

**MEMORANDUM OF AGREEMENT  
REGARDING  
RECREATIONAL ACCESS ON STATE ENDOWMENT LANDS**

This Memorandum of Agreement Regarding Recreational Access on State Endowment Lands ("Agreement") is made and entered into this 10<sup>th</sup> day of September 2018 ("Effective Date"), by and between the Idaho State Board of Land Commissioners ("Land Board") and the Idaho Fish and Game Commission ("Commission") (collectively, "Parties").

**RECITALS**

WHEREAS, the federal government granted certain lands ("Endowment Lands") to the State of Idaho upon statehood, to be held in trust for designated beneficiaries, including public school, the agricultural college, charitable institutions, normal school, penitentiary, school of science, state hospital south, university, and the capitol permanent fund ("Endowment Beneficiaries");

WHEREAS, pursuant to Article IX, § 7 of the Idaho Constitution, the Land Board has the direction, disposition and control of the State's public lands, subject to regulation;

WHEREAS, pursuant to Article IX, § 8 of the Idaho Constitution, the Land Board has the duty to manage Endowment Lands to maximize the long-term financial return to the Endowment Beneficiaries;

WHEREAS, the Land Board has adopted a policy ("Recreation Policy") of allowing the general public to have continued recreational access to legally-accessible Endowment Lands, so long as the recreational activities do not degrade the lands, interfere with management activities, or otherwise negatively affect the long-term financial return to Endowment Beneficiaries;

WHEREAS, the Recreation Policy directs the Idaho Department of Lands ("IDL") to pursue mechanisms to compensate Endowment Beneficiaries for such recreational use;

WHEREAS, pursuant to Idaho Code §§ 58-101 and 58-119(1), IDL is an instrumentality of the Land Board and has the power to exercise, under the Land Board's general control and supervision, all the rights, powers and duties vested by law in the Land Board;

WHEREAS, Idaho Code § 36-104(b)(7) authorizes the Commission to obtain by agreement lands or waters to provide places where the public may fish, hunt, or trap in a lawful manner to support the public's ability to exercise rights to hunt, fish, and trap pursuant to Article I, §23 of the Idaho Constitution;

WHEREAS, Idaho Code § 36-104(b)(7) authorizes the Commission to obtain by agreement lands or waters to provide places where the public may fish, hunt, or trap in a lawful manner;

WHEREAS, one of the objectives of the Commission's Strategic Plan (2015) is to sustain fish and wildlife recreation on public lands;

WHEREAS, pursuant to Idaho Code §§ 36-101 and 36-105(a) and (e), the Director of the Idaho Department of Fish and Game ("IDFG"), under the Commission's supervision and direction, is responsible for general supervision and control of all IDFG's activities, functions, and employees,

including the enforcement of Idaho Fish and Game laws, rules, and proclamations and other Idaho laws not inconsistent with them;

WHEREAS, the Parties agree that payment by IDFG to IDL for public recreational access to accessible Endowment Lands is consistent with the Land Board's fulfillment of its duty to maximize the long-term financial return to Endowment Beneficiaries;

WHEREAS, the Land Board's Recreation Policy directs IDL to work with law enforcement agencies to ensure compliance with recreation management objectives on Endowment Lands, and the Parties agree that the availability of services of IDFG Conservation Officers for enforcement of Fish and Game and related recreational laws, rules, and proclamations enhances the ability of the Land Board and IDL to protect the Endowment Lands and therefore the interests of the Endowment Beneficiaries;

WHEREAS, the Parties agree that it is appropriate to credit as payment for public recreational access an amount for IDFG's provision of Conservation Officer services equivalent to two full-time ("FTE") Senior Conservation Officer Positions;

WHEREAS, the Parties have previously entered into leases or other agreements regarding public access to specific portions of Endowment Lands ("Existing Agreements");

WHEREAS, the Parties intend that those Existing Agreements will remain in effect and separate from this Agreement unless terminated;

NOW THEREFORE, for and in consideration of the mutual promises, covenants, agreements and conditions hereinafter set forth, the Parties agree as follows:

#### **ARTICLE I – ENDOWMENT LANDS OPEN TO RECREATION**

1.1. As used in this Agreement, "Recreational Activities" includes hunting, fishing, trapping, wildlife viewing, hiking, recreational travel (by stock, bicycle, or motor vehicle on designated routes), dispersed camping, and other non-commercial recreational activities. "Recreational Activities" does not include cutting or removing wood, collecting valuable rocks or minerals, mineral exploration, or the collection or disturbance of archaeological, historical, or paleontological sites. Those non-Recreational Activities may take place, if at all, only upon a separate agreement between IDL and the person or entity seeking to engage in non-Recreational Activities.

1.2. The Parties understand and agree that certain Endowment Lands are closed to Recreational Activities due to management activities or other reasons necessary to protect the interests of the Endowment Beneficiaries, for public safety reasons, or due to the lack of legal public access ("Closed Lands"). The remaining Endowment Lands are open to Recreational Activities. The Endowment Lands Open to Recreation ("ELOR") and Closed Lands are depicted on Exhibit A, attached hereto and incorporated herein by reference.

1.3. The Parties understand and agree that Endowment Lands that are the subject of Existing Agreements may be added to this Agreement upon termination of the Existing Agreement and mutual agreement of the Parties.

- 1.4. The Parties agree that as of the Effective Date of this Agreement, IDL manages 2,316,400 acres of ELOR ("Recreation Acreage").
- 1.5. No later than July 1, 2023, and at least every five years thereafter, IDL will re-calculate the amount of Recreation Acreage and provide that number to IDFG.
- 1.6. The Parties agree to use the Recreation Acreage number to calculate the payment provided for in Article III, below.
- 1.7. In consideration of the Conservation Officer services and the Payment set forth in Articles II and III, below, and subject to the conditions set forth in this Article I, the Land Board will continue to allow public access for Recreational Activities upon ELOR.
- 1.8. The Land Board reserves the right, at its sole discretion, to close any of the ELOR to Recreational Activities, or to limit certain Recreational Activities, to fulfill its fiduciary obligations to the Endowment Beneficiaries, manage public safety, or for resource protection purposes.
- 1.9. IDL will inform IDFG of the closure of ELOR, or limitation of any Recreational Activities on ELOR, within 30 days of said closure or limitation.
- 1.10. Nothing contained herein shall be construed as a guarantee, warranty, or promise that the ELOR described herein are suitable for any particular Recreational Activities.
- 1.11. The Parties understand and agree that a fundamental consideration of the Commission for this Agreement, including but not limited to the calculation of price per acre of ELOR, is the current amount and geographic distribution of ELOR, and that reduction in the availability of ELOR may be cause for the Commission to seek renegotiation or termination of this Agreement.
- 1.12. The Parties understand and agree that nothing contained in this Agreement shall require the Land Board to acquire easements, rights-of-way, or other rights across non-Endowment Land for the public to use in accessing any existing Endowment Lands or to any Endowment Lands the Land Board may acquire in the future.
- 1.13. The Parties understand and agree that nothing contained in this Agreement shall limit the Land Board's authority to sell, lease, dispose of, or otherwise encumber any Endowment Lands, including ELOR.
- 1.14. The Parties understand and agree that nothing contained herein shall constitute the transfer of Endowment Lands or any right thereto to the Commission or the public.

## **ARTICLE II – CONSERVATION OFFICER SERVICES**

- 2.1. IDFG will provide Conservation Officer services, approximately equivalent to two (2) Senior Conservation Officer FTEs per year, for the purpose of patrolling ELOR and responding to violations of state law, rule, order, or proclamation related to Recreational Activities upon those ELOR.
- 2.2. IDL and IDFG will meet at least every two years to review the areas of patrol and enforcement emphasis on ELOR, and other Endowment Lands if appropriate, for IDFG to incorporate into IDFG

Enforcement work plans in conjunction with provision of Conservation Officer services under this Agreement.

### **ARTICLE III – PAYMENT**

- 3.1. The Commission agrees to compensate the Land Board in the amount of twenty-five cents (25¢) per acre of ELOR ("Access Compensation").
- 3.2. For each succeeding year of this Agreement, the Access Compensation per acre will adjust at the same percentage as the Consumer Price Index, up to a maximum decrease or increase of three percent (3%) per year.
- 3.3. The Parties agree that IDL will credit toward the Access Compensation an amount for IDFG's provision of Conservation Officer services, equivalent to the average salary, benefits, and operating expenses in the preceding fiscal year for two (2) Senior Conservation Officer FTEs ("CO Services Payment"). The Land Board understands and agrees that this amount may vary annually.
- 3.4. IDFG will pay IDL the net amount of the Access Compensation after crediting the CO Services Payment (the net amount, "Access Payment"). For each year after the first year of this Agreement, IDFG will pay the Access Payment to IDL, calculated pursuant to Articles 3.1 through 3.3, no later than September 1 of each year.
- 3.5. In determining an appropriate amount for Access Compensation, the Parties have taken into account that, pursuant to Idaho Code § 67-7126(4), one dollar (\$1.00) from each off-highway motor vehicle number certificate is allocated to IDL to provide off-highway vehicle opportunities and to repair damage directly related to off-highway vehicle use.

### **ARTICLE IV – GENERAL TERMS AND CONDITIONS**

- 4.1. **No Agency Created.** The Land Board, IDL, and their respective officers and employees are not officers, employees, or agents of the Commission or IDFG. The Commission, IDFG, and their respective officers and employees are not officers, employees, or agents of the Land Board or IDL.
- 4.2. **Liability.** Each Party shall be responsible only for the acts, omissions, or negligence of that Party's own employees. The Parties acknowledge that each party participates in the State of Idaho Risk Management Program comprehensive liability plan using the Retained Risk Account ("Risk Program"). Each Party is obligated to notify the Division of Risk Management and the other Party upon receipt of notice or in the event it has knowledge of any claim or damage arising out of this Agreement.

Nothing in this Agreement shall extend the tort responsibility or liability of either Party beyond that provided by the Idaho Tort Claims Act, Idaho Code § 6-901 *et seq.* Any covered third-party tort liability claim, suit, or loss arising from this Agreement shall be allocated to the Parties by the Division of Risk Management for purposes of the respective loss experiences and subsequent allocation of self-insurance assessments.

Each Party shall be responsible for damage to property of the other Party caused by its Employees in the performance of the Agreement. If property damage arises in the performance of this Agreement and is covered by the Risk Program, the Division of Risk Management shall charge the

damage or loss to the responsible Party's loss history, and the responsible Party shall pay the deductible, if any.

If a claim or damage is not covered by the Risk Program, the responsible Party shall pay the costs arising from such claim or damage. If a claim or damage arises from more than one Party's performance of the Agreement or is not allocable to any Party, each Party shall pay the costs to such Party arising from the claim or damage.

4.3. Representatives.

4.3.1. The Land Board hereby designates the following individual to act as its representative and contact to ensure coordination for purposes of this Agreement:

Todd Wernex, OHV/Recreation Program Specialist - Idaho Department of Lands

4.3.2. The Commission hereby designates the following individual to act as its representative and contact to ensure coordination for purposes of this Agreement:

Sal Palazzolo, Wildlife Program Coordinator, Idaho Department of Fish and Game

4.4. Meet and Confer. In the event the Parties disagree about the amount and location of ELOR, access to or on ELOR, CO Services or the CO Payment, or other performance of this Agreement, the Representatives designated in Article 4.3 will meet within 30 days of either Party's request, to confer and attempt to resolve the disagreement. Nothing contained in this Article 4.4 shall be construed to alter the constitutional and statutory authorities of either Party.

4.5. Termination. Either Party may terminate this Agreement at any time upon written notice to the other Party, which notice shall be provided no less than sixty (60) days prior to the end of the then-current fiscal year. Termination will be effective at the end of the fiscal year in which the written notice was provided.

4.6. Fiscal Necessity and Non-Appropriation. The Parties understand and agree that each is a government entity and that the payments herein provided for are subject to Idaho State Legislative appropriations. The Legislature is under no legal obligation to make appropriations to fulfill this Agreement. This Agreement shall in no way or manner be construed so as to bind or obligate the State of Idaho beyond the term of any particular appropriation of funds by the State's Legislature as may exist from time to time.

Each Party reserves the right to terminate this Agreement in whole or in part if, in its sole judgment, the Legislature of the State of Idaho does not appropriate sufficient funds as may be required for the State to continue such payments, or if the Executive Branch mandates any cuts or holdbacks in spending, or if funds are not budgeted or otherwise available, or if the State discontinues or makes a material alteration of the program under which the funds were provided. The State shall not be required to transfer funds between accounts in the event that funds are reduced or unavailable.

If this Agreement is terminated pursuant to this Article 4.6, all affected future rights and liabilities of the Parties shall thereupon cease within ten (10) calendar days after notice by the terminating Party.

Further, in the event of non-appropriation, neither Party shall be liable for any penalty, expense, or liability, or for general, special, incidental, consequential or other damages resulting therefrom.

4.7. Assignment and Delegation. Neither Party may assign its rights or delegate its duties, in whole or in part, without the prior written consent of the other Party.

4.8. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Idaho, and the Parties hereto consent to the jurisdiction of the state courts of Ada County in the State of Idaho in the event of any dispute with respect to this Agreement.

4.9. Entire Agreement. This Agreement sets forth the entire agreement between the Parties related to the subject matter of this Agreement and may not be modified without the written consent of both Parties.

4.10. No Personal Liability. The Parties understand and agree that in no event shall any official, officer, employee, or agent of the State be personally liable or responsible for any representation, statement, covenant, warranty or obligation contained in, or made in connection with, this Agreement, express or implied.

**On Behalf of the Idaho State Board of Land Commissioners**

A handwritten signature in blue ink, reading "David A. Groeschl", is written over a horizontal line.

**David Groeschl, Director  
Idaho Department of Lands**

**On Behalf of the Idaho Fish and Game Commission**

A handwritten signature in blue ink, reading "Virgil Moore", is written over a horizontal line.

**Virgil Moore, Secretary, Idaho Fish and Game Commission  
And Director, Idaho Department of Fish and Game**

# EXHIBIT A – Endowment Lands Open for Recreation

