

RESOLUTION NO. 13242-19

A RESOLUTION AUTHORIZING AND DIRECTING THE CITY MANAGER TO EXECUTE AND THE CITY CLERK TO ATTEST, ON BEHALF OF THE CITY OF NEWPORT NEWS, VIRGINIA, THAT CERTAIN COOPERATIVE AGREEMENT BY AND BETWEEN JAMES CITY COUNTY, THE CITY OF NEWPORT NEWS, AND THE COMMONWEALTH OF VIRGINIA DEPARTMENT OF GAME AND INLAND FISHERIES DATED THE 14TH DAY OF MAY, 2019.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Newport News:

1. That it hereby authorizes and directs the City Manager to execute and the City Clerk to attest, on behalf of the City of Newport News, Virginia, that certain Cooperative Agreement by and between James City County, the City of Newport News, and the Commonwealth of Virginia Department of Game and Inland Fisheries dated the 14th day of May, 2019.
2. That a copy of the said Agreement is attached hereto and made a part hereof.
3. That this resolution shall be in effect on and after the date of its adoption, July 9, 2019.

PASSED BY THE COUNCIL OF THE CITY OF NEWPORT NEWS ON JULY 9, 2019

Mabel Washington Jenkins, MMC
City Clerk

McKinley L. Price, DDS
Mayor

A true copy, teste:

City Clerk

**COMMONWEALTH OF VIRGINIA
COOPERATIVE AGREEMENT
BY AND BETWEEN
JAMES CITY COUNTY, THE CITY OF NEWPORT NEWS
AND THE COMMONWEALTH OF VIRGINIA,
DEPARTMENT OF GAME AND INLAND FISHERIES**

This Agreement entered into this 14 day of May, 2019, by James City County, hereinafter referred to as the "County", the City of Newport News, Virginia, hereinafter referred to as the "City", and the Commonwealth of Virginia, Department of Game and Inland Fisheries hereinafter referred to as the "Department."

WITNESSETH:

WHEREAS, the Department, County and City were parties to an Agreement dated July 14, 1998, hereinafter referred to as the "**Original Agreement**" for the purpose of providing a portion of real estate located off of the Diascund Creek Reservoir, owned by the City of Newport News, to establish a public boating access site to include the "**Landing**", being defined as the concrete boat ramp and the immediately adjacent pier, and the "**Facility**", being defined as the parking lot and surrounding grounds, excluding the Landing; hereinafter collectively referred to as the "**Boating Access Site**".

WHEREAS, the Department, County and City, collectively referred to as the "**Parties**" desire to continue their arrangement to provide boating access for the benefit of the public pursuant to this **Cooperative Agreement**, hereinafter called the "**Agreement**."

NOW, THEREFORE, in consideration thereof, and of the promises, terms and covenants herein, the Department, County and City agree as follows:

- 1) **PRIOR AGREEMENT:** The aforementioned **Original Agreement** dated July 14, 1998, included herein as **Attachment A**, is incorporated by reference. Any other agreements written or verbal, shall be superseded in their entirety by this **Agreement**.
- 2) **TERM OF AGREEMENT:** This **Agreement** shall remain in force for a period of twenty-five (25) years from the date of execution. Upon the expiration of the twenty-five (25) year term, this **Agreement** shall automatically renew from year to year, unless any of the Parties provides written notice of non-renewal to the other Parties at least ninety (90) days prior to the expiration of the current term. Any of the Parties may terminate this **Agreement** at any time with one hundred and eighty (180) days written notice as described in Paragraph 16, and pursuant to the terms of Paragraph 9 herein.

- 3) **USE OF DEPARTMENT FUNDS:** Department funds shall only be used for the purposes and activities covered in the Agreement Proposal.
- 4) **APPLICABLE LAWS:** This Agreement shall be governed in all respects, whether as to validity, construction, capacity, performance or otherwise, by the laws of the Commonwealth of Virginia.
- 5) **SEVERABILITY:** Each paragraph and provision of this Agreement is severable from the entire Agreement; and if any provision is declared invalid, the remaining provisions shall nevertheless remain in effect.
- 6) **INCONSISTENCIES IN INCORPORATIONS BY REFERENCE:** Where there exists any inconsistency between this Agreement and provisions of previous written agreements between the Parties regarding the Boating Access Site, which are made a part of this Agreement through incorporation by reference or otherwise, the provisions of this Agreement shall control.
- 7) **INTEGRATION AND MODIFICATION:** This Agreement constitutes the entire Agreement between the Department, County and City. No alteration, amendment or modification in the provisions of this Agreement shall be effective unless it is reduced to writing, signed by the Parties and attached hereto.
- 8) **DISCLAIMER:** Nothing in this Agreement shall be construed as authority for any of the Parties to make commitments, which will bind another Party or Parties beyond the project contained herein.
- 9) **TERMINATION FOR CAUSE:** Either the Department, County or the City may terminate the Agreement, in whole, or in part, at any time before the date of completion, upon written notice to the other Parties that there has been a failure to comply with the conditions of the Agreement. In connection with such termination, any recoveries by the Parties shall be in accord with the legal rights and liabilities of the Parties.
- 10) **TERMINATION FOR CONVENIENCE:** The Department, County or City may terminate the Agreement after providing proper notice as described in Paragraphs 2 and 16 if all Parties agree that the continuation of the Agreement program will not produce beneficial results commensurate with further expenditure of funds. The Department, County or City may likewise mutually terminate the Agreement, in whole or in part, after proper notice is given as described in Paragraphs 2 and 16 and all Parties agreeing to the same, if the requesting Party's funding for the Boating Access Site is terminated or reduced. The Department, County and City shall agree upon the termination conditions, including the effective date or, in the case of

partial terminations, the Parties shall agree upon the portions to be terminated. In the event that the County or City elects to terminate said Agreement prior to the expiration of the initial twenty-five year term without the consent of the other Parties, the terminating party shall repay the Department for any Agreement funds, capital funds and/or federal funds invested and documented into the facility during the term of the Agreement by the Department, on a pro-rated schedule for the portion of the term of the Agreement from the date of termination to the end of the initial term.

- 11) **COUNTY AGREEMENT:** The County agrees:
- a. Together with the City, to provide maintenance and make the necessary renovations to the Facility on the land owned by the City, as shown on Attachment B - The Site Plan, for public use for access to the Diascund Creek Reservoir for boating and fishing.
 - b. That the land set aside by this Agreement, owned by the City, shall be used by County solely for the purposes of public access for boating and fishing, including but not limited to administrative purposes. Any other uses must be approved by all Parties. If the County utilizes the Boating Access Site or any portion of the Boating Access Site in a manner that causes damage to the Boating Access Site, the County shall, at their own expense, take whatever steps are necessary to repair damages to the Boating Access Site and prevent further, such damage.
 - c. To share in the patrolling of the Boating Access Site as deemed appropriate by the County to enforce local laws, rules and other public safety regulations, and direct traffic during peak use times.
 - d. To establish rules and regulations, in cooperation with the City and the Department, on appropriate public usage, vehicular access, litter control, and sanitation at the Boating Access Site, as deemed necessary and/or appropriate by the County, in cooperation with the City and the Department.
 - e. To keep the Boating Access Site open to the public for boating access and fishing, except for reasonable closures necessary for maintenance and emergencies.
 - f. To prohibit private advertising signage within the boundaries of Boating Access Site.
 - g. To charge no fees for the use of the Boating Access Site.
 - h. Together with the City, to maintain the Facility, its improvements and grounds for the term of this Agreement. County's maintenance shall include maintaining the parking lot surfaces and access road including parking barriers and bollards, collection and removal of trash and garbage, removal of debris and all other Facility maintenance necessary for safe public use of the Boating Access Site. Should the County install trash receptacles, the receptacles must be emptied by the County as often as is required as to prevent the accumulation of litter and trash in or around the

receptacles.

- i. To erect and maintain signs, if needed, related to the rules and regulations established pursuant to item line item (d) of Paragraph 11.

12) CITY AGREEMENT: The City agrees to:

- a. Make available the land, as shown on **Attachment B - The Site Plan**, owned by the City, for public use for access to the waters of Diascund Creek Reservoir for boating and fishing.
- b. Identify and mark the boundaries of the **Boating Access Site**, and associated bank fishing areas, as it outlined on **Attachment B - The Site Plan**.
- c. Inspect the **Boating Access Site**, and land therein set aside by this Agreement, as needed to ensure that the terms of this Agreement are being met.
- d. To establish rules and regulations, in cooperation with the County and the Department, on appropriate public usage, vehicular access, litter control, and sanitation at the **Boating Access Site**, as deemed necessary and/or appropriate by the City, in cooperation with the County and the Department.
- e. Together with the County, to maintain the Facility, its improvements and grounds for the term of this Agreement. City's maintenance shall include cutting weeds and brush, maintaining drainage ditches and mowing the grass at established public access points, as is detailed on **Attachment B -The Site Plan**
- f. If the City utilizes the **Boating Access Site** or any portion of the **Boating Access Site** in a manner that causes damage to the **Boating Access Site**, the City shall, at their own expense, take whatever steps are necessary to repair damages to the **Boating Access Site** and prevent further, such damage.
- g. To erect and maintain signs, if needed, related to the rules and regulations established pursuant to item line item (d) of Paragraph 12.

13) DEPARTMENT AGREEMENT: The Department, subject to available funding and appropriation by the General Assembly, agrees:

- a. To patrol the **Boating Access Site** as it deems appropriate to enforce game, inland fish and boat laws as well as local regulations related to the public use of the **Boating Access Site** pursuant to its authority.
- b. To maintain signs related to Department Public Boating Access.
- c. To be responsible for maintenance and repair of the **Landing** as required, in the opinion of the Department, for safe use by the public.
- d. To allow the City or County to close the **Boating Access Site**, if necessary, for maintenance and emergencies, in coordination with the Department.

- 14) **AGREEMENT DOCUMENTS:** The Agreement documents, incorporated herein, shall consist of:
- a. This signed form;
 - b. The attached description consisting of the following:
 - i. Original Agreement dated July 14, 1998 (Attachment A)
 - ii. Site Plan (Attachment B)
- 15) **THERE ARE NO THIRD PARTY BENEFICIARIES TO THIS AGREEMENT.**
- 16) **NOTICES:** All notices hereunder must be in writing and shall be deemed valid if sent via one of the following methods:
- a. certified mail, return receipt requested; or
 - b. overnight delivery service.
- 17) **ALL PARTIES AGREE:**
- a. The land set aside by this Agreement is owned by the City as part of its water supply, and any activities authorized pursuant this Agreement are secondary to that primary use. The County and Department agree that their use of the property is limited solely to the purposes of public access for boating and fishing as is detailed herein. Any other uses require prior notification and approval, by all Parties, which notification is to be done via phone or overnight delivery service and which contact information can be found in the below Official Notice Contact Information.
 - b. The Landing is strictly for fishing and the launching and retrieval of watercraft.
 - c. The Boating Access Site's hours of operation shall be one hour before sunrise and one hour after sunset.
 - d. By separate agreement, the County, with the written approval of both the City and the Department, may construct and operate a concessionaire facility at the Boating Access Site – in accordance with the terms and condition set forth in that mutual agreement.
 - e. The Drive and Parking Area, defined as the existing asphalt roads and driveways within the Boating Access Site, are to be resurfaced and sealed (the "Project") at the cooperation, effort and expense of the City and the County together. The City and the County are each to be responsible for 50% (fifty percent) of the total cost of the Project, which Project is to be completed within a reasonable time frame from the execution of this Agreement.

SEE FOLLOWING PAGE

Notices shall be addressed as follows (or to any other address the Parties may designate by like notice):

Official Notice Contact Information:

Department: Virginia Department of Game and Inland Fisheries

ATTN: Real Property Mgmt.
Address: 7870 Villa Park Drive, Suite 400
Henrico, Virginia 23228

Telephone: 804-367-0811
Fax No.: 804-367-2311

County: County of James City-- Administration

ATTN: County Administrator
Address: 101-D Mounts Bay Road
Williamsburg, VA 23185

With copy to:

James City County Attorney's Office
101-D Mounts Bay Road
Williamsburg, VA 23185

Telephone: 757-253-6612
Fax No.: 757-253-6833

City: City of Newport News

ATTN: Director, Waterworks Department
Address: 700 Town Center Dr., Suite 500
Newport News, VA 23606

With copy to:

City Attorney
2400 Washington Avenue, 9th Floor
Newport News, VA 23607

Telephone: 757-926-1146
Fax No.: 757-926-1170

Attachment A – Original Agreement

**COMMONWEALTH OF VIRGINIA
COOPERATIVE AGREEMENT
BY AND BETWEEN
THE CITY OF NEWPORT NEWS,
THE COUNTY OF JAMES CITY, AND
THE DEPARTMENT OF GAME AND INLAND FISHERIES**

This Agreement entered into this 14th day of July 1998 by the CITY OF NEWPORT NEWS hereinafter called the "City", the COUNTY OF JAMES CITY hereinafter called the "County" and the Board of Game and Inland Fisheries and the Department of Game and Inland Fisheries hereinafter called the "Department."

WITNESSETH that the Department, City and County, in consideration of the mutual covenants, promises and agreements herein contained, agree as follows.

SCOPE OF SERVICES

The Department shall act in the capacity of Project Manager to facilitate the engineering, design and construction of a public boating access facility on Diascund Creek Reservoir. This public boating access facility hereinafter called the "Landing" shall be designed and built to Department standards to facilitate access to the waters of the Commonwealth. (Attachment A)

TERM OF AGREEMENT

To begin on the date this agreement is signed by all parties and lasting for a term of twenty (20) years. The funding period for this project is currently set to end 365 days from signing. Should the project require more time, the Department will pursue an extension of funding availability. Terms of this agreement are more specifically described in Attachment B.

FINAL PRODUCT

The Department shall design and construct a public boat landing as described in the Scope of Services, Attachment A. The Landing will meet, but not be limited to the following criteria:

1. Open to the public for boating and fishing access for a minimum of twenty (20) years.
2. Handicapped Accessible (Barrier Free to the top of the ramp or slide)
3. The Department will be responsible for operating and maintaining all public areas associated with the landing.
4. No fees charged for the use of the Landing.

AGREEMENT DOCUMENTS

The Agreement documents, incorporated herein, shall consist of:

1. The signed agreement
2. The attachments of the Agreement consist of:
 - a. Attachment A, Scope of Services
 - b. Attachment B, Terms of Agreement

c. Attachment C, Site Plan

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed intending to be bound thereby:

City: CITY OF NEWPORT NEWS

By:


EDGAR E. MARONEY

APPROVED AS TO FORM:


City Attorney

Title: City Manager

Date:

July 17, 1998

Approved by Resolution duly adopted on July 14, 1998

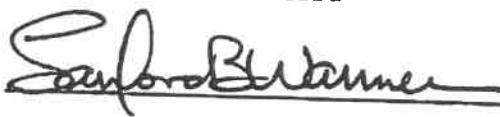
ATTEST:

By:



County: COUNTY OF JAMES CITY

By:



Title:

COUNTY ADMINISTRATOR

Date:

AUGUST 4, 1998

Department: BOARD OF GAME AND INLAND FISHERIES
DEPARTMENT OF GAME AND INLAND FISHERIES

By:


William L. Woodfin, Jr.

Title:

Director

Date:

8/11/98

ATTACHMENT A - SCOPE OF SERVICES

Project Title: Proposed Diascund Creek Reservoir Boat Landing
Project Location: Diascund Creek Reservoir - County of James City
Project Manager: Samuel S. West
Project Advisors: Phillip D. Lownes

PROJECT OBJECTIVE

Provide water-based recreational activities at the Diascund Creek Reservoir.

PROPOSED PROJECT

To construct a concrete boat ramp, access road, and a parking area in order to provide recreational fisherman, boaters, and other users a readily available site for water-based recreational activities.

The scope of the work will include stripping the topsoil from the proposed access road and parking areas and applying a layer of stone for the base. The ramp will be constructed on fill material places during a drawdown of the reservoir.

ATTACHMENT B - TERMS OF AGREEMENT

GENERAL TERMS AND CONDITIONS FOR RECIPIENTS OF DEPARTMENTAL FUNDS DEPARTMENT OF GAME AND INLAND FISHERIES COOPERATIVE AGREEMENT WITH LOCALITIES PROGRAM

1. **USE OF DEPARTMENT FUNDS:** The Department's funds shall only be used for the purposes and activities covered in the Agreement Proposal.
2. **APPLICABLE LAWS:** This Agreement shall be governed in all respects, whether as to validity, construction, capacity, performance or otherwise, by the laws of the Commonwealth of Virginia.
3. **SEVERABILITY:** Each paragraph and provision of this Agreement is severable from the entire Agreement; and if any provision is declared invalid, the remaining provisions shall nevertheless remain in effect.
4. **COLLATERAL CONTRACTS:** Where there exists any inconsistency between this Agreement and other provisions of collateral Contractual Contracts which are made a part of this Agreement by reference or otherwise, the provisions of this Agreement shall control.
5. **INTEGRATION AND MODIFICATION:** This Agreement constitutes the entire Agreement between the Department, City and County. No alteration, amendment or modification in the provisions of this Agreement shall be effective unless it is reduced to writing, signed by the parties and attached hereto.
6. **DISCLAIMER:** Nothing in this Agreement shall be construed as authority for either party to make commitments which will bind the other party beyond the project contained herein. Furthermore, the City or County shall not assign, sublet, or sub-agreement any work related to this Agreement or a interest it may have herein without the prior written consent of the Department.
7. **TERMINATION FOR CAUSE:** The Department reserves the right to terminate the Agreement in whole, or in part, at any time before the date of completion, upon written notice to the City and County, that City or County has failed to comply with the conditions of the Agreement. In connection with such termination or recoveries, the Department shall be in accord with the legal rights and liabilities of the parties.
8. **TERMINATION FOR CONVENIENCE:** The Department may terminate the Agreement if its funding is terminated. The Department, City or County may terminate the Agreement in whole, or in part, if all parties agree that the continuation of the Agreement program will not produce beneficial results commensurate with further expenditure of funds. The Department, City and County shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The City or County shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The Department shall allow full credit to the City or

County for the federal share of the noncancellable obligations properly incurred by the City or County prior to termination. If the Agreement is terminated by the City, prior to the completion of the twenty (20) year period, the City shall repay the Department for any Agreement funds, capital funds and or federal funds invested and documented into the facility by the Department on a prorated schedule for the portion of the term of the Agreement from the date of termination to the end of the period specified.

9. THERE ARE NO THIRD PARTY BENEFICIARIES TO THIS AGREEMENT.

10. THE CITY AGREES TO:

- (a) Make available the land, as shown on Attachment C, owned by the City, for public use for access to the waters of the State for boating and fishing.
- (b) Identify and mark the boundary of the Landing and associated bank fishing areas.
- (c) Inspect the Landing and grounds as needed to ensure that the terms of this agreement are being met.
- (d) To maintain the property and grounds for the term of this Agreement; such maintenance shall include cutting weeds and brush, mowing the grass at established public access points and other routine maintenance necessary for safe public use of the Landing.
- (e) Maintain ditches and stormwater treatment units.

11. THE COUNTY AGREES TO:

- (a) Maintain the property and grounds for the term of this Agreement; such maintenance shall include the collection and removal of trash and garbage, removal of debris and other routine maintenance necessary for safe public use of the Landing.
- (b) Patrol the Landing as it deems appropriate to enforce local laws, rules and other public safety regulations.
- (c) May install and maintain an information kiosk; in which all parties may display information.

12. THE DEPARTMENT, subject to available funding and appropriations by the General Assembly, Agrees to:

- (a) Patrol the Landing as it deems appropriate to enforce game, inland fish and boat laws as well as local regulations related to the public use of the Landing.
- (b) Erect and maintain signs related to direction, regulations of the public boat landing, public fishing rights and access.

- (c) **Maintain and make the necessary improvements to the Landing as needed, including the ramp or slide, pier and parking area, and be responsible for costs associated with those improvements or maintenance. the necessity for maintenances and improvements shall be at the sole discretion of the Department, including repairing the access road and parking lot surface.**
- (d) **Obtain all necessary permits and approvals for the construction of the proposed Landing.**
- (e) **Establish rules and regulations on appropriate public usage, vehicular access, litter control, and sanitation at the Landing.**
- (f) **Make the necessary improvements (complying with all federal, state and local requirements including full accessibility where possible) to the Landing.**
- (g) **Keep the Landing open to the public for boating access and fishing, except for reasonable closures necessary for maintenance or emergencies.**
- (h) **Provide and maintain obvious and conspicuous signs acknowledging participation of the City, Department and any additional partners in the development of the Landing.**

13. ALL PARTIES AGREE TO:

- (a) **The land set aside by this agreement will only be used for the purposes of public access and water supply. Any other uses require prior approval by all parties.**
- (b) **Restrictions governing the use of Diascund Creek Reservoir and marginal lands owned by the City of Newport News provided in City Code Sections 29-54 to 29-60 and the Virginia Health Laws shall apply to all facilities included in the Landing Area.**
- (c) **The Landing's hours of operation will be one hour before sunrise to one hour after sunset.**
- (d) **Charge no fees for use of the facilities.**
- (e) **By separate agreement the County with the City may operate a concessionaire facility at the Landing.**


ATTACHMENT C - SITE PLAN


Attachment B – Site Plan





New Kent
James City


DIASCUIND RESERVOIR RD


 Boating Access Site


 Drive and Parking Area

 Landing

 Roads

 Virginia Jurisdictions

 0 25 50 100 150 200 Feet



Source:
 Virginia Department of Game and Inland Fisheries
 2017
 Aerial Imagery - 2017
 Road Data - 2017
 All Other Data - VDOT
 VDOT - Lewis Pennington, GISP 2017/01/18