Landowner: Town of Horicon
Property Location:
Town: Horicon
County: Warren
DEC Region: 5
CA Number:

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
COOPERATIVE AGREEMENT
PURSUANT TO ECL §11-2101

For the Brant Lake Boat Launch Site
(site name)

Town of Horicon Lake
(municipal corporation name)

WITNESSETH

THIS Agreement is made this _____ day of _____, 20____ by and between the *Town of Horicon*, a municipal corporation with its principal office at *6604 State Route 8, Brant Lake, NY 12815*, hereinafter "Municipality," and the People of the State of New York, acting through their Commissioner of Environmental Conservation, hereinafter called the DEPARTMENT.

WHEREAS, MUNICIPALITY is the owner in fee of certain real property (hereinafter the Property) and more fully described in **Schedule A** attached hereto and made a part hereof as if herein set forth at length, and a portion of which Property said municipal corporation is willing, in consideration of its subsequent development by the Department, to devote to public use as a fishing access site as hereinafter set forth and the portion of the Property to be devoted to such uses is referred to as the "Site," shown on a map attached hereto as **Schedule B** and;

WHEREAS, the Department has determined that the development of the property as a fishing access site will further the purposes of the Department as set forth in ECL § 11-0303, by providing public access to Brant Lake and therefore is willing to enter into this Agreement;

NOW, THEREFORE, MUNICIPALITY and the Department agree to the terms and conditions as follows:

1. MUNICIPALITY grants to the Department a license for the term of this Agreement, which license shall permit the Department to enter upon and occupy the Site, and if desirable, construct and maintain improvements thereon and the license shall also allow

the Department ingress, egress, and regress to the Site from a public highway by motorized and non-motorized means, for the purposes of carrying out its rights and responsibilities under this Agreement and to allow the public ingress, egress, and regress to the Site from a public highway by motorized and non-motorized means, for the purposes of this Agreement.

2. The term of this Agreement is from *June 1, 2015* to *May 31, 2030* unless sooner terminated according to the provisions of paragraph eleven (11) and twelve (12) hereof. The Department may agree to extend the term of this Agreement for an additional term of fifteen (*15*) years by providing MUNICIPALITY written notice.

3. The purpose of this Agreement is to allow the development and subsequent operation of the Site to be used as a public fishing access facility pursuant to ECL §11-2101. MUNICIPALITY agrees that, during the term hereof, the Site will be used as a fishing access site, 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 and that no use of the Site will be made, suffered, permitted, or allowed by MUNICIPALITY, except as may hereinafter be set forth, that will in any way interfere with Department's use as provided herein.

4. The Department agrees that should it choose to develop the Site, it will do so as outlined in **Schedule C,** attached hereto and made a part hereof.

5. The obligations of the Department hereunder shall be deemed executory only to the extent of monies lawfully appropriated and available and no liability shall be incurred by the Department beyond monies available for the purpose.

6. MUNICIPALITY warrants that the Site may lawfully be used for the purpose of a public fishing access site and that there is free public access to the Site from a public highway.

7. The Department, or any party authorized by it, shall have right of access to and from the Site at any and all times for the purposes of developing and managing the public fishing site, protecting the Site and interests of MUNICIPALITY, and for any other purpose connected therewith.

8. MUNICIPALITY 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.

9. Subject to the availability of lawful appropriations, the Department agrees to indemnify and hold harmless MUNICIPALITY, its successors and assigns, officers, employees, and agents, against claims, loss, damage and expense MUNICIPALITY may

suffer as a 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 result of actionable conduct of the Department, as permitted by the Court of Claims Act and Section 17 of the Public Officers Law.

The Departments duty to indemnify and save harmless prescribed by this subsection shall be conditioned upon:

(a) Delivery to the Attorney General by MUNICIPALITY 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 MUNICIPALITY; and

(c) The full cooperation of MUNICIPALITY 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.

10. The Department and MUNICIPALITY, 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 Department or MUNICIPALITY, as the case may be, as a named additional insured. 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 People of the State of New York and/or Landowner, 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 Department or MUNICIPALITY, 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.

11. This Agreement may be terminated by MUNICIPALITY prior to the termination date set forth above by, (1) giving to the Department ninety (90) days prior written notice of Municipality's intent to so terminate; and (2) the payment by MUNICIPALITY to the Department, of the pro-rata cost of any and all initial and subsequent capital improvements installed by Department, not to exceed the Department's total investment associated with this Agreement, computed as five percentage points (5%) of the costs of development for each year of the unexpired term of this Agreement. Any necessary payment will occur via a separate agreement between the Department and MUNICIPALITY. Periods of less than a year shall be prorated accordingly. Upon receipt of such notice and payment, this agreement shall be of no further force and effect from

the latter of (1) the date of payment or, (2) the ninetieth day after the date of receipt of the notice herein required which notice shall be mailed by registered or certified mail, return receipt requested to the Department at the following address:

NYS Department of Environmental Conservation
Division of Fish, Wildlife and Marine Resources
625 Broadway
Albany, NY 12233-5060

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

(b) If such early termination by Department is "for cause," MUNICIPALITY shall pay to Department, the pro-rata cost of any and all initial and subsequent capital improvements installed by Department, not to exceed the Department's total investment associated with this Agreement, computed as five percentage points (5%) of the costs of development for each year of the unexpired term of this Agreement. Any necessary payment will occur via a separate agreement between the Department and MUNICIPALITY. Periods of less than a year shall be of no further force and effect from the latter of (1) the date of payment or, (2) the ninetieth day after the date of receipt of the notice herein required which notice shall be mailed by registered or certified mail, return receipt requested to MUNICIPALITY at the following address:

Town of Horicon
P.O. Box 90
6604 State Route 8
Brant Lake, NY 12815

(c) "Cause," for the purposes of this paragraph 12, shall mean those acts or omissions by or directly attributable to MUNICIPALITY that prevent or frustrate the Department's ability to provide public access to the Site for the development and operation of the Site for use as a public fishing access facility pursuant to ECL §11-2101.

13. Any notices required by this Agreement shall be hand delivered or mailed using first class US Mail addressed to the respective party using the addresses provided above. The parties may designate some other form of providing notice, in accordance with provisions of this paragraph 13.

14. The parties may amend this Agreement but only with a subsequent written instrument signed by all parties.

15. (a) MUNICIPALITY is permitted to make any other use of the Site provided, however, that no such use shall hinder or interfere with the Department's use of the Site as a public fishing access site, which the parties agree is the principal and dominant use of the Site for the term hereof.

16. Any and all additional considerations and responsibilities specific and unique to the development and subsequent use of the Site as a public fishing access site, are set forth **in Schedule D** attached hereto and made a part hereof as if herein set forth at length.

17. This Agreement merges all prior negotiations between the parties. There are no agreements, promises, covenants or representations except those herein set forth. This Agreement may not be modified except in writing mutually subscribed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year appearing opposite their respective signatures.

_____

Dated: _____ by _____
(Supervisor/Mayor)

_____
(office address)

_____
(city, state, zip)

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

Dated: _____ by _____
Nancy W. Lussier, Director
Division of Management and Budget Services

MUNICIPALITY ACKNOWLEDGMENT:

STATE OF NEW YORK)
) ss.:
COUNTY OF _____)

On the ___ day of _____ in the year 20_____ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

_____
Notary Public, State of New York

DEPARTMENT ACKNOWLEDGMENT:

STATE OF NEW YORK)
) ss.:
COUNTY OF ALBANY)

On the _____ day of _____ in the year 20_____ before me, the undersigned, personally appeared **NANCY LUSSIER**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of whom the individual acted, executed the instrument.

_____
Notary Public, State of New York

Waterway Access Project

Resolution

Resolution Authorizing the signing of a State Cooperative Agreement for a Waterway Access Project, under the Appropriate Laws of New York State and the United States of America.

WHEREAS_____
(*Legal Name of Municipality*)
herein called the "Municipality," after thorough consideration has hereby determined that certain work, as described in the State Cooperative Agreement, herein called the "Project," is desirable, in the public interest, and is required in order to achieve a level of availability and use of the State's waters commensurate with the value thereof; and

WHEREAS, the Municipality deems it to be in the public interest and benefit to enter into a Cooperative Agreement therewith;

NOW, THEREFORE, BE IT RESOLVED BY _____
(*Governing Body of Municipality*)

_____

1. That _____
(*Title of designated authorized representative*)
is directed and authorized as the official representative to act in connection with any Cooperative Agreement between the Municipality and the State, and to provide such additional information as may be required;

2. That one (1) certified copy of this Resolution be prepared and sent to the New York State Department of Environmental Conservation, Albany, New York together with the State Cooperative Agreement;

3. That this Resolution take effect immediately.

CERTIFICATE OF RECORDING OFFICER

That the attached Resolution is a true and correct copy of the Resolution, authorizing the signing of a State Cooperative Agreement, as adopted at a legally convened meeting of the

_____
(Name of Governing Body of Applicant)

duly held on the _____ day of _____

20_____; and further that such Resolution has been fully recorded in the
_____

_____ in my office.
(Title of Record Book)

In witness whereof, I have hereunto set my hand this
_____

day of _____, 20_____.

If the Applicant has an Official Seal,
Impress here.

_____
Signature of
Recording Officer

_____
Title of Recording Officer

SCHEDULE A

Description of Property

To be provided by Municipality

See attached deed for parcel 71.20-1-13 on next page.

FORM 553X N.Y. DEED—WARRANTY (Laws of 1917, Chap. 681)

TUTBLANX REGISTERED U.S. PAT. OFFICE
Tuttle Law Print Publishers, Rutland, Vt.

This Indenture,

Made the 21st *day of* April

Nineteen Hundred and Sixty

Between LEON L. JONES,

residing at Brant Lake,

Town of Horicon, County

of Warren and State of

New York

party of the first part, and

THE TOWN OF HORICON

RECORDED
JUN 27 1 14 PM '60
LIBER 379 Deeds
PAGE 395
WARREN COUNTY REGISTER
SIDNEY [illegible]

Witnesseth *that the party of the first part, in consideration of* *party of the second part,*

ONE---------- *Dollar* ($ 1.00) *lawful money of the United States,* and other good and valuable consideration *paid by the party of the second part, does hereby grant and release unto the party of the second part,* its successors *and assigns forever, all*

THAT TRACT OR PARCEL OF LAND situate in the Town of Horicon, County of Warren and State of New York, being a portion of Lot 209, Brant Lake Tract and described as follows: BEGINNING at a point in the center line of the New York State Highway No. 1023 leading Northeasterly from Chestertown to Hague, N.Y., said point of beginning being the southeasterly corner of lands previously conveyed by Andrew F. Jones and wife to Wilfred Sarrult by deed dated August 11, 1944, running;

(1) Thence from said point of beginning along the Easterly boundary of said Wilfred Sarrult's lands to a large maple tree standing on the Northerly side of said Highway and continuing along said Wilfred Sarrult's Easterly boundary for a total distance from the point of beginning of 150 feet to a point.

(2) Thence in a straight line and in a Northerly direction through lands of the party of the first part to the Northwesterly corner of Great Lot No. 209 Brant Lake Tract for the Northwesterly corner of lands herein described.

(3) Thence in an Easterly direction along the Northerly boundary of said Great Lot No. 209, 75.0 feet to a point for the Northeasterly corner of lands herein described.

(4) Thence in a straight line and in a Southerly direction to a point in the centerline of the above mentioned State Highway where same is intersected by the center line of a concrete culvert, at approximately station 286+50± of the survey base line for the said State Highway.

(5) Thence in a Southwesterly direction and along the centerline of said State Highway to the point of beginning.

CONTAINING approximately 1.65 acres.

EXCEPTING AND RESERVING from the above described parcel all lands if any previously conveyed for highway purposes.

ALSO the party of the second part shall have the right and privilege to take sufficent fill from the uplands of the party of the first part where he shall designate to grade the hereinbefore described premises a distance of One Hundred (100) feet Northerly measured from the Easterly boundary of lands herein described, and the party of the second part shall place drainage pipe, at least two (2) feet in diameter, extending from the culvert mentioned in Paragraph Number Four (4) to the Northerly fill line, in compliance with the State of New York specifications.

Together *with the appurtenances and all the estate and rights of the part* y *of the first part in and to said premises,*

To have and to hold *the premises herein granted unto the part* y *of the second part,* its successors *and assigns forever.*

And *said* party of the first part

covenants as follows;

First, *That the part* y *of the second part shall quietly enjoy the said premises;*

Second, *That said* party of the first part

will forever **Warrant** *the title to said premises.*

In Witness Whereof, *the part* y *of the first part ha* s *hereunto set* his *hand and seal the day and year first above written.*

In Presence of

Leon L. Jones

State of New York
County of Warren } ss. *On this* 22nd *day of* April *Nineteen Hundred and* Sixty *before me, the subscriber, personally appeared*

LEON L. JONES

to me personally known and known to me to be the same person described in and who executed the within Instrument, and he acknowledged to me that he executed the same.

Charles R Leggett
Notary Public

CHARLES R. LEGGETT
NOTARY PUBLIC, STATE OF NEW YORK
Qualified in Warren County
Commission expires March 30, 1961

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SCHEDULE B

Map or Description of the Site

SCHEDULE C

DEC Action(s) to be Undertaken

1. The New York State Department of Environmental Conservation ("DEC") shall provide standard site identification signs for the facility, which shall read as follows:

Brant Lake Boat Launch Site State of New York
Department of Environmental Conservation
Federal Aid Project supported by your purchase of
Fishing licensed, fishing equipment and motorboat fuels
Maintained by Town of Horicon

2. The DEC shall (1) install and removal floating docks seasonally, (2) have at least one universally accessible port-a- jon on site before the boating season. If a second port-a-jon unit is needed a standard unit will be placed.

3. DEC shall conduct as necessary and as funding permits, all major rehabilitation activities, including repair or replacement of the launch ramp, floating docks and pavement with parking curbs.

4. The DEC will contract to have the developed hard portions of the launch paved including the parking and maneuvering areas. This project will be completed to reduce erosion entering the lake and to reduce the need for the town to maintain the stone fill adjacent to the concrete ramp.

5. In accordance with the Americans with Disabilities Act, the Brant Lake boat launch facility will provide accessible parking and pathways to every element of this facility.

6. The DEC will provide wood building materials for the MUNICIPALITY to construct a shelter adjacent to the port-a-jon enclosure at the launch. The shelter will be wood and also be painted/stained brown.

7. The DEC will provide the MUNICIPALITY a Landa brand high pressure hot water wash unit to be used by town employees to clean boats. The MUNICIPALITY will operate the wash unit at a MUNICIPALITY owned site. There will be no fee changed by the MUNICIPALITY to clean boats.

SCHEDULE D

1. The Town of Horicon ("MUNICIPALITY ") shall be responsible for conducting recurring annual maintenance of the completed facility to include: (1) mowing of grassed areas, (2) pickup and disposal of trash, (3) snowplowing (if winter access to the ice surface of Brant Lake is to be allowed by the Municipality).

2. Public use of the completed facility shall be on a "first-come, first-served" basis without discrimination of any kind between user groups (residency requirements, differential fees, pre-arranged "permits", etc.).

3. DEC and local enforcement authorities will work collaboratively to ensure that the site is used for its intended purpose as a fishing and boat launching facility. Regulations for the site can be found at Title 6, Section 59 of New York's Code of Rules and Regulations; statutory authority is granted by New York's Environmental Conservation Law §11-210l. Aquatic invasive species regulations at the Brant Lake boat launch can be found at Title 6, Section 59.4 and at part 190.24 use of state lands.

4. The maximum number of parking spaces designated (or large enough to accommodate) a motor-vehicle with attached boat trailer shall be eleven (11), unless otherwise agreed to by DEC and the Municipality.

5. DEC shall erect, maintain and replace all necessary signs, including directional, entrance, exit and parking signs. The Municipality may place additional signs, to the extent that such additional signs do not interfere with the use of the facility as a public fishing and boat launch facility. The location and content of the signs shall be approved by DEC prior to posting. No information shall be posted on the site kiosk without the knowledge of DEC.