

RESOLUTION NO. 2006- 73

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS AND AUTHORIZING THE EXECUTION OF THE PARTICIPATION AGREEMENT AND MEMORANDUM OF AGREEMENT WITH THE ST. JOHNS RIVER WATER MANAGEMENT DISTRICT FOR JOINT ACQUISITION OF THE FOX CREEK REGIONAL POND SITE.

RECITALS

WHEREAS, St. Johns County acquired the 42 acre Fox Creek Regional Pond site in May of 2005 for \$2 million; and

WHEREAS, the Regional Pond will provide needed stormwater treatment and flood protection for portions of West Augustine in the Fox Creek Drainage Basin; and

WHEREAS, on January 10, 2006 the St. Johns River Water Management District (SJRWMD) Governing Board approved the participation agreement for joint acquisition of the Regional Pond ; and

WHEREAS, the Participation Agreement includes the SJRWMD contributing \$975,000 plus 50% of the approved acquisition cost and St. Johns County will construct and manage the regional pond.

NOW THEREFORE, BE IT RESOLVED by the Board of County Commissioners of St. Johns County, Florida, as follows:

1. The above Recitals are hereby incorporated herein by reference and adopted as findings of fact in support of this Resolution.
2. The Board of County Commissioners of St. Johns County hereby approves the terms and conditions of the Participation Agreement and Memorandum of Agreement and authorizes the County Administrator to execute the Participation Agreement and Memorandum of Agreement with the St. Johns River Water Management District establishing the terms of participation between the two organizations to jointly acquire the Fox Creek Regional Pond Site.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 21 day of March, 2006.

BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA

By: James E. Bryant
James E. Bryant, Chairman

ATTEST: Cheryl Strickland, Clerk

RENDITION DATE 3-22-06

By: Patricia DeGrande
Deputy Clerk

Res. 06-73

PARTICIPATION AGREEMENT

THIS AGREEMENT, made and entered into this 11th day of April, 2006, by and between the ST. JOHNS COUNTY, FLORIDA, a political subdivision of the State of Florida, whose mailing address is 4020 Lewis Speedway, St. Augustine, FL 32084, hereinafter referred to as "County", and ST. JOHNS RIVER WATER MANAGEMENT DISTRICT, a public body existing under Chapter 373, Florida Statutes, whose mailing address is 4049 Reid Street, Palatka, Florida 32177, hereinafter referred to as "District".

WITNESSETH:

WHEREAS, the County has adopted a program for the purpose of providing water quality improvement through acquisition of lands suitable for development of stormwater management and passive public recreational facilities, and has acquired a parcel of land known as the West Augustine property (the "Property" or "Parcel"); and

WHEREAS, the District has the authority under Chapter 373, Florida Statutes to participate with the County to acquire the fee or other interest in lands necessary for water management, water supply, and the conservation and protection of water resources; and

WHEREAS, the County and the District, in recognition of the mutual efforts and the responsibilities of the other, each desire to enter into this Agreement to establish a program for the joint acquisition and management of the West Augustine property for development of a stormwater management and passive public recreational facility.

NOW, THEREFORE, the County and the District, for and in consideration of the sum of ten and 00/100 dollars (\$10.00), the mutual covenants, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, do hereby agree as follows:

1. TERM: This Agreement shall commence on the effective date hereof, and continue for a term of i) one (1) year, or ii) until closing between the District and the County, whichever occurs first.
2. PURPOSE: The purpose of this Agreement is to provide for the joint funding, acquisition and management of the Property.
3. APPRAISALS: The County shall provide to the District, for review and approval, appraisal(s) of the fee simple interest in the Parcel, and an appraisal review, in accordance with mutually acceptable appraisal standards and appraiser selection process. In no event shall the District pay greater than appraised value for the parcel, however, this shall not preclude the County from paying a purchase price greater than appraised value for the fee simple interest in the Parcel, and paying the difference between appraised value and the purchase price funded by the District, at the sole discretion of the County.

4. LAND ACQUISITION AND HOLDING OF TITLE: The District agrees to purchase from the County, 48.75% of fee simple title to the Property. The District will provide monies in the amount of \$975,000.00 to the closing agent, pursuant to a Closing Statement for the Parcel. As a simultaneous transaction, the District's 48.75% interest in title to the Parcel will be transferred by the District back to the County. The County agrees to record in the Public Records of St. Johns County, Florida, as an attachment to the deed from the District, a Memorandum of Agreement (the "MOA") that restricts use of the Property to construction by the County of a water quality improvement/storm water management facility (the "Project"), including passive public recreational components at the County's discretion. The MOA will also contain a provision that in the event the County derives any revenue from the sale of fill material or other appurtenances from the Property, all such revenue will be used toward funding the design, construction, operation and maintenance of the Project, including public recreational components. Said MOA will further contain a provision that in the event the County i) fails to complete construction of the Project by a date which is exactly five (5) years from the date the MOA is recorded in the Public Records of St. Johns County, Florida, or ii) ever in the future fails to continue to operate and maintain the stormwater management system on the Property, the District will require the County to reimburse the District the full amount it funded for the Parcel, including costs shown on the closing statement, plus interest at the rate of five percent (5%) per year. For purposes of this Agreement, the term "complete construction" and "continue to operate and maintain" the Project shall mean that the facility is functioning as designed and is being used for its intended purpose. The County shall have eighteen (18) months to repay the District in full and the District shall then provide the County with a waiver of all restrictions on use of the Property as originally imposed at the time of the District's acquisition.

5. TITLE INSURANCE, ENVIRONMENTAL ASSESSMENT AND SURVEY: Prior to the closing with the District, the County will provide the District with the title insurance policy and survey obtained by the County in connection with their closing with the Seller, and will obtain a Phase I Environmental Site Assessment of the Property in accordance with District and County approved standards and procedures, for review and approval by the District.

Request from the County for funds to close, and payment by the District of the purchase price plus costs at closing shall be conclusive evidence of acceptance of all closing related matters by both parties.

6. FUNDING: The District's funding shall be paid from the District's share of monies in the Florida Forever Trust Fund, and closing shall be contingent upon approval and release of such funding by the Florida Department of Environmental Protection.

The County and District shall agree upon a closing date for purchase of the Parcel. Subject to completion of the requirements set forth above and approval by both parties of the closing documents and closing statement, the District shall pay to the Closing Agent or directly to the County the purchase price of \$975,000.00 for an undivided 48.75% interest in the fee simple title in the Parcel, plus 50% of all approved pre-acquisition costs for appraisal, and all acquisition related costs for title insurance, survey, recording fees, environmental site

assessments and any other closing costs attributable to the Buyer under the Purchase Agreement between the County and the Seller for the Property.

7. CONTINGENCY FOR COUNTY/DISTRICT APPROVAL: This Agreement shall be subject to the approval of the St. Johns County Commission and the Governing Board of the District. If such approval does not occur, then neither party is obligated to purchase the Parcel and the parties are relieved from all further obligations under this Agreement.

8. USE, MANAGEMENT AND DEVELOPMENT OF THE PARCEL: The parties agree that the County will assume full responsibility for management of the Parcel following closing, to include construction, management and maintenance of a passive public recreational component if desired by the County. The County shall be responsible for paying for and obtaining the design and engineering plans and specifications necessary for construction of the Project. The District shall have the opportunity to review and approve the design, engineering plans and specifications and any other studies or reports obtained by the County in connection with the Project prior to initiation of any construction activities. Both parties agree that time is of the essence in reviewing and responding to comments relating to the design, engineering plans and specifications, and any other studies or reports necessary for construction of the Project. The County, at its cost, shall construct the Project in accordance with the approved design and engineering plans and specifications and in accordance with the detailed design. The County shall also obtain and maintain and keep in force any and all permits required in connection with the construction, operation, maintenance and repair of the Project. All work shall be performed in accordance with applicable federal, state and local laws, rules, regulations and ordinances. All work shall be performed by the County or by a contractor or sub-contractor hired by the County.

9. NOTICES: Any and all notices, requests or other communications hereunder shall be in writing and shall be deemed delivered or received: i) on the date of delivery if transmitted by hand delivery with receipt therefore; or ii) on the date upon which the return receipt is signed or delivery is refused or non-deliverable, if sent by registered mail/return receipt requested; or iii) on the next business day, if mailed by any form of overnight mail service, to the following:

To the County: St. Johns County, Florida
4020 Lewis Speedway
St. Augustine, FL 32084
Attention: Director, Land Management

To the District: St. Johns River Water Management District
Post Office Box 1429
Palatka, Florida 32178-1429
Attention: Director, Department of Operations
& Land Resources

10. ENTIRE AGREEMENT: This Agreement constitutes the entire agreement of the parties, and there are no understandings dealing with the subject matter of this Agreement other than those contained herein. This Agreement may not be modified, changed or amended, except by a writing signed by the parties hereto.

11. NON-WAIVER OF REGULATORY POWERS: Nothing contained in this Agreement shall be construed as a waiver of or contract with respect to the regulatory and permitting authority of the District or the County as they now or hereafter exist under applicable laws, rules and regulations.

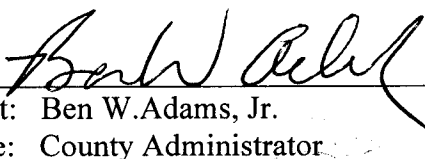
12. NON-WAIVER OF SOVEREIGN IMMUNITY: Nothing contained in this Agreement or in any instruments executed pursuant to the terms of this Agreement shall be construed as a waiver or attempted waiver by the District or the County of their sovereign immunity under the constitution and laws of the State of Florida; provided, however, that this paragraph shall not be construed as an attempt by the District or County to negate any partial waiver of sovereign immunity made by the Legislature under the provisions of The Tort Claims Act, Section 768.28, Florida Statutes or any future statute or Act adopted by the Florida Legislature.

13. GOVERNING LAW/ATTORNEY'S FEES: This Agreement shall be construed and interpreted according to the laws of the State of Florida.

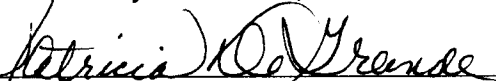
14. EFFECTIVE DATE: For all purposes of this Agreement, the Effective Date hereof shall mean the date when the last of the County or the District has executed the same, and that date shall be inserted at the top of the first page hereof.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement to become effective as of the date and year first above written.

ST. JOHNS COUNTY, FLORIDA

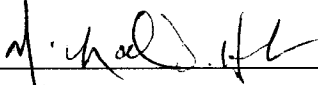
By: 
Print: Ben W. Adams, Jr.
Title: County Administrator

ATTEST: Cheryl Strickland, Clerk

By: 
Deputy Clerk

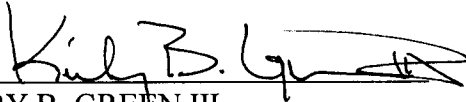
Date: 3-27-06

For the use and reliance of St. Johns County only:
Approved as to form and legal sufficiency.



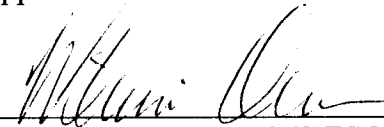
County Attorney

ST. JOHNS RIVER WATER
MANAGEMENT DISTRICT

By: 
KIRBY B. GREEN III
EXECUTIVE DIRECTOR

Date: April 11, 2006

Approved: SJRWMD:



WILLIAM R. ABRAMS ESQUIRE
OFFICE OF GENERAL COUNSEL

STATE OF FLORIDA
COUNTY OF ST. JOHNS

I HEREBY CERTIFY that on this 27th day of March, 2006, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared BEN W. ADAMS, JR., well known to me to be the County Administrator of ST. JOHNS COUNTY, FLORIDA, and that he severally acknowledged executing the same freely and voluntarily under authority duly vested in him by said County. He is personally known to me.

WITNESS my hand and official seal in the County and State last aforesaid this 27th
day of March, 2006.



Laura S. Taylor
Signature of Notary

Name of Notary (Typed, Printed or Stamped)

STATE OF FLORIDA
COUNTY OF PUTNAM

I HEREBY CERTIFY that on this 11th day of April, 2006, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared KIRBY B. GREEN III, well known to me to be the Executive Director of the ST. JOHNS RIVER WATER MANAGEMENT DISTRICT, and he severally acknowledged executing the same freely and voluntarily under authority duly vested in him by said District. He is personally known to me.

WITNESS my hand and official seal in the County and State last aforesaid this 11th day of April, 2006.



Sharon G. Carlin
Signature of Notary

SHARON G. CARLIN
Name of Notary (Typed, Printed or Stamped)