

MEMORANDUM OF AGREEMENT  
BETWEEN  
THE FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION  
AND  
INDIAN RIVER COUNTY  
PARKS AND CONSERVATION RESOURCES  
FOR  
BOATING ACCESS PROJECTS

THIS MEMORANDUM OF AGREEMENT is entered into by and between THE FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION, 620 South Meridian Street, Tallahassee, Florida 32399-1600, hereafter called "COMMISSION," and INDIAN RIVER COUNTY, PARKS AND CONSERVATION RESOURCES, 5500 77<sup>TH</sup> Street, Vero Beach, Florida 32967 hereafter called "COOPERATOR."

WHEREAS, the purpose of this Memorandum of Agreement is to establish an agreement between the parties to provide mutually beneficial support and enhancement of public recreational boating opportunities in their respective efforts for the following boat ramps in Attachment A: Table A, hereafter referred to as the "PROJECTS," and

WHEREAS, the COMMISSION has available labor, equipment, and materials funded part from the Sport Fish Restoration Act – Boat Access and part from state funding to construct new, improve existing, and maintain the PROJECTS, and

WHEREAS, the COOPERATOR has property available for boating access, further described in Attachments A: Table B, hereafter referred to as the "PROJECT SITES," and wishes to cooperate with the COMMISSION.

In consideration of mutual promises contained herein, the COMMISSION and the COOPERATOR agree as follows:

1. RESPONSIBILITIES OF THE PARTIES. The parties hereby agree to accept and undertake the following responsibilities assigned to them under this Agreement:

A. Responsibilities of the COMMISSION.

1. Provide labor, equipment, and materials to maintain the structure or improvements at the PROJECT SITES described in Attachment A: Table B.
2. Agrees to perform all structural maintenance and improvements to the PROJECT SITES as may be necessary during the term of this Agreement.

3. Obtain appropriate permits prior to construction or repair work performed hereunder.
4. Communicate with the COOPERATOR on any changes to the Agreement.

B. Responsibilities of the COOPERATOR

1. Agrees to dedicate, by appropriate action of its governing body, the real property referenced in Attachment A, Table A, Exhibit(s), and by its acceptance to the provisions of this Agreement does hereby dedicate it to public use as a recreation area available to the general public for recreation and boating purposes only. COOPERATOR agrees to complete the Site Dedication Form, Attachment B, and file it as an official record in the Clerk of the Circuit Court with jurisdiction over the project sites. The parties further agree that the execution of this Agreement shall constitute an acceptance of the dedication of PROJECT SITES on behalf of the general public of the State. The Site Dedication shall last for the term of this Agreement unless the Agreement is terminated. Should the Agreement terminate or otherwise end, the COOPERATOR may request, and the COMMISSION shall issue a Termination of the Dedication for filing with the Clerk of Court.
2. Agrees to provide a means of ingress and egress to the PROJECT SITES.
3. Agrees to provide and to maintain all existing parking spaces and ancillary facilities described in Attachments A: Table C, PROJECT FACILITIES.
4. COOPERATOR further agrees, subject to availability of necessary funds, to provide other ancillary facilities such as, but not limited to, lighting, public restrooms, picnic and recreational facilities as may be deemed, in the opinion of the COOPERATOR, to be necessary or desirable.
5. Agrees to operate and, subject to the terms of paragraph A.2 hereof, maintain PROJECT SITES, and all ancillary facilities thereon for the duration of the term of this agreement. Such operational and maintenance responsibility shall include, but not be limited to, the maintenance of ancillary facilities, trash removal, grounds maintenance on the PROJECT SITES, and the provision of such law enforcement services as are usual and customary in order to allow the safe and orderly public utilization of the PROJECT SITES.
6. Shall keep the PROJECT SITES and PROJECT FACILITIES open for public use, maintained in accordance with all applicable health and safety standards and kept in good repair to prevent undue deterioration and provide for safe public use.
7. Covenants that it has full legal authority and financial ability to develop, operate and maintain the PROJECT FACILITIES and improvements in accordance with the terms of this Agreement.

8. Communicate in writing to the COMMISSION when repairs or maintenance to be conducted by the COMMISSION in accordance with paragraph A.2 hereof are deemed necessary by the COOPERATOR.
9. Shall not, for any reason, convert all or any portion of the PROJECT SITES or PROJECT FACILITIES to other purposes, without prior approval of the COMMISSION. Any such conversion will result in termination of this Agreement.
10. Agrees that no launch fee shall be charged by the COOPERATOR. Entrance fees may be collected by the COOPERATOR if existing at the time of the execution of this Agreement or agreed to in writing by the COMMISSION, and if done in accordance with all State and Federal laws and regulations. Entrance fees charged for the PROJECT SITES by the COOPERATOR shall be imposed uniformly upon all users without regard to age, sex, race, religion, handicap, or other lawfully prohibited condition. All entrance fees charged by the COOPERATOR for the PROJECT SITES must be uniform and consistent with fees charged throughout the COOPERATOR's jurisdiction, and must be invested back into the maintenance of PROJECT SITES or PROJECT FACILITIES, as identified in Attachment A.
11. Agrees not to restrict access hours between dawn to dusk to boat launching facilities comprising the PROJECTS unless such restriction is agreed to by the COMMISSION in writing and made part of this Agreement by way of an amendment.
12. Agrees, upon request, to provide the COMMISSION with any existing documents such as surveys, design plans, or as built drawings as may be necessary for construction or repair of the project facilities and to otherwise assist the COMMISSION, as appropriate, in obtaining all necessary permits for work on the PROJECTS. As available, the COOPERATOR further agrees to provide engineering services, when necessary, to address special design problems or major rebuilds and for the purpose of reviewing and signing permit applications requiring a professional engineer's signature. In the event that special design problems or major rebuilds are identified, the COOPERATOR may qualify for grant funding through the COMMISSION'S programs to cover the costs of these engineering services. If the COOPERATOR does not agree to provide these engineering services, the specific PROJECT shall be removed from this Agreement going forward.
13. Agrees to indemnify the Commission for any penalties imposed by United States, Department of Interior due to the COOPERATOR'S non-compliance with applicable Federal regulations, to the extent provide by law. Any such penalties will be paid by the COOPERATOR.
14. Agrees to give the COMMISSION access to the PROJECT FACILITIES, through its agents and employees for the purpose of inspecting the PROJECT FACILITIES thereon, and to perform any duties imposed hereunder. The parties agree that, in compliance with 50 CFR 80.132, those lands or waters on which capital improvements

are made by the COMMISSION hereunder shall remain within the control of the COMMISSION to the extent necessary to assure the protection, maintenance, and use of the improvement(s) throughout the term of this agreement.

15. Agrees to allow the COMMISSION to post, at its own expense, signs at the PROJECT SITES identifying the PROJECT FACILITIES as a Federal Aid Project, and the parties hereto as cooperators in providing boating access facilities. In addition, such signs may include public information concerning maintenance of the PROJECT SITES.

2. TERM OF THE AGREEMENT. It is understood and agreed that the relation established by this Agreement is meant to be for the benefit of both parties, and that this Agreement shall be effective on the date of execution by both parties, and shall remain in effect for a period of 20 (twenty) years, or for a period of 20 (twenty) years from the completion of any reconstruction or major repair, or significant structural alteration or addition to the PROJECT FACILITIES, approved in writing by the parties and conducted at the expense of the COMMISSION, unless otherwise terminated, suspended or modified in writing by an appropriate amendment executed by both parties.

3. TERMINATION. Either party may terminate this Agreement, in whole or as to any specified PROJECT FACILITIES which are the subject hereof, upon giving written notice to the other party specifying the termination date, by certified mail, return receipt requested, at least 60 (sixty) days prior to the termination date specified in the notice. In the event of such termination, the obligations of the parties hereunder shall cease as to the PROJECT SITES or PROJECT FACILITIES which are the subject of termination, and such PROJECT SITES or PROJECT FACILITIES shall revert to the exclusive control of the COOPERATOR. Should the Agreement terminate, the COMMISSION shall issue a Termination of the Site Dedication for filing with the Clerk of Court where the original site dedication was filed.

4. NOTICES. Any and all notices shall be delivered to the parties at the following addresses (or such changed address or addressee as may be provided by notice). A notice or other communication shall be deemed received by the addressee on the next business day after having been placed in overnight mail with the U. S. Postal Service, or other overnight express service such as FedEx, UPS, or similar service. Notices sent by means other than overnight delivery shall be deemed received when actually received by the addressee:

**FOR THE COMMISSION:**

Boating Access Coordinator  
Florida Fish and Wildlife Conservation  
Conservation Commission  
620 South Meridian Street  
Tallahassee, Florida  
850-617-9538  
850-488-9284

**FOR THE COOPERATOR:**

Director  
Parks and Conservation Resources  
Indian River County  
5500 77<sup>th</sup> Street  
Vero Beach, Florida 32967  
772-226-1875

5. **AUTHORITIES.** It is understood and agreed that each party operates under its own legal authorities, policies and administration, and each party's obligations under this Agreement are thereby limited. It shall be the responsibility of each party to interpret its own authorities and policies, and make decisions as required under law and policies applicable to each.

6. **PUBLIC RECORDS.** All records in conjunction with this Agreement shall be public records in accordance with the laws applicable to the parties.

7. **LIABILITY.** Each party hereto agrees that it shall be solely responsible for the negligent or wrongful acts of its employees and agents. However, nothing herein shall constitute a waiver by either party of sovereign immunity or statutory limitations on liability.

8. **STATE REQUIRED CLAUSES.**

a. **Non-discrimination.** No person, on the grounds of race, creed, color, national origin, age, sex, or disability, shall be excluded from participation in, be denied the proceeds or benefits of, or be otherwise subjected to discrimination in performance of this Agreement.

b. **Prohibition of Discriminatory Vendors.** In accordance with Section 287.134, Florida Statutes, an entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.

c. **Public Entity Crimes.** In accordance with Section 287.133(2)(a), F.S., a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.

d. **Legislative appropriation.** For Agreements whose term extends beyond the State fiscal year in which encumbered funds were appropriated, the State of Florida's performance and obligation to pay is contingent upon an annual appropriation by the Legislature.

9. **FEDERAL REQUIRED CLAUSES.**

a. **Non-discrimination.** All activities pursuant to this Agreement and the provisions of Exec. Order No. 11246, 3 C.F.R. 339 (1964-65) shall be in compliance with the requirements of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. 2000d et seq.); Title V, Section

504 of the Rehabilitation Act of 1973 (87 Stat. 394; 29 U.S.C. 794); the Age Discrimination Act of 1975 (89 Stat. 728; 42 U.S.C. 6101 et seq.); and with all other Federal laws, regulations, and policies prohibiting discrimination on the grounds of race, color, national origin, handicap, religion, sex, or sexual orientation, in providing for facilities and service to the public.

b. Public Laws. Nothing herein contained in this Agreement shall be deemed to be inconsistent with or contrary to the purpose of or intent of any Act of Congress or the laws of the District establishing, affecting, or relating to the Agreement.

c. Appropriations. Nothing contained in this Agreement shall be construed as binding the COMMISSION to expend in any one fiscal year any sum in excess of appropriations made by Congress, and available for the purposes of this Agreement for that fiscal year, or as involving the United States in any contract or other obligation for the further expenditure of money in excess of such appropriations.

10. NON-ASSIGNMENT. This Agreement may not be assigned in whole or in part without the written approval of all parties. Any such assignment or attempted assignment shall be null and void.

11. SEVERABILITY AND CHOICE OF VENUE. This Agreement has been delivered in the State of Florida and shall be construed in accordance with the laws of Florida. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. Any action in connection herewith, in law or equity, shall be brought in Leon County, Florida, to the exclusion of all other lawful venues.

12. NO THIRD-PARTY RIGHTS. The parties hereto do not intend, nor shall this Agreement be construed to grant any rights, privileges or interest to any person not a party to this Agreement.

13. JURY TRIAL WAIVER. As part of the consideration for this Agreement, the parties hereby waive trial by jury in any action or proceeding brought by any party against any other party pertaining to any matter whatsoever arising out of or in any way connected with this Agreement, or with the products or services provided under this Agreement; including but not limited to any claim of quantum meruit.

14. PROHIBITION OF UNAUTHORIZED ALIENS. In accordance with Executive Order 96-236, the COMMISSION shall consider the employment by the COOPERATOR of unauthorized aliens a violation of section 274A(e) of the Immigration and Nationalization Act. Such violation shall be cause for unilateral cancellation of this Agreement if the COOPERATOR knowingly employs unauthorized aliens.

15. EMPLOYMENT ELIGIBILITY VERIFICATION. The COOPERATOR shall enroll in and use the U.S. Department of Homeland Security's E-Verify Employment Eligibility Verification

System (<http://www.uscis.gov/portal/site/uscis>) to verify the employment eligibility of all new employees hired by the COOPERATOR during the term of this Agreement.

The COOPERATOR shall include in any subcontracts for the performance of work or provision of services pursuant to this Agreement the requirement that the subcontractor use the E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the Agreement term.

The COOPERATOR further agrees to maintain records of its participation and compliance with the provisions of the E-Verify program, including participation by its subcontractors as provided above, and to make such records available to the COMMISSION or other authorized state entity consistent with the terms of the COOPERATOR'S enrollment in the program. This includes maintaining a copy of proof of the COOPERATOR'S and subcontractors' enrollment in the E-Verify Program (which can be accessed from the "Edit Company Profile" link on the left navigation menu of the E-Verify employer's homepage).

Compliance with the terms of the Employment Eligibility Verification provision is made an express condition of this Agreement and the COMMISSION may treat a failure to comply as a material breach of the Agreement.

16. ENTIRE AGREEMENT; AMENDMENT. This Agreement with all incorporated attachments and exhibits represents the entire agreement of the parties. This Agreement may be amended by mutual written agreement of the parties.

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum of Agreement to be executed through their duly authorized signatories on the day and year last below written.

INDIAN RIVER COUNTY, FLORIDA  
BOARD OF COUNTY COMMISSIONERS

FLORIDA FISH AND WILDLIFE  
CONSERVATION COMMISSION

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
SIGNATURE

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: CHAIRMAN

Title: \_\_\_\_\_

Date: \_\_\_\_\_  
\_\_\_\_\_

Date:

BCC APPROVED: November 19, 2019

Attest: Jeffrey R. Smith, Clerk of Circuit Court  
And Comptroller

BY: \_\_\_\_\_  
Deputy Clerk

Approved:

\_\_\_\_\_  
Jason E. Brown, County Administrator

APPROVED as to form and legal sufficiency

\_\_\_\_\_  
Dylan Reingold, County Attorney

APPROVED as to form and legality  
by FWC Attorney:

\_\_\_\_\_  
SIGNATURE

**Attachments:**

Attachment A: Boat Ramp Reference- Tables identifying ramp number, name, location, structures, parking and ancillary facilities.

Attachment B: Site Dedication Form