

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT (“MOA”) is made and entered into this 4th day of January, 2018, by and between the COMMONWEALTH OF VIRGINIA, DEPARTMENT OF CONSERVATION AND RECREATION (the “Landlord”) and the COUNTY OF ALBEMARLE, a Virginia political subdivision (the “Tenant”).

WITNESSETH

WHEREAS, the Landlord and Tenant have entered into that certain Deed of Lease (“Lease”) of even date herewith, pursuant to the terms of which the Landlord has leased certain property (the “Premises”) to the Tenant for development of a regional park;

WHEREAS, the Lease provides for the basic framework of the parties’ relationship over a term of ninety-nine years; and

WHEREAS, the Lease provides for the parties to enter into this separate MOA to further spell out the parties’ relationship concerning ongoing operations of the Premises.

NOW, THEREFORE, in consideration of the foregoing recitals and as further set forth herein, the parties agree as follows:

1. PUBLIC ACCESS. Tenant agrees that it shall, as may be reasonably accomplished in accordance with available resources and subject to reasonable date and hour restrictions consistent with Tenant’s other public parks, ensure the Premises are open to outdoor recreational use by members of the general public.

2. INVASIVE SPECIES CONTROL. As set forth in Section 8, the Tenant shall catalog existing invasive species located on the Premises and take reasonable steps to prevent the introduction of any invasive species onto the Premises. Tenant shall work with Landlord to develop an invasive species control plan, which plan shall be agreed to within six (6) months of the date of this MOA, to address removal and control of invasive species identified on the Premises. The final control plan shall be appended to, and made a part of, this MOA. Tenant and Landlord agree to revisit invasive species control measures no less than once every two years and make any adjustments to the invasive species control plan as may be reasonably required to address changing conditions on the Premises.

3. HUNTING. Landlord agrees that Tenant may, as part of its management of the Premises, allow managed hunts for purposes of population control. Any managed hunt must be conducted in accordance with a plan approved by the Landlord (whose approval shall not be unreasonably withheld) and only during applicable seasons authorized by the Department of Game and Inland Fisheries.

4. EQUESTRIAN USAGE. Landlord agrees that Tenant’s usage of the Premises, and improvements thereof, may include equestrian uses. Tenant agrees that it shall design any trails or other riding areas for equestrian uses specifically for such use, precluding

equestrian areas and facilities from use by others (such as mountain bikers or other similar users).

5. PLANNING AND IMPROVEMENTS. The parties acknowledge the Premises are subject to an existing Master Plan developed by the Landlord in conjunction with the possible Biscuit Run State Park. Tenant and Landlord agree to cooperate in development of modifications to the Master Plan to accommodate the Tenant's use of the Premises. As set forth in Section 12 of the Lease, Landlord will provide support, through its planning staff, for the Tenant's efforts to revise the Master Plan. Tenant agrees that it, or its contractors, shall be responsible for development of revisions to the Master Plan, with Landlord to provide secondary assistance and input during the process. The parties agree that once Tenant has updated the Master Plan, the location of proposed improvements (including, without limitation, roads, trails, or sports facilities) shall not be subject to further review by the Landlord. Final design of proposed improvements will require further review and approval of the Landlord, with approval subject to the terms of the Lease.

6. FUNDING COOPERATION. Landlord agrees that it shall cooperate with Tenant in efforts to raise funds for completion of improvements to the Premises. Landlord will provide letters of support, assistance in completion of grant applications (except for those grant programs administered by Landlord, for which Landlord shall provide only such assistance as available to all grant applicants), and assistance in completing financial projections for proposed improvements akin to those operated by the Landlord at other locations throughout the Commonwealth (e.g., information on the costs and revenues associated with operation of campgrounds at other Virginia state parks). Landlord will provide to Tenant information concerning possible funding opportunities for Premises improvements when the same is received by the Landlord.

7. NAMING; SIGNAGE. Tenant agrees that prior to determining a site name for its operation of the Premises, it shall consult with and accept input from the Landlord on the site name. Tenant agrees it shall not use any state park logos or branding, or represent in any way that its operation of the Premises constitutes a Virginia State Park without the prior written consent of the Landlord.

8. FURTHER REVISIONS TO MOA. The parties intend this MOA to be a "living," flexible document to allow for changes in the management of the Premises by the Tenant as opportunities or needs may arise. The parties further intend to work cooperatively in the development and ongoing operations of the Premises so the same can serve as a recreational resource for the citizens of Albemarle County and surrounding areas. However, should conditions change such that either party feels that further revisions to this MOA are needed, either party may request a change to the terms of this MOA by providing written notice to the other party together with a proposed amendment to this MOA. The receiving party shall thereafter respond no later than within sixty (60) calendar days by either (a) accepting the proposed changes to the MOA; (b) rejecting the proposed change while proposing an alternative change; or (c) rejecting the proposed changes outright. In the event a proposed change is rejected, the parties shall meet and attempt to resolve the proposed revisions. No change to this MOA shall become effective until executed by both parties.

9. NOTICES.

- (a) All notices to Tenant required or permitted under this MOA shall be given by mailing the notice by certified U.S. mail, postage prepaid, return receipt requested, addressed to:

County of Albemarle
Attn: County Executive
401 McIntire Road
Charlottesville, Virginia 22902

- (b) All notices to Landlord required or permitted under this MOA shall be given by mailing the notice by certified U.S. mail, postage prepaid, return receipt requested, addressed to:

Director
Department of Conservation and Recreation
600 East Main, 24th Floor
Richmond, Virginia 23219

- (c) Wherever a notice is required under this MOA, notice shall be deemed to have been duly given if in writing and either: (i) personally served; (ii) delivered by prepaid nationally recognized overnight courier service; or (iii) forwarded by Registered or Certified mail, return receipt requested, postage prepaid.
- (d) Each such notice shall be deemed to have been given to or served upon the party to which addressed on the date the same is received by the party or delivery is refused. Each party to this MOA shall notify the other party of a new address at which to mail notices, which notice shall be given in the manner provided above, and unless and until such notice of new address is given, notices to a party hereto shall be sufficient if mailed to such party's address as specified in this Section.
- (e) Where notice is sent by an alternative method, the notice shall be effective if actually received by the party, or its appointed agent, to whom the notice is addressed.

10. CHOICE OF LAW; NON-WAIVER. This MOA shall be governed by, and construed according to, the laws of the Commonwealth of Virginia. The parties choose the City of Richmond, Virginia, as the venue for any action instituted with respect to this MOA. By execution of this MOA, the Landlord and Tenant irrevocably consent to the jurisdiction of such court and waive, to the extent otherwise available, now or in the future, any defense of inconvenience of forum. No provision, covenant or agreement contained in this MOA shall be deemed to be a waiver of the sovereign immunity of the Commonwealth of Virginia or Landlord from tort or other liability.

11. APPROPRIATIONS. Agencies of the Commonwealth of Virginia cannot expend funds unless appropriated by the Virginia General Assembly and may not obligate a future session of the Virginia General Assembly. Therefore, notwithstanding any provision in this MOA to the contrary, if the Virginia General Assembly fails to appropriate funds for the affirmative obligations of the Landlord hereunder, such obligations shall terminate upon depletion of the then currently appropriated or allocated funds.

12. COUNTERPARTS. This MOA may be executed in one or more counterparts, more counterpart copies, each of which, when executed and delivered shall be an original, but all of which shall constitute one and the same agreement, provided each appears in its original typewritten form without deletions, strike-throughs or modifications of any type. Execution of this MOA at different times and in different places by the parties hereto shall not affect the validity of the MOA. Any signature page of any such counterpart may be attached or appended to any other counterpart to complete a fully executed counterpart of this MOA.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures and seals.

LANDLORD:

COMMONWEALTH OF VIRGINIA,
DEPARTMENT OF CONSERVATION AND
RECREATION

By: 
Clyde E. Cristman, Director

TENANT:

COUNTY OF ALBEMARLE

By: 
Jeffrey B. Richardson, County Executive

Approved as to form:


County Attorney