

Seabrook Island Dolphin Education Program Agreement

THIS AGREEMENT is made and entered into this ___ day of ~~January~~February, 2021~~10~~ by and between Lowcountry Marine Mammal Network, ("LMMN"), a 501(c)(3) organization focused on protecting marine mammals (dolphins, whales and seals) in South Carolina, with a principal office at 1367 Clearbrook Street, North Charleston, SC 29405, and the Town of Seabrook Island, (the "Town") a South Carolina municipality, with a principal office at 2001 Seabrook Island Road, Seabrook Island, South Carolina.

WHEREAS, "Strand feeding" is a unique hunting behavior in which bottlenose dolphins (*Tursiops truncatus*) work together in small groups to herd fish towards the shore. They then use a powerful wave to push the fish onto the shore and then lunge onto the shore to grab the fish; and

WHEREAS, the Town is one of a few locations in the U.S. that dolphins are known to strand feed; and

WHEREAS, Giving the dolphins their space while strand feeding is important to ensure they are not harassed and this specialized hunting strategy is not disrupted; and

WHEREAS, The Department of Fisheries of the National Oceanic and Atmospheric Administration ("NOAA") has received reports of beach goers trying to interact with (touch, chase, or swim with) or hand feed the dolphins as they strand feed on the beaches of Seabrook Island, South Carolina in apparent violation of the Marine Mammal Protection Act (the "MMPA"); and

WHEREAS, the parties hereto wish to undertake a project called the Seabrook Island Dolphin Education Program, (hereinafter, the "Project") the purpose of which is to reduce disturbance to strand feeding dolphins and minimize violations of the MMPA, as well as better understand the local dolphin population and this feeding strategy. Components of the Project include community outreach on/near the beaches where dolphins are known to strand feed, as well as distribution of outreach materials throughout the Town. Data will be collected to help biologists better understand this unique strand feeding behavior (i.e., frequency, number of dolphins, photo documentation).

NOW THEREFORE in consideration of the foregoing premises and the mutual covenants and conditions contained herein, the parties hereto agree as follows:

1. Expected Project Outcomes; Publication of Findings: The expected results of the Project include a reduction in disturbance by beachgoers to strand feeding dolphins, an increased number of residents and visitors to the Town educated about dolphin conservation, and a better

understanding of dolphin strand feeding behavior, local bottlenose dolphin population, and MMPA violations. The Project will also allow LMMN to monitor the strand feeders to gain more insight into their behavior, and will help it understand if the behavior is increasing or decreasing among animals, identify individual strand feeders through photo-identification and determine if there is seasonality relevance to strand feeding. The information obtained as a result of the Project will allow LMMN to continue to monitor the behavior and understand the risks of human interactions. With this information, LMMN could, subject to the provisions of Section 9 hereof, publish its findings in a peer-reviewed publication and provide information content for the Town's website.

2. Project Team: LMMN will establish a project team consisting of ~~four-three~~ (34) individuals (hereinafter, the "Project Team") to be assigned to the Project. The Project Team will establish relationships with the Town to better understand the value of this behavior to the community while working together towards the conservation of a rare and unique behavior. A list of all Project Team members and their qualifications are attached hereto as Exhibit A.

3. Project Period: The Project will start once the Principal Investigator (hereinafter, the "PI") is able to recruit and train sufficient volunteers from among Seabrook Island residents. It is anticipated that the project will begin on April ____, 202~~10~~ and it will conclude on December 31, 202~~10~~ (hereinafter, the "Project Period"). LMMN will assign not less than one (1) person (hereinafter "Project Team Members") on the beach during peak times for strand feeding to observe and record dolphin behavior and engage the public about maintaining a safe viewing distance.

4. Goals of the Project: The Project goals will include the following:

- A. Increase awareness of residents of and visitors to the Town about conservation of the bottlenose dolphin population that resides in and around Capt. Sam's Inlet;
- B. Education of both local residents and visitors about dolphin strand feeding behavior. Project Team Members will provide beach goers with information about the unique behavior, laws protecting wild dolphins from illegal feeding and harassment, as well as ways to safely view the behavior and animals without disturbing them; and

- C. The Project will allow LMMN to gain information about habitat use and individual strand feeding dolphins to help understand the broader impact of habitat destruction and its effects on this population of dolphins.
5. Project Undertakings by LMMN: The Project will include the following actions and activities to be undertaken by LMMN during the Project Period:
- A. Project Team Members will identify feeding hotspots to allow the parties hereto to focus conservation efforts on those areas as well as understand the impacts on individual strand feeders if these habitats are lost or if the behavior is abandoned. Information regarding the locations of the feeding hotspots will be provided by LMMN to the Town as promptly as possible.
 - B. Beach observations will be the main focus of the Project. During these observations, Project Team Members and volunteers will collect dolphin behavior data and will have an opportunity to talk with beach goers and answer questions about strand feeding behavior and encourage responsible viewing. Observations will be conducted once weekly by the PI, while interns and volunteers will cover the remainder of the week. Observations will take place for four (4) hours each day during the Project Period. LMMN will seek to obtain volunteers among the Town's residents to conduct observations on the days Project Team Members are not anticipated to be present so the week is covered during the Project Period. LMMN will provide the Town with the name of each Seabrook Island volunteer as promptly as is reasonably practicable.
 - C. Project Team Members will educate local residents and visitors of the Town about dolphin conservation, with the goal of reducing disturbance to strand feeding dolphins. Project Team Members will inform residents and visitors that the Town is very unique because it is one of the few places where dolphins are known to strand feed and the public can easily access the area where strand feeding occurs and view this behavior, and advise beach goers of the factors which threaten these dolphins.
 - D. Project Team Members will request local businesses (e.g., hotels, shops and marinas) to help distribute outreach materials.
 - E. A primary objective of the Project is to educate beach goers about the importance of reducing human interference, both from the beach and water, during strand feeding

for fear that the dolphins will abandon this behavior on the Town's beaches. Project Team Members will be present on the beach each week day during the peak season (June-August) during the Project Period and 4 days per week including peak weekends during other parts of the year, at times in which biologists believe strand feeding is most likely to occur, two hours before to two hours after low tide. Project Team Members will ask beach goers to follow the following viewing guidelines to reduce disturbance to strand feeding dolphins:

- (A) View dolphins from a distance and get a better view using binoculars;
- (B) Give dolphins sufficient space and keep dogs away from the shore where dolphins may be present during periods of strand feeding;
- (C) Avoid loud or sudden movements near the dolphins while they are strand feeding; and
- (D) Avoid feeding or attempting to feed dolphins, as such activities are both harmful and illegal (this includes throwing fish on the shore back to dolphins while they are strand feeding).

In discharging their responsibilities under this Section 5E, Project Team Members will treat beach goers with respect and will respect the beach goers right and ability to enjoy his or her beach experience. Project Team Members will not engage beach goers who express no interest in the education effort.

- F. Project Team Members will collect data that could be used by LMMN to better understand the resident population of dolphins, the number of dolphins in the immediate area, the number of dolphins participating in stand feeding and whether and to what extent MMPA violations occur. Copies of all data and information collected by Team Members will be provided to the Town as promptly as is reasonably practicable.
- G. Project Team Members will take photographs of dorsal fin dolphin which will be used to identify individual dolphin which will then be compared to a long-standing photo-id catalogue housed at NOAA/National Ocean Service. Copies of all photographs taken by Project Team Members will be given to the Town as promptly as is reasonably practicable.

- H. During the Project Period, Project Team Members will set up dolphin conservation educational displays at local events and presentations on the Project will be given to local community groups and water enthusiasts and local community groups.
- I. Project Team Members may install interpretive signs about strand feeding only after receiving prior written permission from the Town.
- J. Project Team Members will wear tee shirts and identification tags approved by the Town at all times when they are on the Town's beaches.

6. Project Undertakings by the Town: The Town shall (A) request access for Project Team Members as required through the Seabrook Island Property Association gate, (B) assist LMMN in obtaining Seabrook Island volunteers to conduct observations and (C) arrange for introductions of Project Team Members to merchants and local community groups.

7. Compensation, Materials, and Travel Expenses; Payment: For the beach observations, data collection and volunteer coordination, as described herein, the Town shall pay to LMMN the amount of six thousand, seven hundred and seventy-two dollars (\$6,772.00) in nine (9) equal monthly installments of seven hundred fifty-two dollars and forty-four cents (\$752.44) each. Such amounts shall be due and payable upon receipt of invoice as of the last day of each month during the Project Period.

In addition, the Town shall reimburse LMMN for its reasonable and necessary travel expenses in an amount not to exceed in the aggregate one thousand nine hundred and forty-four dollars (\$1,944.00). The Town shall reimburse LMMN for such travel expenses upon presentation of invoices therefore, together with appropriately documented receipts for such expenses.

It is anticipated that LMMN will incur additional expenses for site visits, training, island events, tee shirts and educational materials in an amount not to exceed, in the aggregate, one thousand three hundred and ten dollars (\$1,314.00). The Town shall reimburse LMMN for such miscellaneous expenses upon presentation of invoices therefore, together with appropriately documented receipts for such expenses.

8. Cancellation Non-Allocation of Funds: This Agreement shall be subject to cancellation without damages or further obligation when funds are not appropriated or otherwise made available to support continued performance of this Agreement by the Town.

9. Anticipated Project Benefit; Limitation on Public Release of Information: The main anticipated benefit of the Project is the safety of both humans and dolphins on Seabrook Island. However, a collateral benefit to LMMN will be an increase of its understanding of the use of Capt. Sam's Inlet as a preferred location for strand feeding. The information LMMN will obtain from implementation of the Project will allow it to provide scientific data on how the development of Capt. Sam's Inlet could affect the dolphin's behavior. It is a condition precedent of the Town's participation in the Project and shall be an express undertaking by LMMN that any and all information obtained by LMMN, Project Team Members or volunteers, and / or LMMN's conclusions and interpretation of such information and / or recommendations based on such information must be reviewed and approved by the Town in writing prior to any public release or publication thereof or the distribution thereof to any third party including NOAA/NOS. For the avoidance of doubt, any publication or distribution of the information and data collected by LMMN, Project Team Members or volunteers by reason of their participation in the Project or publication of any analysis, study, evaluation, conclusion or recommendation based directly or indirectly on such data must be approved in writing by the Town in advance of such publication.

LMMN shall not issue any press release or other statement for public distribution identifying the Town's participation in the Project without first having obtained the prior written consent of the Town.

10. Release; Waiver; Hold Harmless and Indemnity: In consideration for allowing LMMN to undertake the Project and data collections as described herein, LMMN hereby releases, waives, discharges and covenants not to sue the Town, its elected officials, employees or agents or volunteers (hereinafter referred to as "Releasees") with respect to any and all liability, claims, demands, actions and causes of action whatsoever arising out of or related to any loss, damage, or injury, including death, that may be sustained by it, or any of its employees or agents or any property belong to it, whether caused by the negligence of the Releasees or otherwise, while participating in the Project or while in or on the way to the Town. LMMN shall ensure that each Project Team Member and

volunteer executes and delivers to the Town releases in their individual capacity. LMMN further agrees to indemnify, defend (with counsel reasonably acceptable to the Releasees) and hold harmless the Releasees and each of them from and against any loss, liability, damage or cost, including court costs and attorney's fees, that any or all of them may occur by reason of the Town's participation in the Project.

11. Contract Administration: Any questions or issues arising after the execution of this contract shall be directed to the Town Administrator of the Town.

12. Non-Assignment: Neither this Agreement nor any right or obligation hereunder may be assigned, sublet, or transferred without the prior written consent of the Town.

13. Governing Law: This Agreement and any dispute, claim or controversy relating thereto (other than issues relating to conflict of laws) shall in all respects be interpreted, construed, enforced and governed under the laws of the state of South Carolina. All disputes, claims or controversies relating to the Agreement shall be resolved in the circuit court of Charleston County, South Carolina. LMMN agrees that any act by the Town regarding this Agreement is not a waiver of the Town's immunity under the South Carolina Tort Claims Act or any other applicable laws.

14. Notice. Any notice which may be or is otherwise required to be given under this Agreement shall be given in writing and shall be delivered (i) in person, (ii) by certified mail, postage prepaid return receipt request, (iii) by commercial overnight courier that guarantees next day delivery or (iv) by e-mail, and such notices shall be addressed as follows:

If to LMMN: Lauren Rust
 Executive Director, LMMM
 1367 Clearbrook Street
 North Charleston, SC 29405
 lauren@lowcountrymarinemammalnetwork.org

If to the Town: Joseph M. Cronin, Town Administrator
Town of Seabrook Island
2001 Seabrook Island Road
Seabrook Island, SC 29455
jcronin@townofseabrookisland.org

15. **Collaborations:** It is anticipated and agreed that LMMN will collaborate with the National Oceanic Atmospheric Administration / National Ocean Service (hereinafter “NOAA/NOS”) as they have 30 years’ experience working with dolphin population and a network of volunteers that can provide additional help if needed. Their input into the Project design and dolphin biology will help steer the educational program. NOAA/NOS also holds the Bottlenose Dolphin Charleston Estuarine System Stock photo-id catalogue, which include sightings taken off of the Town’s beaches, and will be instrumental in matching individual dolphins from this study.

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

LOWCOUNTRY MARINE MAMMAL NETWORK

TOWN OF SEABROOK ISLAND

By: _____
Lauren Rust, Executive Director

By: _____
John Gregg, Mayor

Attest: _____

Attest: _____

EXHIBIT A

PROJECT TEAM MEMBERS & QUALIFICATIONS

LAUREN RUST: Lauren Rust is the executive director and founder of the Lowcountry Marine Mammal Network, a registered 501(c)3 nonprofit dedicated to increasing the community's knowledge about our local marine mammals and ways to conserve their habitats. Lauren holds a BS in Marine Biology from The College of Charleston and MS in Ecology from the University of Wales in which she focused on dolphin daily behavioral budgets. She has 15 years' experience working with several marine mammal species in a variety of settings including nonprofit and government agencies such as NOAA, NIST and The Marine Mammal Center. She has lived in Charleston for over 12 years and is well connected in the environmental community.

CHERYL MUNDAY: Cheryl Munday most recently served as the Marine Mammal Outreach Specialist with NOAA Fisheries. With a strong background in environmental education and marine conservation, Cheryl contributed to the success of NOAA Fisheries - Protected Resources Division marine mammal education and outreach programs and has been recognized as the 2009 NOAA Fisheries Team Member of the Year. She is known for her work on the Don't Feed Wild Dolphins/ Protect Dolphins Campaign, as founder of the Right Whale Festival, and on the development of the Dolphin & Whale 911 and SEE & ID Dolphins & Whales smartphone apps. Cheryl holds a BS in Marine Biology from Long Island University-Southampton and MS in Environmental Education from Florida Institute of Technology.

WAYNE MCFEE: Wayne McFee is the PI of the Coastal Marine Mammal Assessment division at the National Ocean Service in Charleston, SC. Mr. McFee has nearly 25 years of experience handling stranding events in South Carolina, and has authored or co-authored nearly 40 manuscripts in peer-reviewed journals related to dolphin life history (diet, pathology, reproduction, age, etc), contaminants, and human interaction. He is a member of numerous government sponsored working groups including the Crab Pot/Dolphin interaction working group, the Mid-Atlantic Unusual Mortality Event Population Dynamics Team, and the Southeast Regional Wildlife Impacts from Marine Debris working group. Mr. McFee received a MS degree in Biology from Northeastern University where he studied mass strandings of pilot whales on Cape Cod.