

AGREEMENT NO. 25-01
FWS Agreement #: 082826

MEMORANDUM OF UNDERSTANDING (MOU) Among

CITY OF SANIBEL,
SANIBEL-CAPTIVA CONSERVATION FOUNDATION,
SANIBEL FIRE AND RESCUE DISTRICT,
AND U.S. DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE

I. Authority:

This Memorandum of Understanding (“MOU”) among the City of Sanibel (“City”), the Sanibel-Captiva Conservation Foundation (“Foundation”), the Sanibel Fire and Rescue District (“District”), and the U.S. Department of the Interior U.S. Fish and Wildlife Service (“Service”) (collectively, the City, Foundation, District, and Service being the “Parties”), is hereby entered into under the authority of the following:

- A. The Fish and Wildlife Act of 1956 (16 U.S.C. 742 et seq.) grants the Secretary broad authority to, “take such steps as may be required for the development, advancement, management, conservation, and protection of fish and wildlife resources....” The Act specifically authorizes the acceptance of gifts and the services of volunteers for programs and projects that benefit the mission of the U.S. Fish and Wildlife Service. Further, the Act specifically authorizes the Secretary to enter into cooperative agreements, such as this MOU, for programs and projects to benefit specific units of the National Wildlife Refuge System; and
- B. The City has the authority to engage in this MOU by virtue of Chapters 163 and 166, Florida Statutes, and Section 1.03 of the City Charter; and
- C. The Foundation has the authority to engage in this MOU by virtue of its Articles of Incorporation and its Amended and Restated Bylaws; and
- D. The District has the authority to engage in this MOU by virtue of the Chapters 163 and 191, Florida Statutes.

II. Background:

This MOU is intended to update and streamline previous agreements that have allowed for the successful coordination among the Parties. MOU# 20-42 will expire in FY 2025, and an opportunity to combine it with a related MOU dealing with prescribed burns helps to reduce workloads for each of the Parties and provides linkages between the natural resources protection activities.

The Service manages approximately 6,500 acres on Sanibel Island; the Foundation owns and manages approximately 2,100 acres; and the City owns and manages approximately 600 acres of conservation lands. Since the Parties share boundaries and are tasked with natural areas land management, working collaboratively provides for efficient and cost-effective management options that would not be available otherwise. The cooperation of the Parties has been successful since the 1970’s. Together the Parties have

controlled and managed invasives species, implemented prescribed fires, restored habitats and responded with mutual aid to hurricanes Charley and Ian.

The Foundation, the City and the Service are all involved in the work of land management and environmental restoration including such activities as invasive plant removal, and the use of prescribed fire on managed conservation lands. The management goals of the Foundation, the City and the Service in protecting natural resources and enhancing wildlife habitat on conservation lands on Sanibel Island are similar and successful individual restoration projects on any part of the island are mutually beneficial to all four entities and residents of the island.

III. Purpose

The purpose of this MOU is to facilitate the cooperation of the Parties to manage conservation lands more efficiently and economically on Sanibel Island. The MOU includes the use of prescribed fire in order to maintain or restore wildlife habitats, ecosystems and endangered or threatened species, and provides for the limited interchange of personnel, equipment, and information.

IV. Scope of Effort:

For a period as hereinafter set forth, the Parties shall cooperate as necessary for the performance of work as set forth below:

A. General

1. Each of the Parties agree that any assistance provided under the terms of this MOU shall be without cost to the other Parties.
2. Except for acts or conduct constituting willful and wanton misconduct or gross negligence, each of the Parties waives all claims against the other Parties for compensation for any loss, damage, personal injury or death occurring in the consequence of the performance of this MOU.
3. For the purpose of workers compensation coverage, employees of each agency shall continue to be covered by their parent agency regardless of which agency's land operations are conducted.
4. Each party to this MOU shall appoint a Project Officer responsible for implementation of this MOU.

B. The Service, City, Foundation, and District shall agree to the following:

1. Provide personnel and equipment to any of the other three entities. Release of personnel and equipment shall be at the discretion of the affected Executive Director (Foundation), City Manager (City), Refuge Manager (Service) or Chief (District) depending on station workloads, priorities, and fire danger. Staff and equipment may be used for:
 - a. Management of conservation lands owned or managed by any of the other entities on an as needed, mutually agreed to basis. Such assistance will typically consist of, but is not limited

- to, invasive species control projects, prescribed burning efforts, hazardous fuel reduction or wildlife research.
- b. Technical assistance including the preparation or review of fire management plans and prescribed fire plans (PFP).
 - c. Pre-burn preparations including vegetation and fuel load sampling, control line construction and maintenance, environmental monitoring, fuels manipulation and public outreach.
 - d. Prescribed burn implementation including project supervision, ignition, holding, fire weather behavior monitoring and mop-up.
 - e. Post-burn monitoring and evaluation: To collect data necessary to monitor long-term trends in living and dead vegetative characteristics to better predict fire danger, behavior and effects.
2. The party requesting assistance to burn their land or lands managed for a third party, shall provide staff to develop, review and approve the prescribed fire plan (PFP), obtain any applicable permits, and shall be ultimately responsible to provide a chief-of-party to implement the PFP.
 - a. Each agency may use their respective agency PFP for burns planned for their own lands.
 - b. The requesting agency shall retain the responsibility and authority for the prescribed burn.
 - c. The Prescribed Fire Burn Boss's responsibility will be to conduct the prescribed burning operation in accordance with the approved PFP.
 - d. Joint-jurisdiction prescribed burns, including Service lands and any individual or combination of two or more of the other Parties' lands (Foundation or City), shall utilize a Unified Command Structure to guide the implementation of the burn.
 - e. The lead agency shall be determined by the agency administrators.
 - f. The Unified Command Structure provides appropriate oversight and meets the supervisory requirement related to Service employees.
 - g. The National Interagency Prescribed Fire Plan template (Interagency Prescribed Fire Planning and Implementation Procedures Guide) shall be utilized for these burns, and it shall be reviewed and approved by each party.
 3. Wildfires that have been converted from prescribed fires ignited by, or at the direction, or under the supervision of one of the Parties to this MOU shall be the financial responsibility of that party.
 - a. All suppression costs shall be borne by the responsible party. The responsible party shall reimburse the other Parties for all suppression costs incurred with this claim.
 - b. If a prescribed fire must be converted to a wildfire on a joint jurisdiction burn, the suppression costs will be shared by the Parties based upon the actual suppression acres involved on each party. (Refer to Annual Operating Plan, if any).
 4. A chief-of-party will be designated for the assisting party's employees and equipment. The chief-of-party will work closely with the Prescribed Fire Burn Boss. If the chief-of-party determines that the proposed burn is unsafe or has serious concerns about the advisability of burning and is unable to reach a satisfactory agreement with the burn boss to rectify the situation, he or she retains the option of withdrawing the assisting party's resources.
 5. With regards to sharing resources for the above activities related to prescribed burns, the Parties agree to the following:
 - a. Use of Service Personnel on SCCF or City Prescribed Fire Operations:

In accordance with Service regulations, Service personnel and equipment may only participate in prescribed fire operations that are conducted under current National Wildfire Coordinating Group (NWCG) rules. Generally, this means that any non-federal agency hosting a burn must ensure that either the Prescribed Fire Burn Boss is qualified at the appropriate level under the NWCG position qualification system (RXB1 or RXB2), or a qualified Florida Division of Forestry representative must be on site during the entire operation. Further, any fireline supervisors in charge of Service personnel during prescribed fire operations must also be qualified for their assigned position under NWCG rules.

b. Use of SCCF or City Personnel on Service Prescribed Fire Operations:

In accordance with Service regulations, all personnel participating in prescribed burning operations conducted on Service lands must currently meet appropriate NWCG qualifications. Minimum qualifications include: FFT2, moderate level pack test and annual fireline refresher (<https://www.nwcg.gov/training-courses/rt-130>). The appropriate qualifications shall be determined according to the assignment of individuals within the prescribed fire organization planned for the operation on which they are to participate.

c. Documentation of Qualifications: Documentation of NWCG qualifications shall be provided for personnel participating in prescribed fire operations and wildfire suppression operations beyond the first operational period. Such documentation is normally provided in the form of an NWCG Incident Qualifications Record ("Red Card"). Alternatively, a roster on agency letterhead, signed by an agency supervisor, may be used, so long as it clearly states the name of each individual and their current NWCG qualifications.

6. All aircraft and pilots used to transport Service personnel or directly controlled by the Service shall be certified by a qualified DOI National Business Center - Aviation Management Directorate (AMD) inspector (Office of Aviation Services | U.S. Department of the Interior (doi.gov) prior to Service use.
7. The Parties hereby mutually agree to assist each other in the event of a natural or human-caused disaster that is beyond their respective ability to alleviate the result of the disaster on their own. This Agreement may be activated in the event of a natural or human-caused disaster pursuant to:
 - (a) a Presidential, State, or other local emergency declaration; or
 - (b) the finding of an emergency by the Emergency Management Coordinator or other duly authorized agent of the State or County/City governing body of a Party; or
 - (c) a significant event impacting Homeland Security.

Upon activation of this Mutual Aid provision, the Service agrees to respond as delineated in the Department of the Interior, Departmental Manual -900 DM 1.1 - 1.10, and shall continue, whether or not the disaster event is still active, until the services of the Party rendering aid are no longer required or when the officer in charge of the forces of the Party rendering aid determines, in his/her sole discretion, that further assistance should not be provided.

8. To the extent the Parties find it necessary or useful, they may develop on an annual basis an operating plan (Annual Operating Plan) to provide specific details in further support of this MOU.

C. The City Agrees to:

In addition to the agreements set forth above in IV(B), the City further agrees to manage water levels according to the City's management plan and maintain water conveyance, including dredging and vegetation removal in the Sanibel Slough and weir system.

V. Period of Performance

The term of this MOU is for period of performance of five (5) years from the last date of signature by all Parties. Upon expiration of the five (5) year period, the MOU will terminate unless expressly renewed by all Parties on or before such date.

VI. Project Officers

- A. Service Project Contact:
Kevin Godsea
Refuge Manager
U.S. Fish and Wildlife Service
J.N. "Ding" Darling NWR
1 Wildlife Drive Sanibel, FL 33957
239/472-1100
kevin_godsea@FWS.gov
- B. City Project Contact:
Holly Milbrandt
Natural Resources
City of Sanibel
800 Dunlop Road
Sanibel, FL 33957 Sanibel
239/472-3700
holly.milbrandt@mysanibel.com
- C. Foundation Project Contact:
James Evans
Chief Executive Officer
Sanibel Captiva Conservation Foundation
P.O. Box 839
Sanibel, FL 33957
239/472-2329
james.evans@sccf.org
- D. District Project Contact
Kevin Barbot
Chief
Sanibel Fire Rescue District
2351 Palm Ridge Road

Sanibel, FL 33957
239/472-5525
kbarbot@sanibelfire.com

VII. Modification of Agreement:

This MOU constitutes the full, complete, and entire agreement among the Parties hereto with respect to the topics set forth in Section III above. No modification or amendment of this MOU shall be binding on any party unless such modification or amendment shall be in writing executed in duplicate by all Parties hereto, attached to this MOU, and incorporated in and by reference made a part of this MOU.

VIII. Termination of Agreement:

Any party to this MOU may withdraw with a 60-day written notice. Such withdrawal shall be effective 60-days from the date such written notice is provided to the other Parties to the MOU.

IX. Terms and Conditions:

- A. This MOU in no way restricts the Parties from working together or participating in similar activities with other public or private agencies, organizations, and individuals.
- B. Any public notices issued by any of the Parties with respect to this MOU or any related activities shall be subject to review and approval, in advance, by all Parties to this MOU.
- C. No member of, or delegate to Congress, or resident Commissioner, shall be admitted to any share or part of this agreement, or to any benefit that may arise from, but these provisions shall not be construed to extend to this agreement if made with a corporation for its general benefits.
- D. All Parties will ensure that its employees have the proper training and certification required to conduct activities under this MOU.
- E. This MOU is neither a fiscal nor a funds obligation document. Nothing in this agreement may be construed to obligate the Service (or any of the other Parties) to any current or future expenditure of resources in advance of the availability of appropriations from Congress. Any endeavor involving reimbursement or contribution of funds between or among the Parties to this MOU will be handled in accordance to applicable regulations and procedures, including those for federal government procurement and printing. Such endeavor will be outlined in separate agreements that shall be made in writing by representatives of the Parties and shall be independently authorized in accordance with appropriate statutory authority. This MOU does not provide such authority.
- F. It is agreed by the Parties hereto that, in the performance of this MOU, employees or agents

of each respective party are not to be considered employees of any of the other Parties.

- G. Nothing in this agreement may be interpreted to imply that the United States, the Department of the Interior, or the U.S. Fish and Wildlife Service endorses any product, service or policy of the City, Foundation, or District. **The City, Foundation, and District** will not take any action or make any statement that suggests or implies such an endorsement.
- H. The participation of each party to this agreement in activities conducted pursuant to this MOU is not intended to place either party or its representatives in a position of incurring tort liability arising from an action of the other party. Each party is responsible for any injury or property damage to third parties caused by negligence of its own employees acting within the scope of their employment/official duty subject to such limitation as may be prescribed by applicable laws. Specifically, tort liability arising from negligent or wrongful acts or omissions of Service employees acting within the scope of employment shall be adjudicated pursuant to the Federal Tort Claims 28 U.S.C. Section 2671 et seq., the Federal Employees Compensation Act, U.S.C. Section 8101 et seq., or such other federal legal authority as may be pertinent. Likewise, tort liability arising from negligent or wrongful acts or omissions of City, Foundation, or District employees while acting within the scope of official duty shall be governed by the provisions of the laws of the State of Florida.
- I. The Parties agree to implement the provisions of this MOU to the extent personnel are available and budgets allow. In addition, nothing in the MOU is intended to supersede any laws, regulations, or directives by which the Parties must legally abide.
- J. The value of the services provided to the Foundation by the City shall not exceed the value of the services provided by the Foundation so as not to violate the prohibition against lending of aid and credit to private organizations under the Florida Constitution.

IN WITNESS WHEREOF, the Parties have caused this MOU to be executed by an authorized official on the date and year set forth below their signature.

[End of MOU – Signature page follows]

By: U.S. FISH AND WILDLIFE SERVICE

Signature: _____

Regional Chief, National Wildlife Refuge System
Southeast Region, USFWS

Date: _____

By: Sanibel-Captiva Conservation Foundation, INC., a Florida not-for-profit corporation

Signature: _____

James Evans, Chief Executive Officer
Sanibel-Captiva Conservation Foundation

Date: _____

By: City of Sanibel, A Florida municipal corporation _

Signature: _____

Dana Souza, Sanibel City Manager
City of Sanibel

Date: _____

By: Sanibel Fire and Rescue District

Signature: _____

Kevin Barbot, Fire Chief
Sanibel Fire and Rescue District

Date: _____