

**MEMORANDUM OF AGREEMENT
INDIAN RIVERSIDE PARK PARKING LOT PROJECT**

This MEMORANDUM OF AGREEMENT ("Agreement"), dated _____, is made by and between MARTIN COUNTY, Florida, political subdivision of the State of Florida, whose mailing address is 2401 S.E. Monterey Road, Stuart, FL 34996 (the "COUNTY") and The UNITED STATES SAILING CENTER OF MARTIN COUNTY, INC., a Florida non-profit corporation, whose mailing address is 1955 NE Indian River Dr. Jensen Beach, FL. 34957 ("USSCMC").

WITNESSETH:

WHEREAS, the COUNTY intends to construct an impervious parking lot with up to 76 stalls on the COUNTY's Park property located in Indian RiverSide Park, just north of the Mansion at Tuckahoe (the "Project"); and

WHEREAS, the USSCMC leases property in Indian RiverSide Park next to the Project site and recognizes that there is a clear reciprocity of benefit, and advantage in jointly undertaking the design and construction of the Project; and

WHEREAS, the COUNTY and the USSCMC have a long-standing, cooperative, collaborative relationship in coordinating events, event logistics and past construction projects in Indian RiverSide Park; and

WHEREAS, the COUNTY and the USSCMC desire to cooperate to design, permit and construct the Project based on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual benefits, the parties do hereby agree as follows:

1. The Project boundaries are more particularly described in Exhibit "A" which is attached hereto and incorporated herein.
 - A. The USSCMC, at its sole cost, shall develop plans sufficient for permitting the Project; provided, however, that such plans will be provided to the COUNTY for review at 30%, 90% and 100% completion.
 - B. The USSCMC, at its sole cost, shall apply for an amendment to the Site Plan for Indian RiverSide Park to reflect the design plans for the Project.
 - C. Based on the plans developed and submitted by the USSCMC, the COUNTY will obtain all required permits for the Project.
 - D. The parties recognize the importance of this Project to the citizens of Martin County.
2. A. In accordance with all applicable Florida Statutes and COUNTY requirements, the COUNTY will obtain bids, utilizing a unit price and quantity contract, for the goods and services required for the construction of the Project. The USSCMC agrees the COUNTY has the sole right to award the bid to the lowest responsible bidder.

- B. The USSCMC acknowledges and agrees that the COUNTY shall have full non-exclusive ownership and rights to use all plans and permits developed pursuant to Section 1. herein. There shall be no payment or credit required from the COUNTY for such materials. The parties agree USSCMC shall also have full non-exclusive rights to use and ownership of all such materials.
3. A. The USSCMC agrees to contribute, inclusive of the cost of Project design and amendment to the Site Plan, funds in the amount of \$325,000. The USSCMC's contribution of \$325,000 represents the USSCMC's total fiscal obligation in connection with this Project. USSCMC agrees to pay such funds to the COUNTY concurrent with the submittal of the 100% design plans. The COUNTY agrees to place such funds in a separate account from which invoices for the Project shall be paid ("Project Fund").
- B. The COUNTY agrees to be solely responsible for all Project costs in excess of the funds provided by the USSCMC.
- C. The parties agree the COUNTY shall be solely responsible for review and payment of Project related invoices from the Project Fund.
4. The COUNTY agrees it shall be solely responsible for maintenance, replacement, and repair of the Project, and USSCMC shall have no responsibility for such maintenance, replacement, and repair.
5. Disputes under this Agreement may be resolved between an individual identified by the COUNTY to serve as its Authorized Representative and USSCMC's Authorized Representative identified in Section 10. of this Agreement, or such other Authorized Representative as USSCMC may designate in writing for the purposes of this Section. If such Authorized Representatives are unable to reach a resolution and the parties agree that the issue is of sufficient merit, the parties shall select a mediator mutually acceptable to both parties to conduct a mediation of the issues involved and make a recommendation to both parties in order to settle the dispute. The parties agree to be responsible for their respective costs and fees incurred during the mediation and that the mediator's fees and costs shall be paid in equal amounts by each party.
6. This Agreement may be amended only by a written document duly executed by both parties. A party requesting amendment of the Agreement must propose such amendment in writing to the other party at least ninety-days (90) prior to the proposed effective date of the amendment.
7. This Agreement incorporates and includes all prior and contemporaneous negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior contemporaneous representations or agreements, whether oral or written.
8. If any term or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held invalid or unenforceable, then the application of such term or provision to person or circumstances other than those as to which it is held invalid or unenforceable shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.
9. Any notice, request, demand, consent approval or other communication required or permitted by this Agreement shall be given or made in writing and shall be served (as elected by the party

giving such notice) by one of the following methods: (i) hand delivery to the other party; (ii) delivery by commercial overnight courier service; or (iii) mailed by registered or certified mail (postage prepaid), return receipt requested. For purposes of notice the addresses are:

COUNTY

County Administrator
Martin County Board of County Commissioners
2401 Monterey Road
Stuart, FL 34996

Required Copy to:

County Attorney
Martin County Board of County Commissioners
2401 SE Monterey Road
Stuart, FL 34996

USSCMC:

Jim St. John
United States Sailing Center of Martin County, Inc.
1955 NE Indian River Dr. Jensen Beach, FL. 34957
Telephone: (772) 334-8085

Notice given in accordance with the provision of this paragraph shall be deemed to be delivered and effective on the date of hand delivery or on the second day after the date of the deposit with an overnight courier or on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not delivered if mailed.

10. The Authorized Representative for the USSCMC is Jim St. John, 1955 NE Indian River Dr. Jensen Beach, FL. 34957, telephone number (772) 334-8085. The Project Manager for the COUNTY is George Dzama, Capital Projects Manager, 2401 SE Monterey Road, Stuart, FL 34996, telephone number (772) 463-2837.
11. Unless otherwise terminated by mutual agreement as provided herein, this Agreement shall continue until completion of the Project.
12. Except as otherwise provided in this Agreement, neither party shall be deemed in default or in breach of the Agreement to the extent it shall be unable to perform due to an event of Force Majeure. For the purpose of this Agreement, Force Majeure shall mean and include any act of God, accident, fire, lockout, strike or other labor dispute, riot or civil commotion, act of a public enemy, failure of transportation facilities, enactment, rule, order, or act of government or governmental instrumentality (whether domestic or international and whether federal, state or local, or the international equivalent thereof), failure of technical facilities, or any other cause of any nature whatsoever beyond the control of either party which was not avoidable in the exercise of reasonable care and foresight.
13. To the extent permitted by Florida Law, and as limited in accordance with Section 768.28 Florida Statutes, the parties agree to be responsible for all claims, actions, demands, suits, losses, expenses (including attorney's fees), judgments and liabilities arising out of or from the acts,

negligence or misconduct of themselves and their agents, officers, directors, employees, members, or managers occurring in connection with this Agreement. Provided however, nothing herein shall be construed as a waiver of the sovereign immunity afforded Martin County by the Florida Constitution, a waiver of the provisions of Section 768.28, Fla. Stat. or a consent by Martin County to be sued by third parties.

14. The parties expressly agree that each party will bear its own attorney's fees and court costs incurred in connection with this Agreement.
15. The parties expressly and specifically hereby waive the right to a jury trial as to any issue in any way connected with this Agreement.
16. This Agreement and the terms hereof shall be construed in accordance with the laws of the State of Florida and venue for all actions in a court of competent jurisdiction shall lie in Martin County, Florida.
17. This Agreement may not be assigned by either party.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day, month and year aforesaid.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
MARTIN COUNTY, FLORIDA

CAROLYN TIMMANN, CLERK OF THE
CIRCUIT COURT AND COMPTROLLER

STACEY HETHERINGTON, CHAIR

APPROVED AS TO FORM & LEGAL SUFFICIENCY:

SARAH W. WOODS, COUNTY ATTORNEY

WITNESS:

US SAILING CENTER OF MARTIN COUNTY, INC.

Charlie MacNider
Print name

Alan Linson
Print name: _____

Jan 8, 2021

By: Charlie MacNider President
CHARLIE MACNIDER, PRESIDENT
Jan 8 2021

EXHIBIT "A"

