

**MOBILE BAY NATIONAL ESTUARY PROGRAM
LANDOWNER ACCESS AGREEMENT
Twelve Mile Creek Headwaters Restoration Project**

THIS ACCESS AGREEMENT is made this _____ day of June, TWO THOUSAND and EIGHTEEN by and between _____, hereinafter called "Property Owner", and the Mobile Bay National Estuary Program, hereinafter called "MBNEP", regarding the Twelve Mile Creek Headwaters Restoration project.

Whereas, Coastal Alabama is blessed with estuaries that support both fresh and saltwater species and serve as nursery habitat for many commercially and recreationally important fish and shellfish;

Whereas, the Mobile Bay National Estuary Program was established in 1995 to promote the wise stewardship of the Mobile Bay estuary including restoration of access, shorelines, fisheries, heritage, environmental health and resiliency and water quality;

Whereas, Twelve Mile Creek is one of the main tributaries in the headwaters of the Three Mile Creek Watershed, located in Mobile County, Alabama, and is within the Mobile Bay estuary.;

Whereas, the *Three Mile Creek Watershed Management Plan (2014)* identified streambank erosion in Twelve Mile Creek as a source of sediments being transported downstream in the Three Mile Creek watershed;

Whereas, the *Watershed Management Plan* recommends and identifies areas for stabilizing of stream segments, reducing streambank erosion, and improving stormwater management in the Three Mile Creek Watershed;

Whereas, the City of Mobile supports efforts to reduce excessive sediment loads by restoring stream segments as indicated in the *Watershed Management Plan (2014)*;

Whereas, MBNEP has received funding from the U.S. Environmental Protection Agency through the Gulf Coast Ecosystem Restoration Council and the RESTORE Act to facilitate stream restoration projects within the Twelve Mile Creek tributary, one of the main tributaries within the headwaters of the Three Mile Creek Watershed.;

Witnesseth, that for and in consideration of the mutual covenants and benefits contained herein, the receipt and sufficiency of which is hereby acknowledged, the Property Owner(s) and the MBNEP agree as follows:

1. The Property Owner(s) agrees to allow restoration activities on the property as described in Mobile County, AL parcel numbers:

_____ (parcel numbers)

Mobile (county)

Mobile, AL 36608 (town, state & zip code)

2. **Restoration Project:** This landowner project agreement allows the MBNEP and/or its partners to undertake site assessments, surveying, geotechnical investigations, wetlands delineations, and other activities necessary to plan and design stream restoration activities on land owned by the Property Owner(s) (hereinafter the "Restoration Project"). The project, as depicted on the site map (Appendix A), includes the property referenced by Mobile County parcel number(s): _____

MBNEP shall be responsible for all costs arising from or relating to design and construction of the Restoration Project, and maintenance for two (2) years following completion of the Restoration Project. The Project shall not commence until the Property Owner has reviewed and approved the complete scope of work drawings, engineering, permits and construction methods of the MBNEP. Once approved an onsite preconstruction meeting will take place between the Property Owner and MBNEP representatives prior to any work beginning.

3. **Access:** In signing this agreement, the Property Owner grants to the MBNEP, or its designees, the authority to conduct site assessments, surveying, geotechnical investigations, wetland delineations, and other activities necessary to plan, design, and engineer the Restoration Project. The Property Owner grants to the MBNEP and its partners access to the site at reasonable times for conducting project-related activities such as inspecting work, surveying, and monitoring. The Property Owner retains all rights to control trespass and retains all responsibility for taxes, assessments, and granting rights-of-way.

4. **Warranty:** *The Property Owner understands that neither the MBNEP nor its agent(s) makes any claims or warranties as to the life of any projects completed by the MBNEP. The only warranties, express or implied, for work performed under this agreement are those that may be made by the firms retained to do the project design, or installation work described in the permits, proposal, or project Drawings and Specifications, and MBNEP expressly warrants and represents that Property Owner is an intended third-party beneficiary of any agreement between MBNEP and any consultant, contractor, or provider of labor, equipment or services for or relating to the Restoration Project. If the Property Owner agrees to allow the MBNEP or its agent(s) to undertake the survey and design work for this project, MBNEP or its agent(s) expressly warrant that all such services and results shall be suitable for their intended purposes and shall meet or exceed the standard for such similar services provided by responsible professionals, contractors or consultants in the area. If the MBNEP or its agent(s) agree to undertake construction in accordance with the project Drawings and Specifications, MBNEP or its agent(s) expressly warrant that all such construction shall meet the designated plans and specifications or other requirements and shall be suitable for their intended purpose and shall be*

in conformance with all laws, codes, regulations and other standards for such work in the area.

5. **Hold Harmless:** The MBNEP, its officers, agents and employees agree that Property Owner, its officers, agents, employees and representatives (hereinafter the “Released Entities”) will not be responsible for any claims, causes of action, injuries, or damages of any type arising out of or relating to the Restoration Project. Notwithstanding the foregoing, MBNEP will not be responsible for any claims, causes of action, injuries or damages, which are the result of the intentional, willful, or wonton actions of Property Owner, its officers agents, employees, and representatives. MBNEP agrees to fully and completely defend, indemnify and hold harmless the Released Entities from and against any and all claims, causes of action, suits, demands, injuries, costs, fees, expenses and damages of any kind whatsoever arising from or relating to the Restoration Project or the work of MBNEP or its agents, consultants, suppliers or contractors.

6. **Miscellaneous:** No work or access shall be allowed pursuant to this Agreement on Sundays or otherwise during any church service; No work or access shall be carried out in any manner that constitutes a public or a private nuisance. Property Owner shall have no obligation to provide for the safety or well-being of any persons accessing the Property pursuant to this Agreement. MBNEP shall, at all times pertinent to this Agreement, maintain general liability insurance with minimum limits of at least \$1 million per occurrence and \$3 million in the aggregate, shall cause Property Owner, its agents, employees, and members to be named as additional insureds, and shall deliver to Property Owner a certificate of such insurance prior to first accessing the Property. MBNEP shall use its best efforts to see that all work performed pursuant to this Agreement is performed in accordance with applicable laws, regulations, ordinances, and environmentally-responsible standards. Property Owner shall have no responsibility for maintenance of the Restoration Project. MBNEP shall promptly repair any and all damage to the Property caused by access and/or by the work in accordance with the contract documents. MBNEP shall cause the Restoration Project to be completed in accordance with construction contract documents.

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

PROPERTY OWNER

BY _____

Witness

Date

Date

MOBILE BAY NATIONAL ESTUARY PROGRAM

BY _____

Witness

Date

Date

Commented [JE1]: Should we have these notarized?

Appendix A

DAF, DAF1, & DAF1A Stream Parcels



Location	Name-First	Name Last	PH
1	Charles W	Crowder, III	415/71
2	Christopher & Elizabeth	Davis	55663
3	Jerry	Silverstein	47867
4	Morby Britton & Naomi	Long	57283
5	Danny	Lyndell	81943
6	Victoria-President	Phelps	317633
7	Victoria-President	Phelps	66823
8	James & Judith	Stauder	8429
9	Jerry	Silverstein	66478
10	Victoria	Phelps	16574
11	Ronald	Weaver	44963
12	Victoria-President	Phelps	6513
13	Jerry	Silverstein	66476
14	McGuire Corporation of		12318
15	Victoria	Phelps	43/28
16	Victoria	Phelps	49327
17	Camille & Jason	Long	66840
18	Camille & Jason	Long	8763
19	John	White-spencer	99372
20	Ruthann	Partain	9090
21	Ruthann	Partain	66999
22	Stephen	Callahan	66720
23	Lake Forest Lot Exchange Inc		66866
24	Luther	Young	55/38
25	Jerry	Silverstein	66724
26	Jerry	Silverstein	66723
27	Linda	Coker	20773
28	Manha	Coker	49162
29	Manha	Coker	55869
30	Manha	Coker	66867
31	Linda	Grandinetti	66866
32	Jerry	Silverstein	66865
33	Michael & Joy	Johnson	55582
34	Thomas	Rosandich	10412
35	William & Ruby	Gravat	17085
36	Stephen & Margaret	Snedlmeyer	56071
37	Stephen & Margaret	Snedlmeyer	66382
38	The Hart Family Alabama LLC	Hart	31358
39	Sylvia	Holdings/Holter	11118
40	Kimberly	Hise	7384
41	Stephen	Callahan	66720
42	Joseph R Pellister	Trust	59489
43	Stephen	Callahan	66728
44	Gregory Stanley	Stanley	3/402
45	Marina Pappas	Pappas	8811
46	William Doherty	Doherty	66725
47			30765
48	David F Jr. & Kimberly	Powell	7157
49	Jerry	Silverstein	73019
50	Jerry	Silverstein	50200
51	Jerry	Silverstein	73020
52	Holly	Sherrill	44969
53	Stephen	Callahan	66726
54	Sarah	Jirka	66727
55	City of Daphne		326899

Commented [JE2]: Obviously we need the site specific maps plugged in here.

