

**MEMORANDUM OF AGREEMENT
BETWEEN
THE CITY OF JACKSONVILLE,
DEPARTMENT OF RECREATION AND COMMUNITY SERVICES
AND THE
FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION**

THIS MEMORANDUM OF AGREEMENT is made and entered into by and between THE CITY OF JACKSONVILLE, a municipal corporation existing under the Constitution and the laws of the State of Florida, on behalf of the Department of Recreation & Community Services, whose address is 851 N. Market Street, Jacksonville, Florida 32202 (hereafter "**LANDOWNER**") and the FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION, whose address is 620 S. Meridian Street, Tallahassee, Florida 32399-1600 (hereafter, "**COMMISSION**").

The purpose of this Memorandum of Agreement is to establish an agreement between the parties wherein **LANDOWNER** shall license to the **COMMISSION** and allow access to the Lakes described in Exhibit "A", attached hereto, being certain portions of City of Jacksonville property in Duval County Florida, for the purpose of operating fresh water fishing opportunities under the following terms and conditions.

WITNESSETH

1. **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 the term of this Agreement shall begin on the date of final execution by both parties and shall not end until terminated by either party herein upon the giving of ninety days written notice. **LANDOWNER** and **COMMISSION** acknowledge that this Agreement does not grant or create any easements, rights of way, or any property interest. This Agreement shall replace and supersede the previously existing agreement between the **LANDOWNER** and the **COMMISSION** dated February 24, 1986, which is hereby terminated by agreement of the parties.

2. **CONSIDERATION**: This Memorandum of Agreement is executed and given in consideration of the mutual covenants and agreements set forth herein. The consideration given for this Agreement includes, but is not limited to, the following:

(a) **LANDOWNER** shall allow **COMMISSION** to fish and to hold open for public fishing all lakes shown on Exhibit "A", attached hereto and by reference incorporated herein, hereinafter collectively called the "**Lands.**" This Agreement is primarily for recreational fishing, picnicking, and nature study in designated areas, and includes the

necessary rights of access for such purposes, said access routes to be identified by **LANDOWNER** at its reasonable discretion.

(b) **LANDOWNER** warrants that it owns or controls rights necessary to the grant of the Agreement, including access rights, and has not conveyed or otherwise encumbered such rights to or in favor of any other party.

(c) **COMMISSION** shall be solely responsible for the operation and management of fishing on the Lands, including public fishing. The **COMMISSION** is authorized to construct boat ramps or other improvements related to public fishing, and shall be responsible for enforcement of general and specific rules and regulations. The **COMMISSION** shall be responsible for maintaining areas for public fishing, including shoreline accessibility. The **COMMISSION** may engage in aquatic vegetation control subject to applicable permits and rules. The **COMMISSION** may also conduct research in these lakes related to fish management. **LANDOWNER** reserves the right to remove any person from the Lands for violation of the rules and regulations or to require Commission to remove such persons.

(d) The **COMMISSION** shall have the right to place posted signs on the boundary lines of the Lands.

(e) The **COMMISSION** and **LANDOWNER** acknowledge that all described lakes are part of **LANDOWNER's** water management systems. Notwithstanding any other provision of this Agreement, the ownership, use, access, control and management of these water systems, including flow, quality, and elevation, shall remain exclusively with **LANDOWNER**. Persons using the Lands by permission of **LANDOWNER** for water management purposes shall not be covered by the indemnities described in Paragraph 3 **LIABILITY** for any and all actions, claims, liabilities, assertions of liabilities, losses, or damages arising from or alleged to have arisen from any activity or presence associated with such use.

(f) **LANDOWNER** reserves unto itself, its employees, contractors, and other persons authorized by it, the right of ingress or egress over, upon and across the Lands and the right to use said Lands for such purposes and under such other terms and limitations as are defined in its deeds in the Official Records of Duval County, Florida, excluding fishing. In exercising its rights, **COMMISSION** agrees that it shall, at all times, use due care to prevent injury to person or property.

(g) Notwithstanding any other provisions of this Agreement, **LANDOWNER** shall have the right to close any lands, or any part thereof, to the public upon written notice to the **COMMISSION** of no fewer than thirty (30) days prior to said closure. Notice of such closure shall be posted by **LANDOWNER** at the entrance to the Lands being closed no fewer than seven (7) days prior to the date of closure. Persons using the Lands by permission of **LANDOWNER** on those specific days shall not be covered by the indemnities described in Paragraph 3 **LIABILITY** for any and all actions, claims,

liabilities, assertions of liabilities, losses, or damage arising from or alleged to have arisen from any activity or presence on the Lands on those specific days.

(h) Except for underbrush, **COMMISSION** shall not cut or remove any trees from the Lands. **COMMISSION** shall not drive or permit to be driven any nails, spikes or other metal objects into any trees or timber on the Lands for any purpose whatsoever. Trees may be used for posting purposes.

3. **LIABILITY**: To the extent provided by, and subject to the limitations and conditions specified in Section 768.28, Florida Statutes, the **COMMISSION** shall be responsible for any loss or damage resulting from its use of the premises under the terms of this Agreement. The **LANDOWNER** shall save, hold harmless and indemnify the State of Florida and the **COMMISSION** against any and all liability, claims, judgments or costs of whatsoever kind and nature for injury to, or death of any person or persons and for the loss or damage to any property resulting from the use, service, operation or performance of work under the terms of this Agreement, resulting from the acts or omissions of the **LANDOWNER**, his subcontractor, or any of the employees, agents or representatives of the **LANDOWNER** or subcontractor. Each party hereto agrees that it shall be solely responsible for the negligent or wrongful acts of its employees and agents. Nothing contained in this Paragraph 3 **LIABILITY** shall be, or be construed as being, a further waiver of either party's sovereign immunity beyond the limited legislative waiver thereof in Section 768.28, Florida Statutes.

4. **TERMINATION**: Either party may terminate this Agreement by giving written notice to the other party specifying the termination date, by certified mail, return receipt requested, at least ninety (90) days prior to the termination date specified in the notice. The parties agree to attempt in good faith to amend this Agreement as necessary to include or remove similar Lands held by **LANDOWNER**, such additions or removals to this Agreement to be mutually agreed upon by **LANDOWNER** and the **COMMISSION**. **LANDOWNER's** covenants under this paragraph shall not be applicable if the Agreement is terminated by **LANDOWNER** for cause, including termination due to any breach of health, safety, or environmental laws or regulations arising out of **COMMISSION's** exercise of the rights granted to it under the Agreement. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, legal representatives, successors and assigns, and shall survive any sale or lease of **LANDOWNER's** interest in the Lands. This Agreement shall terminate immediately upon the **COMMISSION's** giving written notice to the **LANDOWNER** in the event of fraud, willful misconduct, or breach of this Agreement.

5. **NON-DISCRIMINATION**: As a condition of this Agreement, the **COMMISSION** and the **LANDOWNER** hereby covenant and agree not to discriminate against any individual on the basis of race, color, religion, sex, national origin, age, handicap, or marital status with respect to any activity occurring pursuant to this Agreement.

6. **MODIFICATION OF AGREEMENT**: This Agreement with all incorporated attachments and exhibits represents the entire agreement of the parties. No waiver or

modification of this Agreement or of any covenant, condition, or limitation herein shall be valid unless in writing and lawfully executed by both parties. It is the intention of the **COMMISSION** and the **LANDOWNER** that no evidence of any waiver or modification shall be offered or received in evidence in any proceeding or litigation between the parties arising out of or affecting this Agreement unless such waiver or modification is in writing and executed as aforesaid. The provisions of this section shall not be waived without compliance with said writing and execution requirements.

7. RELATIONSHIP OF PARTIES: It is understood that an employer-employee relationship does not exist between the **COMMISSION** and the **LANDOWNER**, and neither party shall be responsible for providing Workers' Compensation Insurance and withholding services for the other party or its employees. There is no conflict of interest or any other prohibited relationship between the **LANDOWNER** and the **COMMISSION**.

8. PUBLIC RECORDS: The **COMMISSION** and the **LANDOWNER** shall abide by the provisions of Chapter 119, Florida Statutes, allowing public access to all documents, papers, letters, or other material as applicable.

9. NOTICES: Unless a notice of change of address is given, any and all notices shall be delivered to the parties at the following addresses. 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.

LANDOWNER

City of Jacksonville,
Department of Recreation and
Community Services
851 N. Market Street
Jacksonville, FL 32202

COMMISSION

Allen Martin
Florida Fish & Wildlife
Conservation Commission
3377 East US Highway 90
Lake City, FL 32055

10. PERFORMANCE BY THE COMMISSION: The **COMMISSION**'s performance under this Agreement is contingent upon an annual appropriation by the Legislature.

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.

11. JURY TRIAL WAIVER: As consideration of 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.

12. THIRD PARTIES: The parties hereto do not intend nor shall this Agreement be construed to grant any rights, privileges or interest to any third party.

13. 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.

14. 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 perform work as a grantee, supplier, subcontractor, consultant or by any other manner under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, F.S., for Category Two, for a period of 36 months from the date of being placed on the convicted vendor list.

15. 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.

[Remainder of page left blank intentionally. Signature page follows immediately]

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

**FLORIDA FISH AND WILDLIFE
CONSERVATION COMMISSION**

Witness

Marion D. Jones

By: Marion D. Jones
Section Leader, Division of Freshwater
Fisheries Management

Date: 10/13/2009

Witness

Approved as to form and legality:

Quilla Merialia
Commission Attorney

STATE OF Florida
COUNTY OF Clay

The foregoing instrument was acknowledged before me this 13th day of October, 2009, by Marion D. Jones, Section Leader of the Division of Freshwater Fisheries Management of **The Florida Fish and Wildlife Conservation Commission** on behalf of the Commission. Such person: *(notary must check applicable box)*

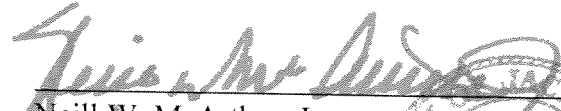
- is personally known to me; or
- produced a current Florida driver's license as identification; or
- produced _____ as identification

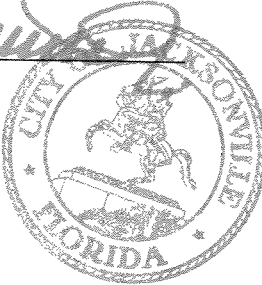
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Notary Public

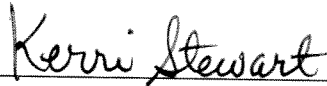


Attest:

CITY OF JACKSONVILLE

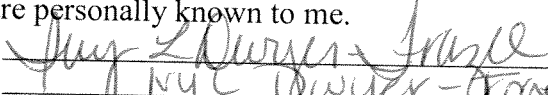

 Neill W. McArthur, Jr.
 Corporation Secretary




 By: John Peyton
 Title: Mayor
 Date: 9/1
 Kerri Stewart
 Deputy Chief Administrative Officer
 For: Mayor John Peyton
 Under Authority of:
 Executive Order No. 07-12

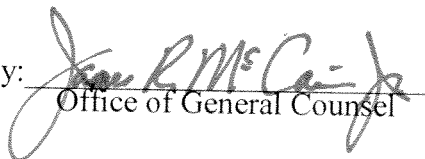
STATE OF FLORIDA
 COUNTY OF DUVAL

The foregoing instrument was acknowledged before me this 1 day of Sept, 2009, by John Peyton and Neill W. McArthur, Jr., the Mayor and Corporation Secretary, respectively, of the **City of Jacksonville**, a municipal corporation, on behalf of the corporation. Such persons are personally known to me.


 [print or type name]
 Notary Public, State of Florida at Large



Form Approved:

By: 
 Office of General Counsel

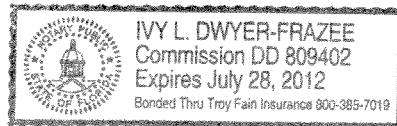


EXHIBIT "A"

Description of Lands

Lands within Duval County, Florida specifically described as follows:

Bethesda Park (Bethesda Fish Management Area):

Section 08, Township 1S, Range 26E (Real Estate Number: 020047-0100):
46.560 S ½ OF NW ¼ PT RECD O/R 4705-1003,5074-877 -

Crystal Spring Road Park (Crystal Springs Fish Management Area):

Section 29, Township 2S, Range 25E (Real Estate Number: 008876-0000):
38.260 NE ¼ OF NW ¼ (EX ORD#76-789-416Z0 -

Kathryn Abbey Hanna Park (Hanna Park Fish Management Area):

AG-212 Section 38, Township 1S, Range 29E (Real Estate Number: 168328-0000):
DEWEES GRANT S/D PT LOT 2 DIV 2 RECD O/R 3340-431, - PT LOT 2 DIV 2 RECD O/R
3342-805, BEING PARCELS 1,2,4,PT LOT 2 DIV 2 RECD O/R 3412-902,PT LOTS 2,3,4

Oceanway Park (Oceanway Fish Management Area):

1-7 Section 37, Township 1N, Range 27E (Real Estate Number: 106860-0000):
28.640 JOHN BROWARD GRANT S/D PT SE ¼ SEC 11 RECD O/R 4521-19, - 4693-
1200,5289-117

Pope Duval Park (Pope Duval East and West Fish Management Areas):

Section 21, Township 2S, Range (Real Estate Number: 001666-0000):
24E PT S ½ RECD O/R BK 3508-980 -

Section 20, Township 2S, Range 24E (Real Estate Number: 001662-0000):
PT S ½ OF SE ¼ RECD O/R BK 3508-980 -

Section 29, Township 2S, Range 24E (Real Estate Number: 001970-0010):
PT E ½ RECD O/R BK 3508-980 -

Earl Johnson Memorial Park (St. Augustine Road North and South Fish Management Areas):

Section 06, Township 3S, Range 27E (Real Estate Number: 147640-0000):
PT E ½ OF SW ¼ RECD O/R BK 3063-1196 -

Section 06 Township 3S, Range 27E (Real Estate Number: 147457-0000):
E ½ OF NW ¼ PT RECD O/R 3063-1196 -

9A Baymeadows Regional Park (9A Baymeadows Fish Management Area):
(Real Estate Number: 167746-0800):

William Sheffield Regional Park (William Sheffield Fish Management Area):
(Real Estate Number: 106382-0000)