rehabilitation center, and

WHEREAS, the Coastal Wildlife Rescue Center would like to place their portable building at the Graham Creek Nature Preserve to rehabilitate birds and other wildlife needing additional care due to the oil spill, and

WHEREAS, the Coastal Wildlife Rescue Center would be responsible for all utilities, cleanup, and disposal of any hazardous material.

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Foley, Alabama, as follows:

SECTION 1: Rescinds Resolution 4123-10 and authorizes the Mayor to enter into a Land Usage Agreement with Coastal Wildlife Rescue Center of South Alabama, Inc. as outlined in the attached Land Usage Agreement, which is made a permanent part of this resolution upon its adoption.

SECTION 2: This Resolution shall become effective immediately upon its adoption as required by law.

PASSED, ADOPTED AND APPROVED THIS 19th day of July 2010.


John E. Koniar, Mayor

ATTEST:


A. Perry Wilbourne
City Clerk/Administrator

LAND USAGE AGREEMENT

This Land Usage Agreement (the "Agreement") effective as of July 19th 2010 is between the CITY OF FOLEY, ALABAMA, a municipal corporation of the State of Alabama ("Foley") and COASTAL WILDLIFE RESCUE CENTER OF SOUTH ALABAMA, INC. an Alabama corporation ("Coastal").

Definitions

For purposes of this Agreement, the words and phrases set forth below shall have the following meanings:

"Site" shall mean the following real property, to-wit:

Approximately one-tenth (1/10th) of one (1) acre of land (0.1 acre), more or less, located approximately 637 feet East of and 400 feet South of the Northwestern (NW) corner of Tax Parcel ID number 61-06-13-0-000-003.010 within Section 13, Township 8 South, Range 4 East, Baldwin County Alabama as approved by the City of Foley Environmental Manager for the location of a portable building, plus such additional areas as approved by the City of Foley Environmental Manager on Tax Parcel ID number 61-06-13-0-000-003.010 and Tax Parcel ID number 61-06-14-0-000-004.000 for the location of temporary portable wildlife enclosures for animal rehabilitation as approved by the City of Foley Environmental Manager.

"Activities" shall mean (i) placing a portable building that is no larger than twelve feet by fifty feet (12' x 50') on the 1/10th acre portion of the Site and connecting it to necessary utilities; (ii) running necessary utilities to the 1/10th acre portion of the Site to serve the portable building; (iii) erecting or placing such temporary, portable cages, fences, enclosures and other systems to house or store animals being rehabilitated in such locations as approved by the City of Foley Environmental Manager on the Site; and (iv) operating and conducting non-profit wildlife rescue and rehabilitation services on the Site.

Preamble

Foley owns the Site, and Coastal desires to use the Site for the Activities.

Agreement

NOW, THEREFORE, in consideration of the premises, mutual agreements of the parties and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Site License; Limitations. Foley hereby grants a non-exclusive license to Coastal on the terms and conditions herein for the use of the Site for the Activities, but for no other purposes.
2. Term. The term of this Agreement shall commence on the effective date first above written and continue for three (3) years unless sooner terminated as herein provided; provided, however, that the term shall continue beyond the expiration date on a month-to-month basis if Coastal remains in possession of any portion of the Site following the expiration of the term and if notice was not provided by either party of their desire to terminate the agreement upon its expiration date. The term of this Agreement can be terminated by either party giving written notice to the other party of their desire to terminate the Agreement on ninety (90) days advance notice during the original term, or on thirty (30) days advance notice during the month-to-month extension of the original term.
3. Consideration. Coastal shall be responsible for any sales, use or income taxes due as a result of its operations at the Site along with all licenses and permit fees necessary for its operations. Coastal is also required to continuously operate a non-profit wildlife rescue and rehabilitation Site at the Site which is part of the consideration to Foley under this Agreement.
4. Inability to Use the Site for Activities. Coastal agrees and acknowledges that Foley shall not be liable for its inability to use the Site for the Activities which occur due to fire or other casualty, acts of God, weather conditions, changes in law or regulation or other acts of governmental authority or any other reason beyond Foley's reasonable control.
5. Assumption of Risk; Waiver of Claims. Coastal agrees that it assumes sole and absolute responsibility for all risk of personal injury, death, damage to property or loss of property suffered by Coastal or any of Coastal's employees, agents, contractors or other invitees of Coastal in connection with use of the Site. Not in limitation of the foregoing, Coastal accepts the Site "as is, where is and with all faults" and agrees that Foley shall have no responsibility for providing any security, lighting, utilities, or other services to the Site hereunder. Coastal acknowledges and agrees that Foley has made no warranties of any kind or nature concerning the Site, its condition, or its fitness or suitability. Coastal agrees to and hereby releases, waives and relinquishes any claim against Foley and the officers, employees, agents, servants, representatives, affiliates, successors and assigns of Foley, that directly or indirectly arise out of or is related to Coastal's use of the Site. Coastal, for itself, its employees, contractors and invitees, assumes the risk of any latent or patent defects that are or may be on the Site, and Coastal agrees that Foley shall not be responsible for any loss or damage on account of any such defects.
6. Indemnity. Coastal will indemnify, save harmless and defend Foley and the officers, employees, agents, servants, representatives, affiliates, successors and assigns of Foley from any and all liability, damage, expense, cause of action, suits, claims or judgments arising from injury to person or property on the Site.
7. Notices. Any notice to be given hereunder must be in writing and shall be deemed to be given when (a) hand delivered, or (b) one (1) business day after pickup by United Parcel

Services or Federal Express, or another similar overnight express service, in either case addressed to the parties at their respective addresses set forth below:

If to Coastal: Janet Ripp
Coastal Wildlife Rescue Center of South Alabama, Inc.
12078 Fernwood Drive West
Foley, Alabama 36535
Phone: 251-978-6690

If to Foley: City Clerk, City of Foley
407 East Laurel Ave.
Foley AL 36536

8. Utilities. Coastal shall initiate, contract for, and obtain in its name any and all utility services that it requires for use of the Site. Coastal shall pay all charges for the utility services furnished to it during the term as such charges become due. If Coastal fails to pay the utility charges for services furnished the Site, Foley may, at its option, pay such charges and Coastal shall promptly reimburse Foley for any such payments made by Foley, and/or Foley may declare Coastal in default and terminate the term hereunder.

9. Maintenance. Coastal, at its own expense, shall maintain the Site in a safe condition, and upon termination of this Agreement in any manner, shall deliver to Foley the Site in substantially the same condition as existed on the commencement date, ordinary wear and tear, casualty and condemnation excepted. Coastal will not permit any mechanic's or other liens to stand against the Site for labor or material furnished to it in connection with any improvements or installations made by it. No modifications or improvements to the Site shall be made without the prior written consent of Foley.

10. Duty to Obtain Permits and Licenses. Coastal shall, at its own cost and expense, procure each and every permit, license certificate, or other authorization and any renewals, extensions, or continuances of the same required in connection with the lawful and proper use of the Site for the Activities.

11. Insurance and Indemnity.

(a) Coastal, at its sole cost and expense, shall carry and maintain the insurance coverages specified on Exhibit "A" attached hereto to protect Foley from and against all claims for damages to persons and to property which may arise from Coastal's use of the Site.

(b) Coastal shall conduct all of its operations related to this Agreement in a safe and workmanlike manner, in full compliance with all applicable governmental laws, rules and regulations, at their own cost, expense and risk. Coastal hereby covenants and agrees with Foley to reimburse, indemnify and hold harmless Foley from and against any and all liabilities, claims, suits, judgments, losses or damages, either to person (including death) or property, including without limitation, all attorney's fees, consulting and engineering fees, court costs,

expenses, expert fees, discovery costs and all other costs arising out of, incident to, or resulting from the operations of Coastal, its employees, agents, representatives, contractors, successors or assigns, on the Site or in connection with the Activities.

(c) Coastal represents, warrants and covenants to Foley that Coastal and its agents, servants, employees, contractors and anyone acting on its behalf will not use, store, generate or dispose of "Hazardous Materials" (as hereinafter defined) in, on, under, around or about the Site or on Foley's other property. Coastal shall give Foley prompt written notice of the existence or discovery of the presence or contamination of the Site with Hazardous Materials. Without limiting the foregoing, Coastal also agrees that Coastal shall not install, operate or maintain any underground storage tanks on or about the Site. Coastal agrees that any and all oil, gas or petroleum containers or products that it keeps on the Site shall be kept and maintained in compliance with all applicable Environmental Laws. Should Coastal operate any machinery on the property and any oil or fuel or other contaminant is released onto the Site or Foley's adjacent property, or should any other discharge, improper storage, leakage, spillage, emission, contamination or pollution of any type occur upon or from the Site or Foley's adjacent property due to or associated with Coastal's use and occupancy thereof, Coastal, at Coastal's expense, shall immediately notify Foley, clean all property affected thereby to the satisfaction of Foley and any governmental body or agency having jurisdiction thereof, and remove any contaminated soil to a permitted Site. In the event Coastal or any of its agents, servants, employees, contractors or anyone acting on its behalf violates this Section of the Agreement, Coastal shall indemnify, defend and hold Foley harmless from and against any and all damages, claims, injuries, cost and expenses and liability arising therefrom or related thereto (including, without limitation, any fines, penalties, judgments, clean-up costs, litigation costs, experts' fees, attorneys' fees and consulting, engineering and construction costs), except to the extent that such liability, damage, loss, cost or expense may be contributed to or exacerbated in part by the negligence of Foley. The clean-up and disposal of such Hazardous Materials, including required air and water monitoring and documentation, shall be performed by Coastal at its sole cost and expense and shall be performed in accordance with all applicable laws, rules, regulations and ordinances. Foley shall have the right, but not the obligation, to review and monitor any such clean-up and disposal by Coastal. Within forty-five (45) days following the clean-up of any Hazardous Materials, Coastal shall furnish to Foley Hazardous Materials manifests and records which document transport and disposal of such material. Coastal's obligations to clean such property shall survive the termination of this Agreement and Coastal's vacancy from the Site. Coastal hereby waives any statute of limitations which might bar Foley from recovery against Coastal for damages Foley suffers, including clean-up costs, for any such pollution, emission, improper storage, contamination, leakage, discharge or spillage, on or near the Site resulting directly from Coastal's operations and use thereof. Coastal shall not be responsible for any contamination, pollution, emission, leakage, or damage to the Site and other affected property caused by the negligence or willful misconduct of Foley or by a prior user or occupant of the Site. As used herein, the term "Hazardous Material(s)" means any chemical, substance or material or combination thereof, which (i) is defined as a hazardous substance, hazardous material, hazardous waste, pollutant, toxic material, or contaminant under any Environmental Law (as defined below), and (ii) is a petroleum hydrocarbon, including crude oil or any fraction thereof, (iii) is hazardous to human health or safety or the environment due to its toxicity, corrosivity, flammability, explosivity, infectiousness, radioactivity, carcinogenicity or

reproductive toxicity, or (iv) is regulated, pursuant to any Environmental Law. As used herein, the term "Environmental Laws" shall include local, state and federal laws, judgments, ordinance, rules, regulations, codes and other governmental restrictions.

12. Surrender. Upon the expiration or termination of this Agreement in any manner, the Site shall be restored by Coastal to a condition similar to what existed at the commencement of this Agreement, free of any Hazardous Materials, ordinary wear and tear, casualty and condemnation excepted. Any personal property of Coastal that remains on the Site following the termination of this Agreement will, at the option of Foley, (i) be deemed abandoned; or (ii) become the property of Foley. Foley may, nonetheless, require Coastal to remove such fixtures, equipment and personal property as designated by Foley (the "Required Removables") at Coastal's sole cost. If Coastal fails to remove the Required Removables, Coastal shall pay Foley on demand all costs incurred in removing, storing and/or disposing of the Required Removables and for any damage to the Site. Coastal's obligation to observe or perform this covenant shall survive the expiration or other termination of this Agreement.

13. Default and Remedies. It is understood and agreed that in the event: (a) Coastal shall fail to make any payment of fees within five (5) business days after receipt of written notice therefor; or (b) the insolvency of Coastal, its adjudication as a bankrupt, voluntary or involuntary, or a general or partial assignment by it for the benefit of its creditors; or (c) Coastal should fail in the performance of any of the other covenants, provisions, or agreements herein contained; and should such default or failure continue for a period of thirty (30) days after receipt of written notice by Coastal of such default or failure or such additional time reasonably necessary to cure, provided Coastal commences to cure such default or failure within such initial 30-day period and diligently prosecutes such cure to completion, then, and in any of those events, Foley shall have the right and option to terminate this Agreement by giving Coastal written notice thereof, in which case this Agreement shall wholly cease and expire on the date fixed by such written notice and Coastal shall immediately remove its operations from the Site and Foley may dismiss Coastal from the Site, in accordance with law.

The right of Foley to terminate this Agreement, as herein set forth, is in addition to and not in exhaustion of such other rights that Foley has or causes of action that may accrue to Foley because of Coastal's failure to fulfill, perform, or observe the obligations, agreements, or covenants of this Agreement after notice and an opportunity to cure as set forth in this Section 13 and the exercise of and pursuit by Foley of any of the rights or causes of action accruing hereunder shall not be an exhaustion of such other rights or causes of action that Foley might otherwise have.

14. Attorney's Fees. In the event of default by either party hereunder and the subsequent employment by the other party of an attorney for the enforcement of its rights under this Agreement, the defaulting party agrees to pay and shall be taxed with a reasonable attorney's fee for the services of such attorney.

16. No Waiver. The failure of Foley to insist upon a strict performance of any of the terms, conditions and covenants herein shall not be deemed a waiver of any subsequent breach or default in the terms, conditions and covenants herein contained.

17. Limitation of Liability. In no event shall either party be liable to the other for consequential damages regardless of causation. With respect to tort claims, neither party will be liable to the other or to any other person for any act or omission of them (or their agents or employees), except for actual damages or costs incurred as a direct result of and caused directly by the willful misconduct or negligence of the parties hereto (or their agents or employees) in circumstances in which either party is deemed to be liable at law for such acts or omissions. Further, in any circumstance in which Foley is judicially determined to have some liability to Coastal, for whatever reason, such liability shall, in each such instance, be limited to the interest of Foley in the Site, and Coastal agrees to look solely to Foley's interest in the Site for the recovery of any such judgment, it being intended that Foley shall not be personally liable for any judgment or deficiency.

19. Governing Law, Jurisdiction and Venue. This Agreement shall be governed by and construed under the laws of the State of Alabama. The parties agree and submit to the jurisdiction of any state or federal court sitting in Baldwin County, Alabama over any suit, action or proceeding arising out of or relating to this Agreement. The parties further irrevocably and unconditionally waive any objection to the laying of venue of any such suit, action or proceeding brought in any such court and any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

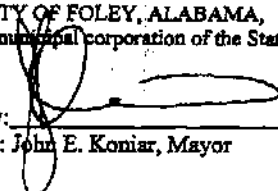
20. Assignment. This Agreement is a personal license in favor of Coastal and is not assignable or divisible by Coastal. The rights and obligations of Foley under this Agreement are freely assignable.

21. Entire Agreement. This Agreement (including all the exhibits and schedules hereto) constitutes the entire agreement between the parties with respect to the matters contained herein, and may be amended only by an instrument in writing signed by both parties hereto.

22. Miscellaneous. The parties to this Agreement are independent contractors and there is no relationship of partnership, joint venture, employment, franchise, or agency between the parties. This Agreement is to be interpreted, construed and governed by and in accordance with the laws of the State of Alabama. This Agreement constitutes the entire agreement between the parties with respect to the subject matter thereof and supersedes all prior agreements, whether written or oral, between the parties respecting such matters. No alteration, amendment, change or modification of this Agreement will be binding unless it is in writing and signed by both Foley and Coastal. This Agreement may not be recorded by Coastal in the real property records of Baldwin County, Alabama.

IN WITNESS WHEREOF, Foley and Coastal have caused this Agreement to be duly executed as of the date first set forth above.

CITY OF FOLEY, ALABAMA,
a municipal corporation of the State of Alabama

By: 
Its: John E. Koniar, Mayor

COASTAL WILDLIFE RESCUE CENTER OF
SOUTH ALABAMA, INC.,
an Alabama corporation

By: 
Its: JANET O. KIPP

Exhibit "A"

INSURANCE BY COASTAL WILDLIFE RESCUE CENTER OF SOUTH ALABAMA, INC.,

Coastal, at its own cost and expense, shall carry and maintain the following types of insurance, in the minimum amounts specified, as will protect Foley and its property from and against all claims for damages to persons and to property which may arise from Coastal's use of the Site and the performance of Coastal's operations at the Site or its Activities:

(A) Commercial General Liability insurance with limits of liability not less than \$2,000,000 each occurrence covering liability arising from, but not limited to, bodily injury and property damages; premises and operations including personal and advertising injury liability; products and completed operations; and contractual liability coverage.

(B) Business Automobile Liability Insurance covering owned, non-owned, and hired vehicles with combined primary and excess limits of liability not less than \$400,000, Combined Single Limit, for any one occurrence for bodily injury, including death, and property damage liability;

(C) Statutory Workers' Compensation insurance and Employer's Liability insurance with limits of not less than \$1,000,000 Bodily Injury each accident; \$1,000,000 Disease/each employee; and \$1,000,000 Disease/policy limit. Such policies shall provide a full Waiver of Subrogation in favor of Foley and its officers, representatives, agents and employees.

Coastal may purchase an Excess or Umbrella Liability Policy to provide the limits of coverage specified above so long as such umbrella provides coverage at least as broad as specified for the individual policies; is equivalent to or in excess of the limits specified for each individual policy; and the umbrella applies directly above the individual policy, without any gap in limit of liability.

The coverage provided by the policies required herein is primary coverage, regardless of policy language to the contrary, and any insurance carried by Foley, if any, shall be excess coverage.

All policies of insurance must be written with good and solvent underwriters acceptable to Foley, but Foley shall not unreasonably refuse to accept any such underwriter. Prior to the effective date of this Agreement, Coastal shall furnish to Foley original certificates of insurance signed by the licensed agent evidencing required coverage. Such certificates shall provide that the policies cannot be materially altered or canceled without thirty (30) days prior written notice to Coastal and Foley. Foley reserves the right to require certified copies of any and all policies required in this Agreement.

Coastal's insurance policies, excluding worker's compensation policies, shall include endorsements providing that Foley and its officers, representatives, agents and employees are to be covered as additional insured, with respect to liability arising out of Coastal's use of the Site.

Coastal's insurers shall agree to waive all rights of subrogation against Foley, its officers, representatives, agents and employees for losses arising from Coastal's use of the Site or from its Activities.

Coastal shall not allow any contractor or subcontractor to commence work on the Site until all similar insurance has been obtained by the contractor or subcontractor or until Coastal has provided such coverage for the contractor or subcontractor.

RESOLUTION NO. 4123-10

**MEMORIALIZING ACCEPTANCE OF DONATION OF BUILDING AND MONETARY
DONATION FOR ANIMAL RESCUE AT GRAHAM CREEK NATURE PRESERVE**

WHEREAS, Coastal Wildlife Rehab received a portable building for use as a clinic and a \$10,000 donation to build cages for injured wildlife, and

WHEREAS, Coastal Wildlife Rehab would like to make a donation of the portable clinic and \$10,000 to the City of Foley to establish a Wildlife Rehabilitation Center at the Graham Creek Nature Preserve, and

WHEREAS, Janet D. Ripp, Coastal Wildlife Rehab Director, along with Jody Young, will head the Wildlife Rehabilitation Center project with no financial support from the City of Foley.

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Foley, Alabama, as follows:

SECTION 1: Approves memorializing acceptance of the donation of a portable building and a \$10,000 monetary donation for establishing an animal rescue center at Graham Creek Nature Preserve.

SECTION 2: Janet D. Ripp, Coastal Wildlife Rehab Director, along with Jody Young, will head the Wildlife Rehabilitation Center project with no financial support from the City of Foley.

SECTION 3: This Resolution shall become effective immediately upon its adoption as required by law.

PASSED, ADOPTED AND APPROVED THIS 21st day of June 2010.


John E. Konlar, Mayor

ATTEST:


A. Perry Wilbourne
City Clerk/Administrator

Polk Plumbing
P.O. Box 250
Foley, AL 36536-0250
251-970-1555

To: Leslie Lassiter

From: Les + De Andrea Polk w/ Polk Plumbing

Here are the documents that you
requested. Thank you for all your help!

Date: 2/6/12

To: Leslie Lassiter

Box 971-3442

Number of pages including cover sheet 7

Polk Plumbing

8827 River Road
PO Box 250
Foley, AL 36536

ATT: Leslie
FAX# 971-3842

Invoice

date	invoice #
2-12	702645

BNI To
Coastal Wildlife Rescue Center 23004 Wolf Bay DR. FOLEY

P.O. No.	Terms	Project

Quantity	Description	Rate	Amount
	Install grinder pump and sewer lines to street tap also install water line from street to building		0.00
	Material used for job.		0.00
	1-grinder pump		
	510ft.-1 1/4" pvc pipe		
	510ft.-2" pvc pipe		
	2--valve box		
	1--pressure regulator		
	1--check valve		
	payment	000.00 - 000.00	6,000.00 -2,000.00
* AS of February 6, 2012 there is still an outstanding balance of:			
→			Total
			\$4,000.00



THE POWELL LAW FIRM, P.C.

7107 Gulf Shores Parkway - Mailing address: Post Office Box 4227
Gulf Shores, Alabama 36547
Telephone 251/968-2320 Fax 251/968-2322
powelllawfirm@gulfnet.com

DATE: 2/6/12

TO: DeAndra Polk

FAX: 943-7837

COMPANY:

FROM: Riley Powell Aubrey Ottosen

RE: Coastal Wildlife Rescue

Number of pages including cover sheet 5

MESSAGE:

Attached, please find the letters you've requested.

CONFIDENTIALITY NOTICE: The information contained in this facsimile message may be attorney privileged and no information and is intended only for the use of the individual or entity named above. If the reader of this message is not the recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone, and return the original message to us at the above address via the U.S. Postal Service. Thank You.

THE POWELL LAW FIRM, P. C.
ESTABLISHED 1987

101 CYPRESS AVENUE
POST OFFICE DRAWER 100
ANNEX/200A, ALABAMA 36608
Telephone: (205) 222-4901
FACSIMILE: (205) 222-4900

ANDER R. (AAR) POWELL, III
A. RILEY POWELL, IV
ANDER R. POWELL, (1979-1980)
ANDER R. POWELL, JR. (1916-1987)

1001 GOLF COURSE DRIVE
POST OFFICE DRAWER 100
GOLF COURSE, ALABAMA 36608
Telephone: (205) 222-4901
FACSIMILE: (205) 222-4900
POWELL, ANDER R. JR. T. JOHN

October 31, 2011

In Reply, Address Please to:

Gulf Shores

VIA CERTIFIED MAIL

Ms. Janet D. Ripp
12078 Fernwood Dr. W.
Foley, AL 36535

Re: Polk Plumbing v Coastal Wildlife Resort, Center, et al

Dear Ms. Ripp:

Please be advised that this firm represents Polk Plumbing, LLC and Leslie Polk for damages incurred due to your breach of contract and non-payment of debt/amounts owed. Direct all future correspondence to this office and do not contact Polk Plumbing and/or its representatives.

**UNDERSTAND THAT THIS LETTER SHALL SERVE AS WRITTEN
NOTICE OF A PENDING LAWSUIT. PLEASE TURN IT OVER TO
YOUR INSURANCE CARRIER IMMEDIATELY!**

If you would like to discuss settlement, please contact me immediately. Suit will be filed on September 9, 2011 if the case is not otherwise resolved.

With best regards, we are:

Sincerely,

THE POWELL LAW FIRM, P.C.

By: A. Riley Powell
A. Riley Powell, IV

Enclosure

Return to Sender	
a. Complete return to sender if address is incorrect. Mark with "X" if return to sender is required.	
b. Mark your return and address on the reverse so that we can return the card to you.	
c. Address only card to the back of the envelope. Do not use front of envelope for return.	
1. Address Addressee to:	
JANET RIPP 12078 FERNWOOD DR. W. POLEY, AL 36535	
2. Airmail Addressee to:	
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THE POWELL LAW FIRM, P. C.

ESTABLISHED 1997

301 EAST AVENUE
POST OFFICE DRAWER 249
GULF SHORES, ALABAMA 36535
TELEPHONE (251) 932-4183
FACSIMILE (251) 932-4183

ANDREW R. POWELL, III
A. RILEY POWELL, IV
ANDREW R. POWELL (1976-1994)
ANDREW R. POWELL, JR. (1916-1997)

7187 GOLF SHORES BLVD.
POST OFFICE DRAWER 227
GULF SHORES, ALABAMA 36535
TELEPHONE (251) 932-4183
FACSIMILE (251) 932-4183
POWELL LAW FIRM, P.C.

October 31, 2011

C. RILEY POWELL, P.C.

Gulf Shores

VIA CERTIFIED MAIL

Ms. Jody A. Young
10491 Hilltop Dr.
Foley, AL 36535

Re: Polk Plumbing v Coastal Wildlife Rescue Center, et al

Dear Ms. Young:

Please be advised that this firm represents Polk Plumbing, LLC and Leslie Polk for damages incurred due to your breach of contract and non-payment of debt/invoices owed. Direct all future correspondence to this office and do not contact Polk Plumbing and/or its representatives.

**UNDERSTAND THAT THIS LETTER SHALL SERVE AS WRITTEN
NOTICE OF A PENDING LAWSUIT. PLEASE TURN IT OVER TO
YOUR INSURANCE CARRIER IMMEDIATELY!**

If you would like to discuss settlement, please contact me immediately. Suit will be filed on September 9, 2011 if the case is not otherwise resolved.

With best regards, we are:

Sincerely,

THE POWELL LAW FIRM, P.C.

By: A. Riley Powell, IV

A. Riley Powell, IV

Enclosure

USPS	
A. Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.	
B. Print your name and address on the reverse so that we can return the card to you.	
C. Attach this card to the back of the envelope. It is on the front of the envelope.	
Article Addressed to:	
JANET RIPP 12476 FERNWOOD DR. W. POLEY, AL 36535	
A. Signature	
X	Signature
B. Address by (Printed Name)	
C. Date of Delivery	
D. Is delivery restricted (return card only)?	
If YES, enter delivery restriction code:	
E. Service type	
☐ Certified Mail	☐ Registered Mail
☐ Insured Mail	☐ Return Receipt for Merchandise
F. Restricted Delivery? (Printed Name)	
PS Form 3811, February 2004	

Coastal Wildlife Rescue Center

January 20, 2012

A letter was sent from the City attorney to CWRC on October 27, 2011 to give formal notice of CWRC's default of the lease agreement. If CWRC disputed the claim of default, they were to contact the City to cure the defaults.

Recently Janet Ripp, registered agent of CWRC, contacted the City to dispute the claims. She will be speaking at the February 6 work session on CWRC's behalf.

I, Leslie Lassitter, recommend that the City terminate the lease based on Coastal Wildlife Rescue Center of South Alabama's default of the lease terms (details below).

Lease Agreement:

#3. Consideration. Coastal shall be responsible for any sales, use or income taxes due as a result of its operations at the Site along with all licenses and permit fees necessary for its operations. Coastal is also required to continuously operate a non-profit wildlife rescue and rehabilitation Site at the Site which is part of the consideration to Foley under this Agreement.

#10. Duty to Obtain Permits and Licenses. Coastal shall, at its own cost and expense, procure each and every permit, license certificate, or other authorization and any renewals, extensions, or continuances of the same required in connection with the lawful and proper use of the Site for the Activities.

Concerns:

There has not been an operational facility as of January 20, 2012. The City has not been provided any licenses or permits that allow the operation of a wildlife rescue center.

Lease Agreement:

#8. Utilities. Coastal shall initiate, contract for, and obtain in its name any and all utility services that it requires for use of the Site. Coastal shall pay all charges for the utility services furnished to it during the term as such charges become due. If Coastal fails to pay the utility charges for services furnished the Site, Foley may, at its option, pay such charges and Coastal shall promptly reimburse Foley for any such payments made by Foley, and/or Foley may declare Coastal in default and terminate the term hereunder.

Concerns:

Riviera Utilities sent the City numerous unpaid bills for water service. As of December 2011, the final bill of over \$200 was paid and the meter was turned off.

Orange Beach Sewer contacted the City in January 2012 regarding unpaid bills for sewer service. Orange Beach had waived the tap fee of \$1800. CWRC still owed \$500 in unpaid sewer bills. Orange Beach spoke with Riviera regarding the disconnected water. Orange Beach will disconnect the sewer for lack of payment and write off the bill.

Baldwin EMC provides power to the facility. Currently there is no outstanding bill; however this service has been turned off as well.

Lease Agreement:

#9. Maintenance. Coastal, at its own expense, shall maintain the Site in a safe condition, and upon termination of this Agreement in any manner, shall deliver to Foley the Site in substantially the same condition as existed on the commencement date, ordinary wear and tear, casualty and condemnation excepted. Coastal will not permit any mechanic's or other liens to stand against the Site for labor or material furnished to it in connection with any improvements or installations made by it. No modifications or improvements to the Site shall be made without the prior written consent of Foley.

Concerns:

Polk Plumbing was hired to plumb and install the grinder pump for the facility. The original bill was for \$6000. Only one payment of \$2000 has been made since September 2010. Polk Plumbing has contacted an attorney for placement of a lien. As of this date there is still an outstanding bill of \$4000.

Lease Agreement:

#11. Insurance and Indemnity. Coastal, at its sole cost and expense, shall carry and maintain the insurance coverages specified on Exhibit "A" attached hereto to protect Foley from and against all claims for damages to persons and to property which may arise from Coastal's use of the Site.

Concerns:

The City does not have evidence of the insurance coverage described above.

Lease Agreement:

#13. Default and Remedies. It is understood and agreed that in the event: (a) Coastal shall fail to make any payment of fees within five (5) business days after receipt of written notice therefor; or (b) the insolvency of Coastal, its adjudication as a bankrupt, voluntary or involuntary, or a general or partial assignment by it for the benefit of its creditors; or (c) Coastal should fail in the performance of any of the other covenants, provisions, or agreements herein contained; and should such default or failure continue for a period of thirty (30) days after receipt of written notice by Coastal of such default or failure or such additional time reasonably necessary to cure, provided Coastal commences to cure such default or failure within such initial 30-day period and diligently prosecutes such cure to completion, then, and in any of those events, Foley shall have the right and option to terminate this Agreement by giving Coastal written notice thereof, in which case this Agreement shall wholly cease and expire on the date fixed by such written notice and Coastal shall immediately remove its operations from the Site and Foley may dismiss Coastal from the Site, in accordance with law.

The right of Foley to terminate this Agreement, as herein set forth, is in addition to and not in exhaustion of such other rights that Foley has or causes of action that may accrue to Foley because of Coastal's failure to fulfill, perform, or observe the obligations, agreements, or covenants of this Agreement after notice and an opportunity to cure as set forth in this Section 13 and the exercise of and pursuit by Foley of any of the rights or causes of action accruing hereunder shall not be an exhaustion of such other rights or causes of action that Foley might otherwise have.

Copy: CDD - Leslie (Pls. provide proof of insurance to Vickrey for perm. file)

N/A

RESOLUTION NO. 4161-10

**RESCINDING RESOLUTION 4123-10 AND APPROVING
ENTERING INTO A LAND USE AGREEMENT
WITH COASTAL WILDLIFE RESCUE CENTER OF SOUTH ALABAMA, INC.**

WHEREAS, the Foley City Council adopted Resolution 4123-10 on June 21, 2010 accepting a donation from Coastal Wildlife Rescue Center of South Alabama, Inc., and

WHEREAS, the Coastal Wildlife Rescue Center received a donation of a 12x50' portable building and \$10,000 to start a wildlife rehabilitation center, and

WHEREAS, the Coastal Wildlife Rescue Center would like to place their portable building at the Graham Creek Nature Preserve to rehabilitate birds and other wildlife needing additional care due to the oil spill, and

WHEREAS, the Coastal Wildlife Rescue Center would be responsible for all utilities, cleanup, and disposal of any hazardous material.

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Foley, Alabama, as follows:

SECTION 1: Rescinds Resolution 4123-10 and authorizes the Mayor to enter into a Land Usage Agreement with Coastal Wildlife Rescue Center of South Alabama, Inc. as outlined in the attached Land Usage Agreement, which is made a permanent part of this resolution upon its adoption.

LAND USAGE AGREEMENT

This Land Usage Agreement (the "Agreement") effective as of July ____, 2010 is between the CITY OF FOLEY, ALABAMA, a municipal corporation of the State of Alabama ("Foley") and COASTAL WILDLIFE RESCUE CENTER OF SOUTH ALABAMA, INC. an Alabama corporation ("Coastal").

Definitions

For purposes of this Agreement, the words and phrases set forth below shall have the following meanings:

"Site" shall mean the following real property, to-wit:

Approximately one-tenth (1/10th) of one (1) acre of land (0.1 acre), more or less, located approximately 637 feet East of and 400 feet South of the Northwestern (NW) corner of Tax Parcel ID number 61-06-13-0-000-003.010 within Section 13, Township 8 South, Range 4 East, Baldwin County Alabama as approved by the City of Foley Environmental Manager for the location of a portable building, plus such additional areas as approved by the City of Foley Environmental Manager on Tax Parcel ID number 61-06-13-0-000-003.010 and Tax Parcel ID number 61-06-14-0-000-004.000 for the location of temporary portable wildlife enclosures for animal rehabilitation as approved by the City of Foley Environmental Manager.

"Activities" shall mean (i) placing a portable building that is no larger than twelve feet by fifty feet (12' x 50') on the 1/10th acre portion of the Site and connecting it to necessary utilities; (ii) running necessary utilities to the 1/10th acre portion of the Site to serve the portable building; (iii) erecting or placing such temporary, portable cages, fences, enclosures and other systems to house or store animals being rehabilitated in such locations as approved by the City of Foley Environmental Manager on the Site; and (iv) operating and conducting non-profit wildlife rescue and rehabilitation services on the Site.

Preamble

Foley owns the Site, and Coastal desires to use the Site for the Activities.

Agreement

NOW, THEREFORE, in consideration of the premises, mutual agreements of the parties and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Site License; Limitations. Foley hereby grants a non-exclusive license to Coastal on the terms and conditions herein for the use of the Site for the Activities, but for no other purposes.
2. Term. The term of this Agreement shall commence on the effective date first above written and continue for three (3) years unless sooner terminated as herein provided; provided, however, that the term shall continue beyond the expiration date on a month-to-month basis if Coastal remains in possession of any portion of the Site following the expiration of the term and if notice was not provided by either party of their desire to terminate the agreement upon its expiration date. The term of this Agreement can be terminated by either party giving written notice to the other party of their desire to terminate the Agreement on ninety (90) days advance notice during the original term, or on thirty (30) days advance notice during the month-to-month extension of the original term.
3. Consideration. Coastal shall be responsible for any sales, use or income taxes due as a result of its operations at the Site along with all licenses and permit fees necessary for its operations. Coastal is also required to continuously operate a non-profit wildlife rescue and rehabilitation Site at the Site which is part of the consideration to Foley under this Agreement.
4. Inability to Use the Site for Activities. Coastal agrees and acknowledges that Foley shall not be liable for its inability to use the Site for the Activities which occur due to fire or other casualty, acts of God, weather conditions, changes in law or regulation or other acts of governmental authority or any other reason beyond Foley's reasonable control.
5. Assumption of Risk; Waiver of Claims. Coastal agrees that it assumes sole and absolute responsibility for all risk of personal injury, death, damage to property or loss of property suffered by Coastal or any of Coastal's employees, agents, contractors or other invitees of Coastal in connection with use of the Site. Not in limitation of the foregoing, Coastal accepts the Site "as is, where is and with all faults" and agrees that Foley shall have no responsibility for providing any security, lighting, utilities, or other services to the Site hereunder. Coastal acknowledges and agrees that Foley has made no warranties of any kind or nature concerning the Site, its condition, or its fitness or suitability. Coastal agrees to and hereby releases, waives and relinquishes any claim against Foley and the officers, employees, agents, servants, representatives, affiliates, successors and assigns of Foley, that directly or indirectly arise out of or is related to Coastal's use of the Site. Coastal, for itself, its employees, contractors and invitees, assumes the risk of any latent or patent defects that are or may be on the Site, and Coastal agrees that Foley shall not be responsible for any loss or damage on account of any such defects.
6. Indemnity. Coastal will indemnify, save harmless and defend Foley and the officers, employees, agents, servants, representatives, affiliates, successors and assigns of Foley from any and all liability, damage, expense, cause of action, suits, claims or judgments arising from injury to person or property on the Site.
7. Notices. Any notice to be given hereunder must be in writing and shall be deemed to be given when (a) hand delivered, or (b) one (1) business day after pickup by United Parcel

Services or Federal Express, or another similar overnight express service, in either case addressed to the parties at their respective addresses set forth below:

If to Coastal: Janet Ripp
Coastal Wildlife Rescue Center of South Alabama, Inc.
12078 Fernwood Drive West
Foley, Alabama 36535
Phone: 251-978-6690

If to Foley: City Clerk, City of Foley
407 East Laurel Ave.
Foley AL 36536

8. Utilities. Coastal shall initiate, contract for, and obtain in its name any and all utility services that it requires for use of the Site. Coastal shall pay all charges for the utility services furnished to it during the term as such charges become due. If Coastal fails to pay the utility charges for services furnished the Site, Foley may, at its option, pay such charges and Coastal shall promptly reimburse Foley for any such payments made by Foley, and/or Foley may declare Coastal in default and terminate the term hereunder.

9. Maintenance. Coastal, at its own expense, shall maintain the Site in a safe condition, and upon termination of this Agreement in any manner, shall deliver to Foley the Site in substantially the same condition as existed on the commencement date, ordinary wear and tear, casualty and condemnation excepted. Coastal will not permit any mechanic's or other liens to stand against the Site for labor or material furnished to it in connection with any improvements or installations made by it. No modifications or improvements to the Site shall be made without the prior written consent of Foley.

10. Duty to Obtain Permits and Licenses. Coastal shall, at its own cost and expense, procure each and every permit, license certificate, or other authorization and any renewals, extensions, or continuances of the same required in connection with the lawful and proper use of the Site for the Activities.

11. Insurance and Indemnity.

(a) Coastal, at its sole cost and expense, shall carry and maintain the insurance coverages specified on Exhibit "A" attached hereto to protect Foley from and against all claims for damages to persons and to property which may arise from Coastal's use of the Site.

(b) Coastal shall conduct all of its operations related to this Agreement in a safe and workmanlike manner, in full compliance with all applicable governmental laws, rules and regulations, at their own cost, expense and risk. Coastal hereby covenants and agrees with Foley to reimburse, indemnify and hold harmless Foley from and against any and all liabilities, claims, suits, judgments, losses or damages, either to person (including death) or property, including without limitation, all attorney's fees, consulting and engineering fees, court costs,

expenses, expert fees, discovery costs and all other costs arising out of, incident to, or resulting from the operations of Coastal, its employees, agents, representatives, contractors, successors or assigns, on the Site or in connection with the Activities.

(c) Coastal represents, warrants and covenants to Foley that Coastal and its agents, servants, employees, contractors and anyone acting on its behalf will not use, store, generate or dispose of "Hazardous Materials" (as hereinafter defined) in, on, under, around or about the Site or on Foley's other property. Coastal shall give Foley prompt written notice of the existence or discovery of the presence or contamination of the Site with Hazardous Materials. Without limiting the foregoing, Coastal also agrees that Coastal shall not install, operate or maintain any underground storage tanks on or about the Site. Coastal agrees that any and all oil, gas or petroleum containers or products that it keeps on the Site shall be kept and maintained in compliance with all applicable Environmental Laws. Should Coastal operate any machinery on the property and any oil or fuel or other contaminant is released onto the Site or Foley's adjacent property, or should any other discharge, improper storage, leakage, spillage, emission, contamination or pollution of any type occur upon or from the Site or Foley's adjacent property due to or associated with Coastal's use and occupancy thereof, Coastal, at Coastal's expense, shall immediately notify Foley, clean all property affected thereby to the satisfaction of Foley and any governmental body or agency having jurisdiction thereof, and remove any contaminated soil to a permitted Site. In the event Coastal or any of its agents, servants, employees, contractors or anyone acting on its behalf violates this Section of the Agreement, Coastal shall indemnify, defend and hold Foley harmless from and against any and all damages, claims, injuries, cost and expenses and liability arising therefrom or related thereto (including, without limitation, any fines, penalties, judgments, clean-up costs, litigation costs, experts' fees, attorneys' fees and consulting, engineering and construction costs), except to the extent that such liability, damage, loss, cost or expense may be contributed to or exacerbated in part by the negligence of Foley. The clean-up and disposal of such Hazardous Materials, including required air and water monitoring and documentation, shall be performed by Coastal at its sole cost and expense and shall be performed in accordance with all applicable laws, rules, regulations and ordinances. Foley shall have the right, but not the obligation, to review and monitor any such clean-up and disposal by Coastal. Within forty-five (45) days following the clean-up of any Hazardous Materials, Coastal shall furnish to Foley Hazardous Materials manifests and records which document transport and disposal of such material. Coastal's obligations to clean such property shall survive the termination of this Agreement and Coastal's vacancy from the Site. Coastal hereby waives any statute of limitations which might bar Foley from recovery against Coastal for damages Foley suffers, including clean-up costs, for any such pollution, emission, improper storage, contamination, leakage, discharge or spillage, on or near the Site resulting directly from Coastal's operations and use thereof. Coastal shall not be responsible for any contamination, pollution, emission, leakage, or damage to the Site and other affected property caused by the negligence or willful misconduct of Foley or by a prior user or occupant of the Site. As used herein, the term "Hazardous Material(s)" means any chemical, substance or material or combination thereof, which (i) is defined as a hazardous substance, hazardous material, hazardous waste, pollutant, toxic material, or contaminant under any Environmental Law (as defined below), and (ii) is a petroleum hydrocarbon, including crude oil or any fraction thereof, (iii) is hazardous to human health or safety or the environment due to its toxicity, corrosivity, flammability, explosivity, infectiousness, radioactivity, carcinogenicity or

reproductive toxicity, or (iv) is regulated, pursuant to any Environmental Law. As used herein, the term "Environmental Laws" shall include local, state and federal laws, judgments, ordinance, rules, regulations, codes and other governmental restrictions.

12. Surrender. Upon the expiration or termination of this Agreement in any manner, the Site shall be restored by Coastal to a condition similar to what existed at the commencement of this Agreement, free of any Hazardous Materials, ordinary wear and tear, casualty and condemnation excepted. Any personal property of Coastal that remains on the Site following the termination of this Agreement will, at the option of Foley, (i) be deemed abandoned; or (ii) become the property of Foley. Foley may, nonetheless, require Coastal to remove such fixtures, equipment and personal property as designated by Foley (the "Required Removables") at Coastal's sole cost. If Coastal fails to remove the Required Removables, Coastal shall pay Foley on demand all costs incurred in removing, storing and/or disposing of the Required Removables and for any damage to the Site. Coastal's obligation to observe or perform this covenant shall survive the expiration or other termination of this Agreement.

13. Default and Remedies. It is understood and agreed that in the event: (a) Coastal shall fail to make any payment of fees within five (5) business days after receipt of written notice therefor; or (b) the insolvency of Coastal, its adjudication as a bankrupt, voluntary or involuntary, or a general or partial assignment by it for the benefit of its creditors; or (c) Coastal should fail in the performance of any of the other covenants, provisions, or agreements herein contained; and should such default or failure continue for a period of thirty (30) days after receipt of written notice by Coastal of such default or failure or such additional time reasonably necessary to cure, provided Coastal commences to cure such default or failure within such initial 30-day period and diligently prosecutes such cure to completion, then, and in any of those events, Foley shall have the right and option to terminate this Agreement by giving Coastal written notice thereof, in which case this Agreement shall wholly cease and expire on the date fixed by such written notice and Coastal shall immediately remove its operations from the Site and Foley may dismiss Coastal from the Site, in accordance with law.

The right of Foley to terminate this Agreement, as herein set forth, is in addition to and not in exhaustion of such other rights that Foley has or causes of action that may accrue to Foley because of Coastal's failure to fulfill, perform, or observe the obligations, agreements, or covenants of this Agreement after notice and an opportunity to cure as set forth in this Section 13 and the exercise of and pursuit by Foley of any of the rights or causes of action accruing hereunder shall not be an exhaustion of such other rights or causes of action that Foley might otherwise have.

14. Attorney's Fees. In the event of default by either party hereunder and the subsequent employment by the other party of an attorney for the enforcement of its rights under this Agreement, the defaulting party agrees to pay and shall be taxed with a reasonable attorney's fee for the services of such attorney.

16. No Waiver. The failure of Foley to insist upon a strict performance of any of the terms, conditions and covenants herein shall not be deemed a waiver of any subsequent breach or default in the terms, conditions and covenants herein contained.

17. Limitation of Liability. In no event shall either party be liable to the other for consequential damages regardless of causation. With respect to tort claims, neither party will be liable to the other or to any other person for any act or omission of them (or their agents or employees), except for actual damages or costs incurred as a direct result of and caused directly by the willful misconduct or negligence of the parties hereto (or their agents or employees) in circumstances in which either party is deemed to be liable at law for such acts or omissions. Further, in any circumstance in which Foley is judicially determined to have some liability to Coastal, for whatever reason, such liability shall, in each such instance, be limited to the interest of Foley in the Site, and Coastal agrees to look solely to Foley's interest in the Site for the recovery of any such judgment, it being intended that Foley shall not be personally liable for any judgment or deficiency.

19. Governing Law, Jurisdiction and Venue. This Agreement shall be governed by and construed under the laws of the State of Alabama. The parties agree and submit to the jurisdiction of any state or federal court sitting in Baldwin County, Alabama over any suit, action or proceeding arising out of or relating to this Agreement. The parties further irrevocably and unconditionally waive any objection to the laying of venue of any such suit, action or proceeding brought in any such court and any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

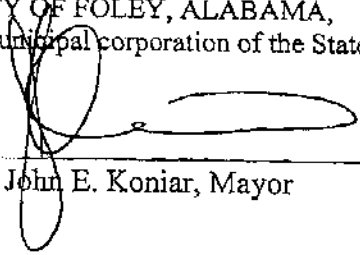
20. Assignment. This Agreement is a personal license in favor of Coastal and is not assignable or divisible by Coastal. The rights and obligations of Foley under this Agreement are freely assignable.

21. Entire Agreement. This Agreement (including all the exhibits and schedules hereto) constitutes the entire agreement between the parties with respect to the matters contained herein, and may be amended only by an instrument in writing signed by both parties hereto.

22. Miscellaneous. The parties to this Agreement are independent contractors and there is no relationship of partnership, joint venture, employment, franchise, or agency between the parties. This Agreement is to be interpreted, construed and governed by and in accordance with the laws of the State of Alabama. This Agreement constitutes the entire agreement between the parties with respect to the subject matter thereof and supersedes all prior agreements, whether written or oral, between the parties respecting such matters. No alteration, amendment, change or modification of this Agreement will be binding unless it is in writing and signed by both Foley and Coastal. This Agreement may not be recorded by Coastal in the real property records of Baldwin County, Alabama.

IN WITNESS WHEREOF, Foley and Coastal have caused this Agreement to be duly executed as of the date first set forth above.

CITY OF FOLEY, ALABAMA,
a municipal corporation of the State of Alabama

By: 
Its: John E. Koniar, Mayor

COASTAL WILDLIFE RESCUE CENTER OF
SOUTH ALABAMA, INC.,
an Alabama corporation

By: _____
Its: _____

Exhibit "A"

INSURANCE BY COASTAL WILDLIFE RESCUE CENTER OF SOUTH ALABAMA, INC.,

Coastal, at it's own cost and expense, shall carry and maintain the following types of insurance, in the minimum amounts specified, as will protect Foley and its property from and against all claims for damages to persons and to property which may arise from Coastal's use of the Site and the performance of Coastal's operations at the Site or its Activities:

(A) Commercial General Liability insurance with limits of liability not less than \$2,000,000 each occurrence covering liability arising from, but not limited to, bodily injury and property damages; premises and operations including personal and advertising injury liability; products and completed operations; and contractual liability coverage.

(B) Business Automobile Liability Insurance covering owned, non-owned, and hired vehicles with combined primary and excess limits of liability not less than \$400,000, Combined Single Limit, for any one occurrence for bodily injury, including death, and property damage liability;

(C) Statutory Workers' Compensation insurance and Employer's Liability insurance with limits of not less than \$1,000,000 Bodily Injury each accident; \$1,000,000 Disease/each employee; and \$1,000,000 Disease/policy limit. Such policies shall provide a full Waiver of Subrogation in favor of Foley and its officers, representatives, agents and employees.

Coastal may purchase an Excess or Umbrella Liability Policy to provide the limits of coverage specified above so long as such umbrella provides coverage at least as broad as specified for the individual policies; is equivalent to or in excess of the limits specified for each individual policy; and the umbrella applies directly above the individual policy, without any gap in limit of liability.

The coverage provided by the policies required herein is primary coverage, regardless of policy language to the contrary, and any insurance carried by Foley, if any, shall be excess coverage.

All policies of insurance must be written with good and solvent underwriters acceptable to Foley, but Foley shall not unreasonably refuse to accept any such underwriter. Prior to the effective date of this Agreement, Coastal shall furnish to Foley original certificates of insurance signed by the licensed agent evidencing required coverage. Such certificates shall provide that the policies cannot be materially altered or canceled without thirty (30) days prior written notice to Coastal and Foley. Foley reserves the right to require certified copies of any and all policies required in this Agreement.

Coastal's insurance policies, excluding worker's compensation policies, shall include endorsements providing that Foley and its officers, representatives, agents and employees are to be covered as additional insured, with respect to liability arising out of Coastal's use of the Site.

Coastal's insurers shall agree to waive all rights of subrogation against Foley, its officers, representatives, agents and employees for losses arising from Coastal's use of the Site or from its Activities.

Coastal shall not allow any contractor or subcontractor to commence work on the Site until all similar insurance has been obtained by the contractor or subcontractor or until Coastal has provided such coverage for the contractor or subcontractor.

RESOLUTION NO. 4123-10

**MEMORIALIZING ACCEPTANCE OF DONATION OF BUILDING AND MONETARY
DONATION FOR ANIMAL RESCUE AT GRAHAM CREEK NATURE PRESERVE**

WHEREAS, Coastal Wildlife Rehab received a portable building for use as a clinic and a \$10,000 donation to build cages for injured wildlife, and

WHEREAS, Coastal Wildlife Rehab would like to make a donation of the portable clinic and \$10,000 to the City of Foley to establish a Wildlife Rehabilitation Center at the Graham Creek Nature Preserve, and

WHEREAS, Janet D. Ripp, Coastal Wildlife Rehab Director, along with Jody Young, will head the Wildlife Rehabilitation Center project with no financial support from the City of Foley.

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Foley, Alabama, as follows:

SECTION 1: Approves memorializing acceptance of the donation of a portable building and a \$10,000 monetary donation for establishing an animal rescue center at Graham Creek Nature Preserve.

SECTION 2: Janet D. Ripp, Coastal Wildlife Rehab Director, along with Jody Young, will head the Wildlife Rehabilitation Center project with no financial support from the City of Foley.

SECTION 3: This Resolution shall become effective immediately upon its adoption as required by law.

PASSED, ADOPTED AND APPROVED THIS 21st day of June 2010.



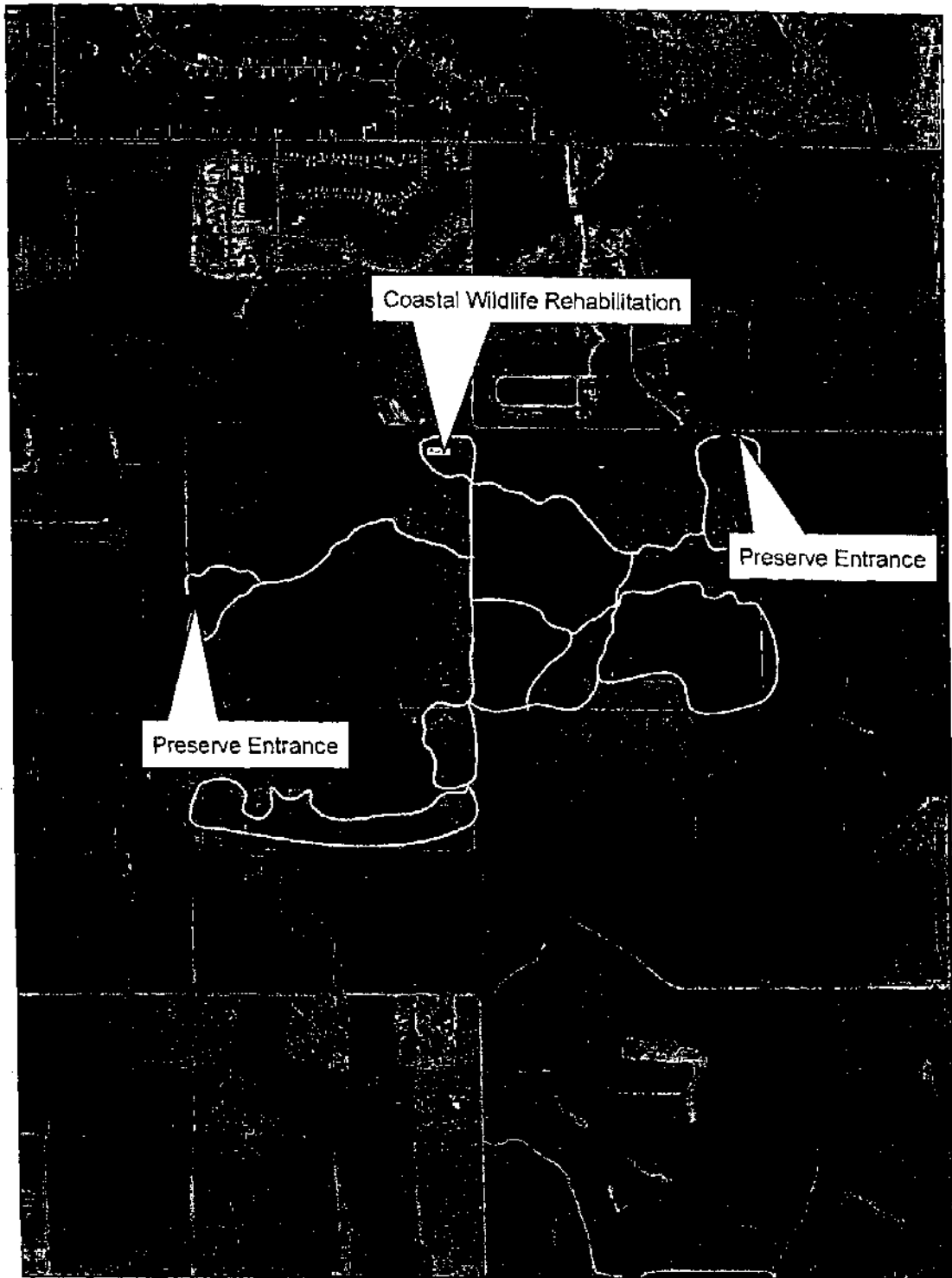
John E. Koniar, Mayor

ATTEST:



A. Perry Wilbourne
City Clerk/Administrator

Graham Creek Nature Preserve



0 875 1,750 3,500 Feet

