

## MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT is made this 5<sup>th</sup> day of Nov., 2018, by and between the Board of Commissioners of the Sebastian Inlet District, hereinafter referred to as "District" and the State of Florida Department of Environmental Protection, hereinafter referred to as "Department".

### RECITALS

1. WHEREAS, the District, an independent special district, was created and reenacted by Chapter 2003-373; and
2. WHEREAS, the District has the statutory responsibility to construct, improve and maintain the Sebastian Inlet ("Inlet") between the Indian River and the Atlantic Ocean, and is authorized to conduct programs and projects for beach renourishment, erosion control, environmental protection, navigation, boating, recreation, and public safety for the operation and maintenance of the Inlet; and
3. WHEREAS, the District owns the currently submerged lands described in the Warranty Deed at Book 99 and Page 279, which comprise the former uplands that were dredged to form the Inlet, and holds and has held various easements over submerged lands and uplands owned by the Board of Trustees of the Internal Improvement Fund of the State of Florida; and
4. WHEREAS, the District, since 1919, has constructed and maintained navigation structures known as the north and south jetties, which are located primarily on sovereign submerged lands of the State of Florida, as integral infrastructure of the Inlet, and asserts that the primary purpose of the north and south jetties is to allow the District to carry out its function which is to construct, improve, widen or deepen to maintain the Inlet between the Indian River and the Atlantic Ocean for navigational purposes; and
5. WHEREAS, the Department operates Sebastian Inlet State Park ("Park"), a park and public recreational facility immediately adjacent to the Inlet, established following the acquisition of land by the State of Florida in 1971; and
6. WHEREAS, in 2001 the Department, with District assistance, undertook the North Fishing Jetty Improvement project funded under DEP Work Project #60218 with line item appropriations to the Department for schematic review, design development, permitting and construction of jetty infrastructure as well as the fishing deck overlying the north jetty. The Department has operated the multi-use fishing deck and sidewalk, as well as the concrete walkway extending along the south jetty (hereinafter together referred to as the "deck" in this document. See definitions in schedule 3) as part of the Park since that time; and

7. WHEREAS, the Department's predecessor agency, the State of Florida Department of Natural Resources, and the District entered into a Memorandum of Agreement on November 7, 1988, concerning their respective responsibilities and duties regarding the Park and the Inlet addressing public access and the use of the deck over the jetties; and

8. WHEREAS, the Department and the District entered into an Amended and Restated Memorandum of Agreement on December 21, 2000; which restated and readdressed the respective responsibilities and duties of the Department and the District, specifically addressing the Department's management responsibility for maintaining safety and order for Park visitors on the deck; and

9. WHEREAS, the north and south jetties have recently been incorporated into the Park boundary by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida (Amendment Number 12 to Lease Number 2457, dated 05-14-2018). This instrument now conforms with previous agreements and understandings between the Department and the District regarding responsibilities for maintaining public access, public order and public safety. The Department shall be responsible for maintaining public order and safety on the deck and jetties; and

10. WHEREAS, there may be a need from time to time to provide supplemental security utilizing the presence of sworn officers through agreements between the District, the Department and third parties, in accordance with Section 6 of Section 3 of Chapter 2003-373, Laws of Florida. Such provision of supplemental security will in no manner restrict public access onto the decks and will be provided as a security presence and a deterrent to any potential unlawful behavior; any supplemental security personnel will abide by Rules and Conditions set out in Schedule 3 of this agreement; and

11. WHEREAS, the primary purpose of the north and south jetties is to serve as navigation structures and provide integral infrastructure to the Inlet, and the deck built on the north jetty and the concrete walkway of the south jetty provide public access and a secondary function for fishing and other recreational activities; and

12. WHEREAS, the Park is an important resource for public access widely known as a premier fishing destination, attracting 809,565 visitors in the 2016/2017 fiscal year, with users also enjoying public access to the beach, camping, or other activities within the Park. The multi-use fishing deck is a major attraction within the Park, with an estimated head count on the north deck between 6,000 and 7,000 users per month for the calendar year 2016; and

13. WHEREAS, the District and the Department acknowledge that the jetties have a primary function as infrastructure to the Inlet and may need to be reconfigured in the future for navigation management, inlet safety and coastal management and that both

parties recognize and promote the secondary recreational uses over the jetties, both of which attract users in addition to anglers, including sightseers, bird watchers, photographers, surfing observers and nature enthusiasts; and

14. WHEREAS, the District and the Department are sensitive to conflicts between various users of the decks and surrounding water; and

15. WHEREAS, the Department is focused on continuing to ensure public access and public safety over the decks because of the concerns listed above; and

16. WHEREAS, the District has taken steps and incurred expense to maintain public safety, such as posting signs with rules, installing video surveillance cameras, installing a barrier/control gate on the deck over the north jetty, as further described in paragraph 3 below, and requesting more security presence by law enforcement agencies; and

17. WHEREAS, the Department and the District agree that an increased presence of law enforcement officers (including both Florida Fish and Wildlife Conservation Commission officers and local law enforcement) at the north jetty and on the water near the north jetty is an effective management tool; and

18. WHEREAS, the parties desire to facilitate the presence of law enforcement officers at the Park, including the decks, to establish an effective security presence; and

19. WHEREAS, the parties desire to enter into this Memorandum of Agreement to replace the Amended and Restated Memorandum of Agreement dated December 21, 2000, as amended by the Amendment to the Amended and Restated Memorandum of Agreement of the same date, reflecting changes occurring since the Amended and Restated Memorandum of Agreement and its Amendment, and altering and modifying the respective responsibilities and duties of each party.

IT IS, THEREFORE, AGREED as follows:

1. The Recitals above are true and accurate.

2. MAINTENANCE OF THE INLET: The District is responsible for the construction and maintenance of the Sebastian Inlet between the Indian River and Atlantic Ocean. Maintenance of Inlet infrastructure, including rock ribs, revetments, pilings, instrumentation and navigational aids, are the responsibility of the District., The fishing walkways, sidewalks and railings, as well as the fishing deck, grates and railings above the north jetty and concrete walkway along the south jetty are maintained by the Park. For a detailed inventory of Inlet features and the responsibilities of the parties for maintenance, See Schedule 1, as part of this agreement.

3. EASEMENTS AND ACCESS: The District holds fee simple title from third parties within the Inlet itself, landward of the mean high-water line of the Atlantic Ocean. The District requires easements from the Trustees of the Internal Improvement Trust Fund (Board) where the north jetty, south jetty, and revetments have been constructed and a spoil disposal area is maintained. The District requires the use of the aforementioned property identified for the maintenance, construction and reconstruction of the Inlet. Such property includes the areas necessary for the jetties, the shoreline revetment areas adjacent to and in the Inlet, and the Dredged Material Management Area (DMMA), the Sand Trap Area, the Navigation Channel, staging areas and the beach access area at R-8. (See Schedule 2 for a list of easements and conveyances needed by the District for maintenance, construction, and reconstruction of the Inlet.) The District shall secure all necessary authorizations, and State and Federal regulatory permits for any projects it undertakes for the operation and maintenance of the inlet and the waters of the Atlantic Ocean and Indian River Lagoon adjacent thereto. It is understood that the District must comply with the applicable laws and Department and Board rules in obtaining any regulatory permits from the Department and any proprietary authorizations from the Board. Both parties will work together to facilitate the easements and access necessary to maintain the inlet. It is also understood that although the District installed a barrier/gate on the deck over the north jetty, that gate shall not be used to preclude public access to the deck without written agreement of the park manager. .

4. ASSIGNMENT OF LAW ENFORCEMENT: The parties to this Agreement agree to request assistance from the Florida Fish and Wildlife Conservation Commission and local law enforcement as necessary and as described below, to assign sworn law enforcement officers to the Sebastian Inlet State Park, including the decks, to establish an effective security presence both during daytime and nighttime Park hours. This assignment of law enforcement shall not limit the coordination required of the parties described throughout this agreement. The District may, by coordinated agreement with the park manager, contract with the Brevard County Sheriff's Office, FWCC or private security firm to provide supplemental security at such times when the presence of sworn officers is perceived necessary for assurance of public safety. The park manager will provide a set of conditions and limits for the use of supplemental security (see Schedule 3) and the District bears all responsibility for ensuring that officers are briefed and agree to conform to the conditions and limits.

5. COORDINATION AND COMMUNICATION: The Department has created a Sebastian Inlet State Park Unit Management Plan and the District has created an Inlet Management Plan, both of which outline procedures and goals of the respective entities. The parties acknowledge that projects will be undertaken within their respective management plans and pursuant to their authorizing statutes and legislation. The parties further acknowledge that they will continue dialog regarding proposed future projects and will consider comments to ensure that activities will result in the least impact on each party's area of responsibility possible. The parties further agree to determine what easements or other submerged land authorizations from the Board may be necessary to allow the District to continue operating and maintaining the Inlet, starting from the list provided as Schedule 2 of this Agreement.

6. NOTIFICATION: Any notices required to be given under this Memorandum of Agreement shall be provided as follows:

**FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION:**

Division of Recreation and Parks

Office of Park Planning

Bureau Chief

Steven A. Cutshaw

3900 Commonwealth Blvd., MS 535

Tallahassee, FL 32399-3000

**BOARD OF COMMISSIONERS OF THE SEBASTIAN INLET TAX DISTRICT  
F/K/A THE SEBASTIAN INLET DISTRICT**

Administrator

Marty Smithson

114 Sixth Avenue

Indianapolis, FL 32903

7. FISCAL CONSTRAINTS: The parties understand and agree that each party is a unit of government responsible under the law for establishing its own budget and program priorities. Each party operates under fiscal constraints and will unilaterally determine the amount of funds available, if any, to fulfill their duties under this Agreement.

8. INDEMNIFICATION. The Department shall indemnify the District and save the District harmless from any and all claims, injuries, damages, liabilities, losses and causes of action of or to a third party arising out of any negligent act, error or omission of the Department related to the District's performance under this Agreement. The District shall indemnify the Department and save the Department harmless from any and all claims, injuries, damages, liabilities, losses and causes of action of or to a third party arising out of any negligent act, error or omission of the District related to the Department's performance under this Agreement. Nothing in this Agreement shall be construed to waive or affect the parties' enjoyment of sovereign immunity.

9. DISPUTES AND DISAGREEMENTS AND RESOLUTIONS THEREOF: The parties to this Agreement shall, in the event there is a dispute or disagreement with regards to any party's rights or obligations hereunder, notify the other party in writing of the claimed dispute or disagreement. The notified party shall have 30 days to cure the dispute or disagreement and should it not agree with the claim of the complaining party, it shall so notify the complaining party. In such event, the parties agree that they shall meet in person within 30 days of the response to the claiming party to discuss and attempt to resolve the dispute or disagreement. All attempts will be made to avoid the need for mediation.

10. MODIFICATION OR AMENDMENT: Any modification or amendment to this Agreement must be in writing, must be accepted, acknowledged and executed by all parties, and

must comply with the rules and statutes in existence at the time of the execution of the modification or amendment.

11. TERM AND RENEWAL: This Agreement shall be for a term of ten years, commencing on the date of the signature of the last party to execute the agreement. Renewal of this Agreement shall be at the discretion of the parties. Such renewal shall be subject to the terms, conditions and provisions of management standards and applicable laws, rules and regulations in effect at that time.

12. ENTIRETY: This Agreement represents the entire agreement between the parties. This Agreement supersedes the Memorandum of Agreement dated December 21, 2000, as well as the first Amendment to the Memorandum of Agreement of the same date.

IN WITNESS WHEREOF, we have set our hands and seals on the date first written above.

WITNESS

BOARD OF COMMISSIONERS OF  
THE SEBASTIAN INLET TAX  
DISTRICT F/K/A THE SEBASTIAN  
INLET DISTRICT

Marti S. Smithson  
Administrator  
Dave [Signature]

By: [Signature]  
Chairperson

FLORIDA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION

Thia [Signature]  
Pamela Harman

By: [Signature]  
Deputy Secretary

Approved as to form and legality:

[Signature]  
DEP Attorney

[Signature]  
SID Attorney

## SCHEDULE 1

Inventory of Items of Inlet District - Maintenance Responsibility (Note: Access to structures on state owned lands [both submerged and uplands] that are part of this list is governed by easements and leases to the District from the Board of Trustees. This list is provided for organizational purposes between the District and the Park only and should not be construed to indicate authorization of use by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida.)

- North Jetty rocks and revetment
- North Jetty weather station and navigation light
- North Jetty web cam with weather instruments and surveillance cameras
- North Jetty splash apron, asphalt veneer and rocks underneath from pier structure to A1A bridge.
- North Jetty web cam wiring and conduit to concession building
- South Jetty – rocks and revetment
- Storage Shed with computer and modem plus cable to offshore Acoustic Doppler Current Profiler (ADCP). North end of park.
- Rocks and revetment (North Shore) to Tide Pool and west.
- Dredged Material Management Area (DMMA) with control structures and fencing.
- DMMA turnaround with dry detention stormwater treatment
- Truck access easements – off A1A into park for DMMA access.
- South shoreline rocks and revetments
- T-Dock for dredge workboat staging
- Expanded 42-acre Sand Trap
- Coconut Point revetment with staging area easement
- Inlet Channel Markers (36), Boat Ramp channel (6), Channel to Sebastian River (6)
- R-8 Beach access area

## SCHEDULE 1

### Structural Maintenance Responsibilities of the Sebastian Inlet District and State Park In District

#### Easement areas within Sebastian Inlet State Park

FEATURE	DISTRICT	STATE PARK	NOTES
North Jetty	Pilings, rocks, District devices described above including: signage, lights, weather station, and web cam	Pier decking, grates, railings, gates, park signage, safety devices, trash collection system, fish cleaning stations	
Splash Apron	Asphalt and rocks underneath asphalt veneer from the pier structure to the A1A bridge.	Sidewalk and railing used by park visitors, storm drain	
Sidewalk from pier structure to A1A	Rocks/Revetment fronting and under sidewalk	Sidewalk and railing used by park visitors	
Dredged Material Management Area (DMMA)	All features of DMMA and stormwater treatment area. Any damage incurred during District work projects shall be repaired to the same condition as existed prior to work project	Coordinated use, administration of easement.  Any Park projects within the easement area to be coordinated with the District.	Gopher Tortoise relocation by District
North side shed housing computer/modem for offshore ADCP	Maintain shed, equipment, connections and cable to ADCP		
South Jetty	rocks, lights and devices for navigational purposes.	Decking and railings used by park visitors, Walkway/sidewalk from A1A Bridge leading to jetty with railing. Lights for upland visitor use purposes.	District responsible for all revetment/rocks fronting walkway



FEATURE	DISTRICT	STATE PARK	NOTES
T-Dock on south side	Repairs or modifications associated with sand trap and dredging operations	Recreational access, normal maintenance and repairs outside sand trap and dredging usage	50: 50 cost-share between District and FIND
Coconut Point	Maintaining and controlling erosion around edges of Coconut Point	Recreational access and parking	
Sand Trap	Associated dredging activities	None	
Channel Markers	Maintenance of all associated channel markers for navigation	None	
R-8 Beach Access	Hauling access within designated corridor; environmental protection, erosion control, security of access, and contractor management related to hauling activities	Recreational access and associated park management activities	
Coconut Point Boat Ramp	Channel markers leading to ramp. Maintenance dredging of channel to ramp to be coordinated between State and District at a maximum 50: 50 ratio	Ramps and floating piers Coordinated maintenance dredging of channel to ramp.	

**SCHEDULE 2  
CURRENT AND EXPIRED ENCUMBRANCES**

Document References	141296	25082	TFI	Y	4-28-1970 ESMT FOR PIPELINE ACROSS STATE LANDS, S'LY OF INLET
Document References	141916	27943	TFI	N	TEMP EASEMENT FOR SUBMERGED LANDS DREDGING AREA OF N'LY SHORE OF INLET - EXPIRED IN 1992
Document References	143041	24963	TFI	Y	SUBMERGED LANDS EASEMENT
Document References	143298	30247	TFI	Y	2 ACCESS ROUTES FROM HWY TO BEACH S'LY OF INLET AREA. 50 YR TERM EXPIRES IN 2049.
Document References	300498	28298	TFI	Y	RELEASE OF TWO PIPELINE ROUTES ACROSS LANDS S'LY OF BRIDGE
Document References	328838	00027	TFI	Y	EASEMENT FOR DREDGE SITE OUT IN INLET-SUBMERGED LANDS. MODIFICATION OF 00027. ACTIVE.
Document References	300505	28298	TFI	Y	PARTIAL RELEASE OF 2 AREAS COVERED BY PARENT EASEMENT

142206	28298	TFI		SUBMERGED LANDS EASEMENT - EXPIRED ON 1/1/2015
363355	32057	TFI		EASEMENT FOR SPOIL DISPOSAL AREA- 50YR TERM EXPIRES IN 2060.
328834	00077	TFI		SUBMERGED LANDS EASEMENT ASSOC W/ ERP PERMIT 31-244773-4 & MEMO OF AGMT DATED 11/17/1988
356370	00027	TFI		SUBMERGED LANDS EASEMENT IN INNER INLET-20 YR TERM EXP 11-22-2008 - RENEWED UNTIL 10-01-2028
Current				
2959		ADF		AGENCY DEED FILE - SUBJECT TO TERMS AND CONDITIONS OF AGMT DATED JULY 11, 1964
2975		ADF		DISCLAIMER FROM INLET DIST FOR PIPELINE ROUTE

363349	28298	TFI		RELEASED A SPOIL AREA ON N'LY SHORE OF INLET 4-16-2010
300510	28298	TFI		AMENDED AREA EXPIRED AT END OF ESMT TERM IN 2015

LEGEND: \*00077 expired 2014 per Certification of Board Action  
 CURRENT ENCUMBRANCES (i.e. easements)  
 EXPIRED OR RELEASED ENCUMBRANCES

### SCHEDULE 3

#### RULES, CONDITIONS AND DEFINITIONS

##### Sebastian Inlet State Park Rules for Jetties and Fishing Decks

For everyone's safety we have established the following rules:

1. The Jetty was built to aid boaters in navigation through the inlet and provide public access onto the deck. While using the Fishing Deck, please yield to boaters until they pass safely through the inlet.
2. Throwing or casting of objects at vessels, surfers and snorkeler/divers is prohibited.
3. No cast netting is allowed on the eastern portion of the deck.
4. Cast netters using the rest of the deck must return unused marine life back into the water. This is one of the few jetties that allows netting please do not abuse the privilege.
5. No Alcoholic beverages, glass containers, pets other than service animals. The use of bicycles, skateboards or scooters or similar devices are not permitted on the deck.
6. Use clam shell shucking station and discard shells safely into the water. Trash and discarded fishing line must be placed in the provided receptacles.
7. No clam shells, fish, trash or discarded fishing line may be left on the jetty.
8. All fish harvested must be placed in a container as soon as possible.
9. Jumping and Diving from the deck and jetties is prohibited.
10. No canopies or tents are allowed. Umbrella's may be used but cannot be attached to the deck or railing.
11. There is a limit of two fishing rods per person and they must be attended.
12. No loud music, profanity or rude behavior is allowed.
13. No open flame or grills are allowed.
14. Be courteous when using lights after dark, red lights are strongly encouraged.
15. No propeller driven craft may be launched or landed on the jetty.
16. All Marine life not for harvest must be returned to the water without intentional harm and in whole condition as quick and safe as possible.
17. Please adapt fishing methods when birds are actively feeding so they are not caught. Every effort should be made to release them unharmed if caught or entangled.
18. Targeting Goliath Grouper, a Protected Species is prohibited. Do not tie lines to the railing or any part of the structure.
19. Please exit the jetty during periods of inclement weather which may result in lightening and rough seas.

##### **Video Surveillance in Use**

It is the fisherman's responsibility to know and follow all current FWC rules and regulations in harvesting marine life. All limits and seasons are strictly enforced.

When in doubt release it.

Failure to follow these rules may result in loss of Fishing privileges.

Rude or aggressive behavior will not be tolerated and may result in being trespassed from the State Park.

Sebastian Inlet State Park Conditions and Limits for Use of Supplemental Security and Special Detail Responsibilities:

1. Detail Shifts
  - a. Four hour shifts three shifts per week for a one-month trial period.
  - b. An attempt will be made to schedule shifts to start two hours before incoming tide change and end two hours after tide change.
  - c. Shifts should rotate between day and evenings Wednesday, Friday, Saturday or Holidays.
2. Communication
  - a. Deputies should pick up a Park Radio at the North Ranger station at the beginning of the shift. And return it after the shift.
  - b. Deputies should use their normal means of communication for all emergencies.
  - c. Resource violations will be immediately reported to the Park Manager through the Park Radio; and FWC through normal law enforcement communications channels for necessary compliance or enforcement actions.
3. Primary Responsibilities
  - a. The main responsibility of the Special Detail is to interpret and educate our visitors on sharing a major fishing resource and following the jetty rules.
  - b. The deputies should make every effort to prevent altercation through early intervention.
  - c. Deputies should document incident using their normal protocol and provide copies of the reports to Sebastian Inlet State Park and the Sebastian Inlet Tax District.
  - d. Visitors who repeatedly violate jetty rules should be asked to leave the jetty and not return for a period of one year with Park Manager's approval and proper documentation.
  - e. Visitors that are rude and abusive should be trespassed from the park for one year with Park Managers approval and proper documentation.
  - f. The Deputies always have the option to make arrest or take any necessary action when considering public safety.
  - g. Every effort should be made to use common sense and courtesy when interacting with the different user groups. Generally, the person that is using the area first should have the priority. The exception is when inlet conditions are safest close to the jetty, fishermen from the deck should pull in their lines until the boat passes through.
4. Safety
  - a. Deputies should always respond to incidents using their level of training and call for assistance using normal protocol.
  - b. The North Ranger Station should be notified as soon as possible so Rangers can respond and gather information for reports.
  - c. Deputies should become familiar with the life rings and receive training if needed.

- d. Deputies may be asked to assist in clearing the jetty of visitors during times of inclement weather and high seas.
5. Protecting Wildlife Resources
- a. Deputies should become familiar with basic fishing regulation and ask for voluntary compliance.
  - b. Deputies should coordinate with FWC to protect our resources and to make sure our fishing regulations are followed.
  - c. Keeping the deck clean and returning unwanted fish to the water alive should be a high priority. Visitors repeatedly failing to follow the rules of the jetty should be asked to leave the jetty.

**DEFINITIONS:**

Deck – The concrete cap atop the jetty pilings, inclusive of metal grates and handrails. The multi-use deck provides access to the public for fishing, sightseeing, observing nature, etc.

Jetty – The structure extending into the water, or fronting the waterway, for protection of the inlet, inclusive of rocks, piles, decking and sidewalks.

Jetty Rocks – Primarily the boulders and rocks between the pilings forming the rib of the jetty. Also includes the boulders lining both sides of the jetty extending into the water from the beach.

Pier – When used, means the elevated portion of the deck over water, atop the pilings.

Revetment – Rocks and boulders lining the inlet shoreline and embankment protecting the shoreline from erosion.

Sidewalk – The concrete walkway leaving the elevated deck, sitting atop the rock revetment.