

AGREEMENT NO.

MEMORANDUM OF AGREEMENT

Between

EASTERN COLLIER PROPERTY OWNERS

And

U. S. DEPARTMENT OF THE INTERIOR  
FISH AND WILDLIFE SERVICE

**I. Background:**

This Memorandum of Agreement (MOA or Agreement) is intended to facilitate, subject to the terms of this Agreement, Eastern Collier Property Owners (ECPO) provision of resources to the U.S. Fish and Wildlife Service (Service) to fund the continued technical assistance, consultation, and coordination services of the South Florida Ecological Services Field Office while it dedicates staff away from those duties to facilitate the development and review of the Eastern Collier Multiple Species Habitat Conservation Plan (Eastern Collier HCP), as well as the accompanying Environmental Impact Statement and Biological Opinion, and any other analyses, reviews, or reports associated with the Eastern Collier HCP that the Service may undertake following consultation with ECPO in accordance with section IV of this Agreement (the Project). The Service and ECPO are collectively referred to in this MOA as the Parties. Staff dedicated to reviewing the Eastern Collier HCP will, among other things, ensure that the Eastern Collier HCP conforms to the Endangered Species Act (ESA), as well as other statutes, such as the Migratory Bird Treaty Act (MBTA), the Bald and Golden Eagle Protection Act (BGEPA), and the Fish and Wildlife Coordination Act, among others.

**II. Authority:**

This MOA is prepared in accordance with the Appropriations Act for the Department of Interior and Related Agencies, 1999.

**III. Purpose**

This MOA between the U.S. Fish and Wildlife Service, Region 4, Atlanta, Georgia, hereinafter referred to as the "Service", and the Eastern Collier Property Owners "ECPO" is entered into to facilitate technical review and assistance for the Project. Subject to the terms of this Agreement, ECPO will provide resources to the Service to fund the

continued provision of technical assistance, consultation, and coordination services of the South Florida Ecological Services Field Office while it dedicates staff away from those duties to facilitate the development and review of the Eastern Collier HCP, as well as the accompanying Environmental Impact Statement and Biological Opinion, and any other analyses, reviews, or reports associated with the Eastern Collier HCP that the Service may undertake following consultation with ECPO in accordance with section IV of this Agreement (the Project), for a period of at least one (1) but, if needed, up to and not to exceed four (4) years after the Effective Date of this MOA. Pursuant to section IV.B below, the Parties will work together to complete the Project within two (2) years. Each Party shall select an individual (Project Manager) to represent it pursuant to sections VII and X.B of this Agreement. It is a mutual desire of the Parties to work toward the following common objectives.

- A. Develop a Habitat Conservation Plan that meets the requirements of Section 10(a)(1)(B) of the ESA.
- B. Initiate, conduct, and complete studies of the HCP and Alternatives, required under the National Environmental Policy Act (NEPA).
- C. Facilitate assembly and submission of a Signature Package to the Service's Region 4 Office for an Incidental Take Permit Application in accordance with the requirements of Section 10(a)(1)(B) of the ESA.

This agreement provides for the provision of funds to obtain these objectives.

#### **IV. Coordination:**

The Service and ECPO collectively must meet certain requirements for the timely completion and review of materials submitted as part of the application for an Incidental Take Permit. It is therefore appropriate and desirable that these entities join together in this MOA to fulfill mutual objectives and individual agency and organization objectives for timely completion of the Project.

- A. The Parties will work together to identify tasks, related activities, and other specified environmental reviews to be completed and to be treated as priorities by the Service with respect to the Project. No less often than every six months during the term of this Agreement, the Parties will meet or otherwise confer to establish tasks, activities, and reviews anticipated to be completed during the upcoming 6-month period as milestones, and will confirm the milestones established in writing (by email or otherwise) at the conclusion of the meeting or conference. The Parties will update the list of HCP related review and assistance tasks and priorities, as warranted but no less often than every six months during the term of this Agreement. If ECPO declines to participate with the Service to identify tasks, related activities, and other environmental reviews to be completed and to be treated as priorities during review of the HCP, the Service will establish its own priorities in accordance with the objectives of this Agreement and provide a list of priorities to ECPO.
- B. The Parties will work together to ensure the tasks and priorities established are within the Service's reasonable capacity and can be completed within 2 years. If, during the 4-year term of this Agreement, the current or projected workload of

priorities exceeds the Service's ability to provide the services specified pursuant to this Agreement, the Service will consult with the ECPO Project Manager regarding an adjustment of priorities and or identification of additional funding resources.

**V. Scope of Effort:**

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

**A. General:**

This MOA is intended to:

1. Enable ECPO to develop and deliver a final Eastern Collier HCP within 2 years, but within a period not to exceed 4 years from the Effective Date of this MOA, by enabling the Service to provide more focused staffing and coordination during review of and comment on the Eastern Collier HCP related to the statutes mentioned above, and the identification of appropriate avoidance, minimization, and mitigation measures;
2. Enhance ECPO's planning and development of documents through timely technical assistance, consultation, and coordination services from the Service; and
3. Establish the payments to be made by ECPO to the Service to support the continuation of certain duties of the South Florida Ecological Services Field Office.

**B. ECPO shall:**

1. Provide adequate and timely information regarding proposed activities in enough detail to enable the Service and all appropriate Federal action agencies to review the Eastern Collier HCP related to the ESA, MBTA, BGEPA, and Fish and Wildlife Coordination Act, among others;
2. Provide results of available, mutually agreed to surveys and assessments related to species covered or potentially covered by the ESA, MBTA, BGEPA, and Fish and Wildlife Coordination Act, among others, within a timely manner;
3. Participate in meetings with the Service pursuant to the terms of this Agreement, as appropriate; and
4. Provide funding annually to support one GS-11 biologist in accordance with the terms of this Agreement and Schedule A.

**C. The Service shall:**

1. Ensure coordination among the Service regional and field offices involved in the provision of technical assistance, consultation, and coordination services for the Project, and the identification of appropriate avoidance, minimization, and mitigation measures for the Eastern Collier HCP; provide a dedicated point of contact (POC) for the Eastern Collier HCP;
2. Provide timely technical assistance, consultation, and coordination services;
3. Participate with other Federal, State, and local agencies in the review of the Eastern Collier HCP, including proposed avoidance, minimization, and mitigation measures, consistent with the agency's legal mandates, duties, and responsibilities;
4. Provide ECPO with timely information on the Service's actions that may affect the Project; and
5. Maintain administrative records of Service activities related to the Project.

**VI. Period of Performance**

The period of performance of this Memorandum of Agreement is from the effective date of signature by all parties, with a goal of completion by December 31, 2018, and a scheduled completion date of December 31, 2020.

**VII. Project Managers**

The Parties designate the following as principal contacts for the Project, and to receive any notice provided in accordance with this Agreement:

**A. Service:**

Kenneth McDonald  
South Florida Ecological Services Field Office  
1339 20th Street  
Vero Beach, Florida 32960-3559  
Office: (772)469-4284  
Fax: (772)562-4288  
kenneth\_mcdonald@fws.gov

**B. ECPO**

Christian Spilker  
Collier Enterprises  
2550 Goodlette Rd North, #100  
Naples, Florida 34103  
(239)261-4455  
CSpilker@collierenterprises.com

### **VIII. Modification of Agreement:**

This MOA constitutes the full, complete, and entire agreement between the Parties hereto. No modification or amendment of this MOA shall be binding on either Party unless such modification or amendment is made in writing executed in duplicate by both Parties hereto, attached to this MOA, and incorporated in and by reference made a part of this MOA.

### **IX. Termination of Agreement:**

This MOA may be terminated by either Party upon 60-days written notice of such termination to the other Party.

### **X. Other Terms and Conditions:**

#### **A Period of Performance**

1. Work under this Agreement will be deemed to begin on or about July 1, 2016 (Effective Date) and will terminate upon the earliest of: (i) issuance of a final decision by the Service with respect to any ECPO permit application(s) submitted as a part of the Eastern Collier Multiple Species HCP, (ii) expiration of the 4-year term of this Agreement, or (iii) termination of this Agreement by either Party pursuant to section IX (Termination Date).

#### **B General Provisions**

##### **1. Project Coordination**

- a. ECPO has designated Christian Spilker as its Project Manager, who will serve as the point of contact for coordination with the Service related to this Agreement. ECPO may designate an alternate Project Manager and will notify the Service in writing in the event of a change. The Project Manager will be responsible for providing information and input to the Service as specified in the Agreement, and will serve as the Service's initial contact for resolution of any issues that may arise in the course of the Project.
- b. The Service has designated Kenneth McDonald as dedicated reviewer of the Eastern Collier HCP and as its Point of Contact (POC) for coordination with ECPO and others, as necessary, related to this Agreement and the Project. The Service may designate alternate staff to be the POC as necessary and will notify ECPO in writing in the event of a change. The POC will be responsible for providing reports

and other information on the Service's activities and expenditures as specified in this Agreement, and will serve as ECPO's initial contact for resolution of any issues that may arise in the course of completing the tasks associated with this Agreement.

- c. The Parties will submit all requests for in-person meetings in writing to the Service POC and the ECPO Project Manager, respectively. All requests will provide reasonably sufficient time in advance of any requested meeting for scheduling and establishing travel authorizations. Each such request will include a brief agenda that characterizes the participation expected, the desired outcome of the meeting, and any other materials necessary to provide information to enable the Service or ECPO, respectively, to prepare for and actively participate in the meeting.

### **C Reports and Meetings**

The following requirements pertain to reports and meetings related to implementation of this Agreement:

1. The Service will provide a detailed, written semi-annual report to the ECPO Project Manager documenting expenditures under this Agreement occurring during the prior 6 months. The first such report will be provided within 2 weeks following the first 6-month period after the Effective Date of this Agreement. Each semi-annual report will specifically include:
  - a. Itemization of all costs billed to the Agreement for the 6-month period covered by the report and cumulatively for the fiscal year;
  - b. A list of staff members who billed their time directly to the Agreement during the 6-month period covered by the report, as well as the total hours charged;
  - c. An update on the achievement of milestones or progress towards the achievement of milestones established by the Parties for the 6-month period that the report covers pursuant to section IV.A of this Agreement.

*ECPO may request additional information regarding any item included in or relating to the semi-annual report as it deems appropriate.*

### **D Dispute Resolution**

Any issues that are not readily resolved by the Parties' staff engaged in work on the Project will promptly be referred to the Service POC and the

ECPO Project Manager for resolution. Should they be unable to reach resolution, issues remaining unresolved will be referred to management for resolution (for the Service, Field Office Project Leader Roxanna Hinzman; for ECPO, Christian Spilker). Issue resolution may be initiated on request of either Party. Both Parties are responsible for ensuring timely elevation and resolution of issues.

#### **E Payment**

1. ECPO will advance funds to the Service for work performed by dedicated staff, in accordance with the attached cost estimate (Attachment A).
2. Upon execution of this Agreement, the Service will invoice ECPO in advance for an initial payment of \$69,747.12 in accordance with the payment schedule listed in the cost estimate (Attachment A). In no case will the Service invoice in advance for more than one year at a time.
3. If the Service does not expend the full amount of an advance during any year, the remaining amount may, at ECPO's discretion, be used to reduce the amount of advance payment for the following year or to augment the following year's budget. In addition, any unused funds not used to reduce the amount of advance payment for the following year or to augment the following year's budget, per the discretion of ECPO, including any funds remaining as of the Termination Date, will be returned to ECPO.
  - a. The total amount payable by ECPO under this Agreement will be reviewed annually.
  - b. Funding will be provided by ECPO up front in the form of a cash advance payment, and costs accrued pursuant to this Agreement shall be charged against these reimbursable funds as they are incurred.

# ATTACHMENT A

Table 1 Backfill Cost Estimates for additional years will be reviewed annually

Eastern Collier MSHCP Backfill Cost Estimate, Including 22% Reimbursable Rate		
Year 1: 1/2 Year Salary w/35% Additives:	GS 11:	\$47,978.33
Add 7.1% COLA for 75% of year: 360.26		\$2,554.85
Add 3% step increase		\$1,439.35
Subtotal:		\$51,972.52
Add 10% travel and FO overhead		\$5,197.25
Subtotal:		\$57,169.77
Add 22% Reimbursable/Cost Recovery Rate		\$12,577.35
<b>Year 1 Annual Gross Reimbursable Funds</b>		<b>\$69,747.12</b>
Year 2: Annual Salary with Additives:	GS 11:	\$103,945.04
Add 7.1% COLA for 75% of year: 360.26		\$5,535.07
Subtotal:		\$109,480.11
Add 10% Travel and Overhead:		\$10,948.01
Subtotal:		\$120,428.13
Add 22% Reimbursable/Cost Recovery Rate		\$26,494.19
<b>Year 2 Annual Gross Reimbursable Funds</b>		<b>\$146,922.31</b>



## XI. Financial Information

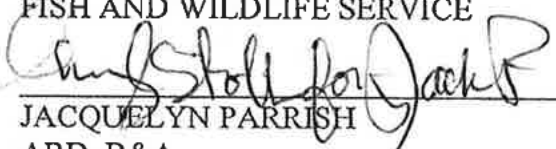
Funds provided in accordance with this MOA are to be delivered to:

Jacquelyn B. Parrish, Region Four Reimbursable Coordinator  
C/O Regina Abraham  
1875 Century Blvd.  
Atlanta, GA 30345  
(404) 679-4074


Billing will be performed by the Service and an invoice will be sent to ECPO for the full amount outlined in this Agreement. Payment should be provided in the form of a check and mailed to the address above.

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

U.S. DEPARTMENT OF THE INTERIOR  
FISH AND WILDLIFE SERVICE

  
JACQUELYN PARRISH  
ARD, B&A  
May 2, 2016

EASTERN COLLIER PROPERTY OWNERS

BY:   
TITLE: Agent  
DATE: June 28, 2016