

**BREVARD COUNTY OYSTER GARDENING PROGRAM
MEMORANDUM OF AGREEMENT**

**BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS
AND
BREVARD ZOO**

This Memorandum of Agreement (the "Agreement") is entered into the date of last signature below by and between Brevard County Board of County Commissioners, whose address is 2725 Judge Fran Jamieson Way, A-219, Viera, Florida 32940 (hereinafter referred to as "BREVARD COUNTY") and East Coast Zoological Society of Florida whose address is 8225 North Wickham Road, Viera, Florida 32940 (doing business as and hereafter referred to as "BREVARD ZOO").

WITNESSETH

WHEREAS, BREVARD ZOO, in furtherance of its local conservation mission, has knowledge, experience and expertise in community-based live oyster propagation, oyster restoration, and living shoreline installation projects of interest to BREVARD COUNTY; and

WHEREAS, BREVARD COUNTY is desirous of engaging BREVARD ZOO as a team to provide services as described in this Agreement, unless otherwise amended; and

WHEREAS, BREVARD ZOO has been providing services in accordance with the requirements of this Agreement from October 1, 2019 and will continue to provide such services in accordance with this Agreement through September 30, 2020, unless otherwise provided.

NOW THEREFORE, in consideration of the above recitals and of the mutual promises and other good and valuable consideration set forth below, these parties intending to be bound, agree in advance as follows to the general terms and conditions under this Agreement.

1. STATEMENT OF WORK

BREVARD ZOO agrees to provide services to be performed under this Agreement in accordance with the specific Statement of Work attached as EXHIBIT A.

2. PERIOD OF PERFORMANCE

This Agreement shall run from the date of last signature below and shall remain in effect until September 30, 2020, unless otherwise amended. The parties may agree in writing to renew this Agreement, under the same terms and conditions, up to two (2) additional one-year terms.

3. CONSIDERATION AND PAYMENT

- (a) BREVARD COUNTY hereby agrees to pay to BREVARD ZOO \$ 150,000.00 on a fixed price basis of \$ 37,500.00 at the end of each quarter to perform the services associated with the Brevard County Oyster Gardening Project as specifically described in the attached Statement of Work (EXHIBIT A). As of the date of last signature, BREVARD ZOO has satisfied its requirements for the first quarter. Additional payments shall continue to be made in accordance with the terms and conditions of this Agreement and EXHIBIT A.
- (b) BREVARD ZOO shall submit quarterly invoices in accordance with the compensation guidelines / payment schedule as set forth in the Statement of Work attached as EXHIBIT A, to the following address:

BREVARD COUNTY
Natural Resources Management Department
2725 Judge Fran Jamieson Way, Bldg A, Room 219
Viera, FL 32940
Attn: Jenny Hansen

- (c) BREVARD COUNTY shall send payment of the invoice amounts to BREVARD ZOO within 30 days of receipt of a complete invoice and quarterly reporting package.

4. PERFORMANCE

BREVARD ZOO will provide diligent efforts in performing the services under this Agreement and services will be rendered at a level commensurate with professional standards acceptable in the discipline and within the scope of the project to the satisfaction of BREVARD COUNTY.

5. REPORTS

BREVARD ZOO shall prepare and submit to BREVARD COUNTY all necessary technical information as reasonably required by BREVARD COUNTY in the performance of the Agreement, including quarterly reports with invoices.

6. SUBAGREEMENTS

BREVARD ZOO shall not sublet, assign or transfer any work under this Agreement without the written consent of BREVARD COUNTY. If applicable, and upon receipt of such consent in writing, the names of the firms responsible for such sublet, assigned or transferred portions of the work shall appear on the Invoices for Services performed.

7. TERMINATION

Notwithstanding Section 8 below, this Agreement and the performance of all work under this Agreement may be terminated by either party with three (3) months written notice to the other party. BREVARD COUNTY will pay all reasonable allowable costs associated with this Agreement up to the date of termination, including any non-cancellable obligations.

8. FORCE MAJEURE

- (a) No party shall be liable for any delays in or failure of performance due to strike, riot, fire, storm, and explosion, War, act of God, governmental action, embargo, epidemic or any other cause beyond the reasonable control of such party. The Party affected shall promptly notify the other in writing of the nature, cause, date of commencement thereof, the anticipated extent of such delay and whether it is anticipated that any completion dates will be affected thereby.
- (b) In the event of any delay resulting from such causes and provided the affected party has promptly notified the other and exercised due diligence as provided in Section 8 (a), the time of performance of each of the Parties hereunder (including payment of monies) shall be extended for a time period equal the period of such delay.

9. AUDIT AND PUBLIC RECORDS LAW

BREVARD ZOO agrees to keep full, clear and accurate books and records. Within fifteen (15) days following written request by BREVARD COUNTY, BREVARD ZOO shall make available for inspection and/or audit any and all records related to its performance under this Agreement. Said records are subject to inspection and audit, at the sole expense of BREVARD COUNTY, by representatives of BREVARD COUNTY and the Comptroller General of the United States during reasonable business hours throughout the term of this Agreement and for the five (5) years immediately following BREVARD COUNTY'S final payment to BREVARD ZOO under this Agreement. In the event an audit is initiated by BREVARD COUNTY during the five (5) years following the BREVARD COUNTY'S final payment, BREVARD ZOO agrees to retain any and all records associated with this Agreement until such time as any disputes arising therefrom are resolved. If any provision of this section is inconsistent with BREVARD COUNTY audit requirements, the more stringent shall prevail.

BREVARD COUNTY is subject to Chapter 119, Florida Statutes, and other provisions of law related to Florida's Public Records Act. **IF BREVARD ZOO HAD QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDIA STATUTES, TO BREVARD ZOO'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: (321) 633-2016; Sandra.SanzGarcia@brevardfl.gov; Brevard County Natural Resources Management Department, ATTN: Records Custodian, 2725 Judge Fran Jamieson Way, A-219, Viera, FL 32940.**

10. INDEMNIFICATION AND INSURANCE

- (a) To the extent permitted by Florida law, BREVARD ZOO agrees to indemnify, hold harmless and defend BREVARD COUNTY and its

respective trustees, officers, employees and agents against any and all claims for death, illness, personal injury, property damage, and improper business practices arising from the negligence or misconduct of BREVARD ZOO or its employees, students or agents in connection with the performance of this Agreement.

- (b) BREVARD COUNTY'S liability obligations hereunder shall be subject to the BREVARD COUNTY's right of sovereign immunity and limited to the extent of the protections of and limitations on damages as set forth in Section 768.28, Florida Statutes. Nothing in this Agreement is intended to inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the doctrine of sovereign immunity or by operation of law. Nothing herein shall constitute a waiver of BREVARD COUNTY's sovereign immunity. The Parties acknowledge specific consideration has been exchanged for this provision.
- (c) BREVARD ZOO, at its own expense, shall keep in force and at all times maintain during the term of this Agreement:
 - i. General Liability Insurance: General Liability Insurance issued by responsible insurance companies and in a form acceptable to BREVARD COUNTY, with combined single limits of not less than One Million Dollars (\$1,000,000) for Bodily Injury and Property Damage per occurrence.
 - ii. Certificates of Insurance: BREVARD ZOO shall provide BREVARD COUNTY with a Certificate of Insurance for general liability coverage. Said liability policy shall provide that BREVARD COUNTY be an additional insured. BREVARD COUNTY shall be notified in writing of any reduction, cancellation or substantial change of policy or policies at least thirty (30) days prior to the effective date of said action. All insurance policies shall be issued by responsible companies who are acceptable to the COUNTY and licensed and authorized under the laws of the State of Florida.
- (d) Neither Party shall be liable to the other Party for any special, indirect, incidental or, consequential damages, however caused and whether grounded in tort (including negligence), or any other theory of liability, even if such other Party has been advised of the possibility of such damages.
- (e) Both Parties shall at all times comply, through insurance or self-insurance, with all statutory workers' compensation and employers' liability requirements covering any and all employees with respect to activities performed under this Agreement.
- (f) BREVARD COUNTY agrees to assume any and all liabilities and claims that may be incurred by BREVARD COUNTY in commercial ventures conducted by BREVARD COUNTY in connection with this Agreement; provided such liabilities and claims are not the result of the

negligence or willful misconduct of BREVARD ZOO or its employees, students or agents. Additional hold harmless clauses, if applicable, shall be added to subsequent Task Orders.

11. WARRANTY

Other than to complete the Agreement in accordance with any statements of work, BREVARD ZOO makes no warranty, express, implied or otherwise, with respect to use, operation, effectiveness or fitness for any particular purpose of its services performed under this Agreement or their results.

12. INDEPENDENT CONTRACTOR

BREVARD COUNTY contracts for the services of BREVARD ZOO as an independent contractor and not as an employee. Nothing herein shall be construed to create a partnership, joint venture or agency relationship between the parties. Neither party shall have the authority to enter into any agreements of any kind on behalf of the other, or to bind or obligate the other to any third party.

13. PUBLICITY

Neither party shall make reference to the other party in any advertising or publicity matter without prior written approval of the other party.

14. CONTRACTOR REPRESENTATIVES

The following serve as the representatives of the areas indicated:

BREVARD ZOO:

TECHNICAL MATTERS:

Jody Palmer
Director of Conservation
Brevard Zoo
8225 North Wickham Road
Melbourne, FL 32940
Ph: 321-254-9453 Ext.265
Email: JPalmer@brevardzoo.org

ADMINISTRATIVE MATTERS:

Frank Fieseler
Chief Operating/Financial Officer
8225 North Wickham Road
Melbourne, FL 32940
Ph: 321-254-9453 Ext.246
Email: FFieseler@brevardzoo.org

BREVARD COUNTY:

TECHNICAL MATTERS:

Jenny Hansen
Natural Resources Management
2725 Judge Fran Jamieson Way
Bldg A, Suite 219
Viera, Florida 32940
Ph: 321-633-2016
Jenny.Hansen@brevardfl.gov

ADMINISTRATIVE MATTERS:

Jackie Thompson
Natural Resources Management
2725 Judge Fran Jamieson Way
Bldg A, Suite 219
Viera, Florida 32940
Ph: 321-633-2016
Jackie.Thompson@brevardfl.gov

15. REGULATORY COMPLIANCE AND GOVERNING LAW

This Agreement, and any disputes arising under it, shall be governed by and construed in accordance with the laws of the State of Florida. Brevard County shall be the venue and forum for any legal actions arising from or incident to this Agreement. Where a dispute arises from a conflict between BREVARD ZOO's application of this Agreement, BREVARD ZOO shall be responsible for addressing the resolution of the conflict to the satisfaction of BREVARD COUNTY. BREVARD ZOO shall be responsible for obtaining any and all permits.

16. SEVERABILITY AND SURVIVABILITY

The illegality or unenforceability of the whole or any part of the provisions of this Agreement will not affect the continued operation of the remaining provisions. The provisions of Sections 7, 10, 11, 13 and 15 shall survive the termination of this Agreement for a period of five (5) years.

17. ATTORNEY'S FEES

Each party shall be responsible for their own respective attorney's fees incurred arising out of any dispute associated with enforcement and/or interpretation of the terms or conditions of this Agreement.

18. SCRUTINIZED COMPANIES

- (a) BREVARD ZOO certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List. Pursuant to Section 287.135, Florida Statutes (2019), BREVARD COUNTY may immediately terminate this Agreement at its sole option if BREVARD ZOO or its subcontractors are found to have submitted false certification; or if BREVARD ZOO, or its subcontractors are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement.
- (b) If this Agreement is for more than one million dollars, BREVARD ZOO further certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes (2019).
- (c) Pursuant to Section 287.135, Florida Statutes (2019), BREVARD COUNTY may immediately terminate this Agreement at its sole option if BREVARD ZOO, its affiliates, or its subcontractors are found to have submitted a false certification; or if BREVARD ZOO, its affiliates, or its subcontractors are placed on the Scrutinized Companies that Boycott the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.
- (d) BREVARD ZOO agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement. As provided in Section 287.135(8), Florida Statutes (2019), if Federal law ceases to authorize these contracting prohibitions, this section shall become inoperative and unenforceable.

19. ENTIRE AGREEMENT

This Agreement represents the entire understanding of BREVARD COUNTY and BREVARD ZOO, and may only be modified in writing and duly executed by both parties.

THE UNDERSIGNED BY THEIR AUTHORIZED AGENTS HAVE EXECUTED THIS AGREEMENT AS OF THE DATE OF LAST SIGNATURE BELOW.

-Signature Page Follows-

Signatures of Authorized Officials

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

Scott Ellis, Clerk

By: _____
Bryan Lober, Chairman

As approved by the Board on _____

Reviewed for legal form and content for BREVARD COUNTY:


Alex Esseeesse, Assistant County Attorney

EAST COAST ZOOLOGICAL SOCIETY (DBA BREVARD ZOO)

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A

Statement of Work

Project: Brevard County Oyster Gardening Program – Phase 7: FY 2019-20

Background: Oyster Gardening is a citizen-based oyster propagation program where juvenile oysters are raised under lagoon-front homeowner's docks and eventually used to populate constructed oyster reef sites in Brevard County. Oyster Gardening participants receive spat-on-shell oysters plus all supplies needed to care for their oysters until they are returned six (6) to nine (9) months later and placed at new reef sites in the Indian River Lagoon. Oyster Gardening workshops are held throughout the county to increase and accommodate public interest, and to provide training and education about oyster gardening, living shorelines, and issues facing the lagoon. The Oyster Gardening Program is executed in partnership with the Brevard Zoo.

Scope:

Live Oyster Propagation:

- Brevard Zoo will secure required permits for oyster gardening (FWC-Special Activity License) and submit associated required reporting directly to FWC.
- Brevard Zoo will conduct sufficient oyster gardening workshops to accommodate public interest and provide all oyster gardening materials/supplies for oyster gardeners and oyster buddies.
- Brevard Zoo will purchase and distribute about 1-million spat on shell to trained oyster gardeners during the fall of each year. In the event of delays in spat productions by the hatchery, this schedule can be modified with written approval from the County staff.
- Brevard Zoo will coordinate oyster gardener engagement in the care and propagation of oysters during the timeframe of this agreement. This will include about six (6) months of oyster propagation and habitat maintenance per spat distribution to produce oysters grown to approximately 1" or larger oysters.
- Brevard Zoo will maintain contact with approximately 1000 oyster gardeners engaged to date and provide regular communication through e-newsletters and social media.

Monitoring:

- Oyster Gardens: Brevard Zoo will conduct site visits one (1) day per week during gardening season at oyster garden locations where site access is allowed.

Collection and Deployment:

- Brevard Zoo will coordinate and manage collection of gardened oysters at the conclusion of the gardening season.
- Brevard Zoo will deploy gardened oysters at permitted reef locations mutually agreed upon in advance by Brevard County and Brevard Zoo.

Reporting:

- Brevard Zoo will provide quarterly draft and final reports to Brevard County summarizing oyster propagation success and milestones.
- Brevard Zoo will provide copies of FWC permits, required reports to FWC, site visit data, workshop registrations and sign-in sheets, presentations, and handouts upon request by Brevard County.

Invoicing:

- Brevard Zoo will submit quarterly invoices for a lump sum reimbursement for costs associated with the tasks of this project for periods ending 12/31/19, 3/31/20, 6/30/20, and 9/30/20. Payment for such work shall be made after the invoices have been reviewed by County staff.

Timeline for completion: October 1, 2019 – September 30, 2020.

Contractual: \$ 150,000.