

**Cooperative Agreement  
Cuba Lake Fishing Access Site  
Town of Cuba, County of Allegany**

**DEC Cooperative Agreement Number: CA00301**

This Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the **CUBA LAKE DISTRICT**, a political subdivision of the State of New York and a district corporation within the meaning of the New York State Constitution and laws of New York State, with its principal office at P.O. Box 201, Cuba, NY 14727, hereinafter called the District; and the People of the State of New York, acting through their **COMMISSIONER OF ENVIRONMENTAL CONSERVATION**, who has an office at 625 Broadway, 14<sup>th</sup> Floor, Albany, New York 12233, hereinafter called the Department; and the People of the State of New York, acting through their **COMMISSIONER OF GENERAL SERVICES**, who has an office at Mayor Erastus Corning Tower II, The Governor Nelson A. Rockefeller Empire State Plaza, 41<sup>st</sup> Floor, Albany, New York 12242, hereinafter called General Services.

WHEREAS, the District and Department enter into this Cooperation Agreement for the operation by the District of a boat launch and fishing facility that the Department intends to construct on lands owned by the State of New York and managed by the District on behalf of General Services pursuant to Chapter 264 of the Laws of 1981 and Chapter 644 of the Laws of 1983; and

WHEREAS, General Services joins in this Cooperation Agreement in order to consent to the terms and conditions of this Agreement that may affect the State lands under its supervision and control.

NOW THEREFORE, the parties hereto agree as follows ("Agreement"):

1) The term of this Agreement shall be for twenty-five (25) years, from \_\_\_\_\_, 2011 to \_\_\_\_\_, 2036, unless terminated as provided in paragraphs 14 or 15 herein. The District or Department may extend the term of this Agreement upon written notice to the other party in accordance with paragraph 16. The parties may extend the term of this Agreement by separate written instrument, signed by all the parties hereto.

2) The District was created pursuant to Chapter 263 of the Laws of 1981 as a unit of local government to supervise, manage and control the body of water known as Cuba Lake, located in the Town of Cuba, Allegany County and the Town of Ischua, Cattaraugus County, for purposes set forth therein, including the conservation of fish and wildlife of the Lake and the preservation of recreational facilities for the use and enjoyment of the public.

3) Subject to the availability of lawful appropriations for this purpose, the Department intends to construct a public boating and fishing access facility (hereinafter "Facility") on certain State-owned lands under the jurisdiction of General Services and identified as Parcels A and B on a map entitled "Map of Lands Comprising Cuba Lake Fishing Access Site Situate in Lot 63, Township 3, Range 2, Holland Land Company's Survey, Town of Cuba, Allegany County, State of New York" dated December 11, 1997 prepared by the New York State Department of Environmental Conservation and on file in that department in Albany, New York as Map No. 11,421, a copy of which is attached hereto as **Schedule A** (hereinafter referred to as the "Site").

The Department's authority to construct and maintain the Facility is provided by section 11-2101 of the Environmental Conservation Law (ECL).

4) The Department shall locate any construction associated with the Facility on that portion of the Site identified in **Schedule A**, or at some other location on the Site that the Department may select at its discretion (but upon the prior written approval of General Services). Upon construction of the Facility, the Department shall thereafter maintain and repair the Facility as may be necessary or desirable for the use and benefit of the general public.

The Department intends to construct and maintain the following improvements substantially as shown on a map entitled "Cuba Lake Fishing Access Site Conceptual Site Plan," prepared by the State of New York Department of Environmental Conservation, Division of Operations, (Project # 94-2769) and dated May, 1994 and which map is attached hereto as **Schedule B**, or as modified from time-time by the Department, at its sole discretion:

- a. boat launching and retrieval ramp;
- b. parking area or areas;
- c. access road or roads from County Route 7C (West Lake Road) to the parking area and launching ramp; and
- d. weed cutter parking area.

5) Subject to the terms of this Agreement and applicable laws and regulations, the purposes of the Facility may include but shall not be limited to:

- a. providing public access to Cuba Lake from the Site for the launching and retrieving of boats, public boating on the Lake, and fishing; and
- b. providing public access from the Site for bank fishing along the shore of Cuba Lake between the Rawson Creek bridge and a point on the lakeshore 350 feet north of the confluence of the tributary known as Abbott's Creek.

6) At the time that construction of the Facility (or an element of the Facility) reaches a point that, in the opinion of the Department, the public may use the Facility (or an element of the Facility), the Department shall notify the District in writing. The notification shall request that the District inspect the Facility or element. Should the District find that the Facility (or an element of the Facility) is in a condition that complies with the terms of this Agreement and may be used by the public, the District shall accept the Facility (or an element of the Facility) in writing delivered to the Department and thereafter operate the Facility or the completed element. For the purposes of this Agreement, the term “operate” mean the following activities:

- a. Pay utility bills in a timely manner;
- b. Ensure that the Site and Facility are open and available to the general public and the District residents without charge for the purposes enumerated in this Agreement; and
- c. Plow or remove snow as necessary, if the parties agree that the Site and Facility shall be open and available to support public ice fishing.

At a minimum, the Site and Facility shall be open for public use and operated by the District each year beginning on March 1 and ending on November 30. The parties may agree to open the Site and Facility to ice fishing and, in such event, the parties shall agree on the period during which the Site and Facility are open to support ice fishing by the public.

- d. Additionally, the District and the Department agree that the Facility (or a completed element), once constructed and opened, will be operated in accordance with the regulations of the Department as set forth in Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York at Part 59 as the same exists on the date hereof or may be subsequently amended.

7) The Department shall maintain the Facility (or element) in accordance with the Department’s standards for similar facilities in other locations and as specified in generic standards that are attached hereto as **Schedule C**. For the purposes of this Agreement, the term “maintain” shall include, without limitation, those activities listed in **Schedule C**. The Department shall not be responsible for maintaining restroom facilities as noted in paragraph 9, below.

8) The foregoing notwithstanding, the Department, District, or General Services, as the case may be, may close the Site or Facility for reasonable periods of time for the purpose of repairs, maintenance, emergency, or to prevent harm to any person or property. Any party needing to temporarily close the Site or Facility for such purposes shall provide as much advance notice as possible to the other parties.

9) The District may, at its cost and expense and upon no fewer than sixty (60) days prior written notice to and approval of the Department, construct one or more restrooms on the Site, or have restrooms placed on the Site; however, should the District choose to do so, it shall be the responsibility of the District to maintain such restrooms and associated improvements in a condition that provides clean, safe and universal access to the public using the Site. District agrees to ensure any such restrooms, as well as access thereto, conform to standards of universal access as promulgated by the Americans With Disabilities Act (ADA) or any similar requirements provided by the Department and intended to ensure universal access.

10) The Department and General Services acknowledge that the survey map prepared by the Department entitled "Map Of Lands Comprising Cuba Lake Fishing Access Site" by Robert C. Stanton, L.S. (License Number 49780), dated December 11, 1997, with Map Number 11,421 attached hereto and made a part hereof as **Schedule A**, shows an "Exception" of lands now or formerly conveyed by Jeffrey Preston to Edward G. and Arlene M. Kellner as per Liber 1063 of Deeds at page 190. The parties hereby acknowledge that the real property and improvements identified as such on **Schedule A** were acquired by the People of the State of New York from the Cuba Lake District by Deed dated December 4, 2002 and recorded on January 21, 2003 in the Allegany County Clerk's Office.

11) The District shall hold and save harmless The People of the State of New York, the Department, their officials, employees and contractors from any claim or liability arising out of this Agreement, except for liability that is directly attributable to the acts or omissions of the Department or State of New York.

12) Subject to the availability of lawful appropriations, the Department agrees to indemnify and hold harmless the District, its successors and assigns, officers, employees, and agents, against claims, loss, damage and expense the District may suffer as a direct result of the Department's negligence or tortious acts or omissions in the course of exercising any rights granted under this Agreement or as a direct result of actionable conduct of the Department, as permitted by the Court of Claims Act and Section 17 of the Public Officers Law.

The Department's duty to indemnify and save harmless prescribed by this paragraph shall be conditioned upon:

a. Delivery to the Attorney General by the District of the original or a copy of any summons, complaint, process, notice, demand or pleading within fifteen (15) business days after it is served with such document; and

b. Representation by the Attorney General or, if the Attorney General determines in his or her sole discretion based upon investigation and review of the facts and circumstances of the case that representation by the Attorney General would be inappropriate, representation by private counsel to be selected by the Attorney General after consultation with the District; and

c. The full cooperation of the District in the defense of such action or proceeding against the Department based upon the same act or omission, and in the prosecution of any appeal.

13) The Department and District, as the case may be, shall require any contractor hired by it to provide goods or services on the Site, to obtain and maintain in full force and effect at all relevant times, the following insurance with limits not less than those described below, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies) and the form and content of such policy or policies shall be subject at any time to review and approval by either party. Any such policies of insurance shall name the Department (and The People of the State of New York), and the District, as the case may be, as named additional insureds. The insurance requirements are as follows:

a. Commercial General Liability Insurance with a limit of not less than \$1,000,000 each occurrence. Such liability shall be written in the Insurance Service Office's (ISO) occurrence for CG 00 01, or a substitute form providing equivalent coverages and shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal and advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract) and explosion, collapse and underground coverage.

b. If such insurance contains an aggregate limit, it shall apply separately to this project.

c. Products and Completed Operations coverage shall include a provision that coverage will extend for a period not less than twelve (12) months from the date of final completion and acceptance by the hiring party of all contractors' work.

d. An Owners and Contractors Protective Liability Policy issued to, and in the name of the Department and The People of the State of New York and/or District, as appropriate, with limits of not less than \$1,000,000 per occurrence and \$1,000,000 in the aggregate.

e. Workers Compensation, Employers Liability, and Disability Benefits as required by New York State. If employees will be working on, near or over navigable waters, US Longshore and Harbor Workers Compensation Act endorsement must be included.

f. Comprehensive Business Automobile Liability Insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any automobile including owned, leased, hired and non-owned automobiles.

g. Commercial Property Insurance covering at a minimum, the perils insured under ISO Special Causes of Loss Form (CP 10 30), or a substitute form providing equivalent coverages, for loss or damage to any owned, borrowed, leased, or rented capital equipment, tools, including tools of their agents and employees, staging towers and forms, and property of the Department and/or District, as the case may be, held in its care, custody, and/or control.

h. During the performance of any construction work, restoration or alteration, builder's risk completed value form covering the perils insured under the ISO special causes of loss form, including collapse, water damage, and transit theft of building materials, with deductible reasonably approved by the Department, in non-reporting form, covering the total value of the work performed and equipment, supplies and materials at any off-site storage location used with respect to the construction work.

14) The District may terminate this Agreement prior to the termination date set forth only as a result of a material breach of a substantive term of this Agreement by the Department and only after complying with the dispute resolution provisions contained in paragraph 19 herein.

15) The Department may terminate this Agreement prior to the termination date set forth above by giving the District ninety (90) days prior written notice of the Department's intent to so terminate.

16) Any notice required by this Agreement shall be personally delivered or sent to the other party as provided below:

Any notice to the Department required by this Agreement shall be personally delivered or sent to the Department (with a copy to General Services) by first class mail at the following address:

New York State Department of Environmental Conservation  
Region 9, Regional Director  
270 Michigan Ave.  
Buffalo, New York 14203

Any notice to the District required by this Agreement shall be personally delivered or sent to the District (with a copy to General Services) by first class mail at the following address:

Cuba Lake District  
PO Box 201  
31 Water Street, Suite 8  
Cuba, NY 14727

The District or the Department, as the case may be, shall provide General Services a copy of any notice sent by it to the other party. The District and the Department shall send copies of notices to:

New York State Office of General Services  
ATTN: Counsel's Office  
Mayor Erastus Corning Tower II, 41<sup>st</sup> Floor  
The Gov. Nelson A. Rockefeller Empire State Plaza  
Albany, New York 12242

17) Any party may notify the other(s) of a breach or suspected breach of any of the terms or conditions of this Agreement. Such notice shall set forth how the offending party can cure such breach or suspected breach and shall give such party sixty (60) days from the date of receipt of the notice in which to cure, which time period may be extended as appropriate.

At the expiration of such period of time to cure, or any extensions thereof, the aggrieved party shall notify the other of any failure to adequately cure the breach or suspected breach. The other party shall then have an additional fifteen (15) days from receipt of such notice to cure. At the expiration of said fifteen-day period, the aggrieved party may commence any legal or equitable action or proceedings in accordance with any applicable law to require compliance with the terms of this Agreement.

18) In the event the parties cannot resolve a dispute through the notice to cure process described above, and prior to the initiation of any action or proceeding based upon the notice of cure and upon the concurrence of the parties, the dispute may be mediated by the Department's Office of Hearings and Mediation Services whose recommendations are advisory to the parties.

Within thirty (30) days of receipt of such recommendations each party must advise the other(s) of its concurrence or non-concurrence.

Any disputes remaining unresolved after mediation may be pursued through initiation of any appropriate action or proceeding in a court of competent jurisdiction.

19) This Agreement may be amended or modified in writing mutually subscribed by the parties hereto.

20) The District and the Department shall be obligated under this Agreement only to the extent that monies are lawfully appropriated and available for these purposes and no liability shall be incurred by either party beyond monies lawfully appropriated and available for the purposes enumerated in this Agreement.

21) This Agreement may not be assigned by either party without prior written consent.

22) This Agreement binds the parties hereto and their respective successors, if any.

23) The parties hereby acknowledge the "Management Agreement" between the District and General Services dated November 6, 2006 and any successor agreements between the District and General Services. This Cooperation Agreement shall not be interpreted as modifying or amending any provision of the November 6, 2006 Management Agreement or any successor agreement, unless the parties expressly provide otherwise.

24) This Agreement fully represents the understanding of both the District and the Department as to use, maintenance and operation of the Site and the Facility. No other agreements, promises or representations have been made by the parties except those set forth herein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

CUBA LAKE DISTRICT

By: Jay Moris

Its: CHAIRPERSON

Dated 9/8/2011

THE PEOPLE OF THE STATE OF NEW YORK  
acting by and through the  
Commissioner of the Department of  
Department of Environmental  
Conservation

By \_\_\_\_\_  
Nancy Lussier

Its: Director, Division of Management and Budget

Dated: \_\_\_\_\_

THE PEOPLE OF THE STATE OF NEW YORK  
acting by and through the  
Commissioner of General Services

By \_\_\_\_\_

Its:

Dated: \_\_\_\_\_



# CERTIFICATE OF RECORDING OFFICER

That the attached Resolution is a true and correct copy of the Resolution, authorizing the signing of Cooperative Agreement CA00301 with the Department of Environmental Conservation, as adopted at a legally convened meeting of the

Cuba Lake District  
(Name of Governing Body of District)

duly held on the 8<sup>th</sup> day of

September 20 11; and further that such Resolution has

been fully recorded in the meeting minutes

8 September 2011 Meeting Minutes in my office.  
(Title of Record Book)

In witness whereof, I have hereunto set my hand this

12<sup>th</sup> day of September, 20 11.

If the District has an Official Seal,  
Impress here.

Shel A Warren, Secretary  
Signature of Recording Officer

## SCHEDULE C

### Operation and Maintenance by Department

Subject to the availability of lawful appropriations for this purpose, the Department shall be responsible for the following Facility operation and maintenance, upon completion of Facilities (or an element of the Facility) by the Department.

#### 1. Operation --- Overview

A. Those Facilities generally depicted in Schedule B and that are intended to serve anglers will be open and available to the general public, in accordance with the terms of this Agreement, without regard to the residency of users.

B. Boat launching and shore fishing areas will be open for use, weather permitting, as soon as water levels allow each Spring and until Lake levels are dropped in the Fall or Winter.

#### 2. Maintenance --- Overview

A. Those Facilities generally depicted in Schedule B and that are intended to serve anglers shall be maintained to provide a reasonably safe and clean experience to users at all times such Facilities are open to the public.

B. Department shall maintain and keep all Facilities in a good state of repair so as to maximize public use and to prevent untimely deterioration and depreciation of the Facilities. As such, Department shall make all necessary repairs, servicing, and maintenance in a timely and professional manner.

#### 3. Maintenance Requirements

A. Immediately prior to seasonal opening of Facilities, Department shall perform the following tasks:

- (1) Touch up road surfaces and paths with appropriate materials;
- (2) Install temporary docks, if provided;
- (3) Install identification and instructional signs, if provided ;  
And
- (4) Maintain and replace as necessary property boundary markers, posts, fences, and barriers.

- B. During operating seasons, the Department shall perform the following tasks as needed:
- (1) Mow grass and control brush, where necessary;
  - (2) Pick up and remove trash to an approved disposal facility;
  - (3) Make adjustments to temporary docks, if provided;
  - (4) Repairs resulting from vandalism, graffiti, etc.; and
  - (5) Provide periodic inspections by law enforcement personnel and enforcement of applicable laws, regulations, and rules of the DEPARTMENT.
- C. As part of closing the Site for the season, Department shall perform the following tasks:
- (1) Remove and store signs; and
  - (2) In the event the Department provides temporary docks, Department shall remove and securely store such docks.
- D. Whenever Winter use is allowed at the Site, Department shall perform the following tasks:
- (1) Pick up and remove trash to an approved disposal facility; and
  - (2) Provide periodic inspections by law enforcement personnel and enforcement of applicable laws, regulations, and rules of the DEPARTMENT.