

RESOLUTION NO. 2011- 290

**A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS AND CONDITIONS OF A USE AGREEMENT BY AND BETWEEN THE STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION AND ST. JOHNS COUNTY; PROVIDING FOR THE EFFECT OF RECITALS; AUTHORIZING THE COUNTY ADMINISTRATOR OR DESIGNEE TO EXECUTE THE AGREEMENT AND SUPPLEMENTAL DOCUMENTATION; PROVIDING FOR CORRECTION OF ERRORS; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the State of Florida Department of Environmental Protection (“DEP”), and St. Johns County (the “County”) desire to enter into DEP Use Agreement Number 0375, attached hereto and incorporated herein, granting the County to use the park lands for the St. Augustine Beach Re-nourishment Project from the State for said Project; and

**WHEREAS**, the COUNTY has reviewed the terms, provisions, and requirements of the Agreement, and has determined that accepting the terms of the Agreement serves the public interests of the citizens of St. Johns County.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AS FOLLOWS:**

**Section 1.** The above Recitals are hereby incorporated into the body of this Resolution, and such Recitals are adopted as Findings of Fact.

**Section 2.** The Board of County Commissioners hereby approves the terms, conditions, provisions, and requirements of DEP Use Agreement No. 0375, and authorizes the County Administrator, or designee, to execute the Agreement, on behalf of the County.

**Section 3.** The Board of County Commissioners further authorizes the County Administrator, or designee, to execute any supplement paperwork/documentation necessary to accomplish the overall goal set forth in the Agreement.

**Section 4.** To the extent that there are typographical, administrative or scrivener’s errors that do not change the tone, tenor or concept of this Resolution, then this Resolution may be revised without further action by the Board of County Commissioners.

**Section 5.** This Resolution shall become effective immediately upon its adoption.

**PASSED AND ADOPTED** by the Board of County Commissioners of St. Johns County, Florida, this 4<sup>th</sup> day of October, 2011.

**BOARD OF COUNTY COMMISSIONERS OF  
ST. JOHNS COUNTY, FLORIDA**

**ATTEST:**

*Pam Halteman*  
Deputy Clerk

**BY:**

*Ken Bryan*  
Ken Bryan -- Chair

RENDITION DATE 10/10/11



USE AGREEMENT

FOR A BEACH NOURISHMENT PROJECT AT ANASTASIA STATE PARK  
BETWEEN  
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF THE  
STATE OF FLORIDA  
AND  
ST. JOHNS COUNTY, FLORIDA

Use Agreement No.0375

THIS USE AGREEMENT ("use agreement") is hereby made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by and between the BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA, hereinafter referred to as "GRANTOR" and ST. JOHNS COUNTY, FLORIDA, hereinafter referred to as "GRANTEE."

WITNESSETH

WHEREAS, GRANTOR is the owner of the hereinafter described real estate property, commonly known as Anastasia State Park ("Park" or "premises"), which is managed by the State of Florida Department of Environmental Protection, Division of Recreation and Parks ("DRP") under GRANTOR's lease No. 3608; and

WHEREAS, the United States Army Corps of Engineers ("ACOE") is embarking upon a beach nourishment project (the "project") within the vicinity of Anastasia State Park as depicted in Exhibit "A" attached hereto and made part hereof, in which GRANTEE is the "local sponsor" responsible for obtaining such permissions necessary to complete the work; and

WHEREAS, in undertaking the project, GRANTEE desires to temporarily place and maintain pipeline and equipment and to place dredged materials upon that portion of the Park, as depicted in Exhibit "A" attached hereto and made part hereof; and

WHEREAS, DRP has agreed to the proposed use of the Park under this use agreement.

NOW THEREFORE, in consideration of the faithful and timely performance of and compliance with all the terms and conditions stated herein, GRANTOR has entered into this use agreement with GRANTEE to allow GRANTEE to use that portion of the Park in St. Johns County, as described in this use agreement subject to the following terms and conditions:

1. **DELEGATIONS OF AUTHORITY:** GRANTOR's responsibilities and obligations herein shall be exercised by the Division of State Lands, State of Florida Department of Environmental Protection, pursuant to Chapter 18-2, Florida Administrative Code, and applicable delegations of authority.
2. **TERM:** This use agreement shall commence on the execution date of this use agreement and end on \_\_\_\_\_, unless sooner terminated by GRANTOR or GRANTEE or otherwise extended in writing by both parties to this use agreement.
3. **EXTENT OF AGREEMENT:** This use agreement covers the use of the premises for the purposes of construction, operation and maintenance of a sand transmission pipeline and placing dredged materials in certain areas within that portion of the Park as depicted in Exhibit "A" of this use agreement. It is understood that heavy equipment will be used to move the pipe, grade and till the beach during the project and at the finish of the project. No other use or activity shall be allowed. All such activities shall be consistent with the Consolidated Joint Coastal Permit and Sovereign Submerged Lands Authorization No. \_\_\_\_\_-002 JC issued by the State of Florida Department of Environmental Protection on \_\_\_\_\_, 20\_\_\_\_, attached hereto as Exhibit "B" and made a part hereof.
4. **UNDUE WASTE:** GRANTEE shall not commit undue waste to the Park. Existing beach and dune vegetation shall be disturbed only to the minimum extent necessary for construction, construction access, and other permitted activities as determined at the pre-construction meeting between GRANTEE and the park manager of the Park ("Park Manager") or other representatives of DRP. Upon completion or termination of the project, GRANTEE, at its sole cost and expense, shall restore landscape features and coastal vegetation damaged during construction to pre-existing or better condition to the satisfaction of the Park Manager. Vegetation shall be replaced with plants of same species or, by authorization of the Park Manager with other indigenous salt resistant vegetation suitable for beach and dune stabilization.

5. **COORDINATION WITH DRP:** All activities of GRANTEE under this use agreement shall be coordinated with the Park Manager. Project specifics shall be identified at the pre-work conference and approved by the Park Manager and DRP within two weeks after the contract for the project is awarded to the ACOE's subcontractor. Project specifics will include, but are not limited to, location of staging areas, use of Park roads for access, visitor safety concerns, starting dates, location of pipeline within the Park, the distance and placement of dredged material disposal, any future temporary structures, beach mouse and marine turtle relocation activities, environmental concerns, and timeline for restoration of corridors and staging areas before mobilization and after demobilization. Additionally, GRANTEE shall attend weekly meetings with the Park Manager and DRP during sand placement operations to discuss issues that include but are not limited to: all safety concerns, including staff and visitor safety, resource management, location or relocation of staging areas. All issues arising from the initial meeting or thereafter will be resolved by mutual agreement between GRANTEE, GRANTOR and DRP.
6. **RIGHT OF INSPECTION:** GRANTOR, DRP or their duly authorized agents shall have the right at any time to inspect the works and operation of GRANTEE pertaining to this use agreement. These inspections shall not interfere in GRANTEE's daily operations or compromise the safety of GRANTEE, GRANTOR and DRP's employees or agents.
7. **PROPERTY RIGHTS:** This use agreement constitutes permissive use only, and the placing of temporary or permanent facilities or related structures upon the premises pursuant to this use agreement is prohibited except for the pipeline and heavy equipment. GRANTEE agrees that it does not and shall not claim at any time any interest or estate of any kind or extent whatsoever in the premises, by virtue of this use agreement or its occupancy or use hereof.
8. **USE OF PROPERTY:** This use agreement shall be non-exclusive. GRANTOR, DRP, or their duly authorized agents, shall retain the right to enter the premises covered by this use agreement or to engage in management activities not inconsistent with the use herein provided for, and GRANTOR shall retain the right to grant compatible uses of the premises subject to this use agreement to third parties during the term of this use agreement.
9. **LIABILITY:** If any action of GRANTEE's employees or agents in the exercise of this use agreement results in damage to the premises, GRANTEE will, in its sole discretion, either repair such damage or make appropriate settlement with GRANTOR. In no event shall such repair or settlement exceed the fair market value of the fee title to the real property at the time immediately preceding such damage. GRANTEE's liability under this paragraph is subject to the availability of appropriations for such payment, and nothing contained in this use agreement may be considered as implying that Congress will at a later date appropriate funds sufficient to meet deficiencies. The provisions of this paragraph are without prejudice to any rights GRANTOR or any other party may have to make a claim under applicable federal laws for any damages other than those provided for herein. GRANTOR makes no warranties or representations that the premises are safe or suitable for the purpose for which GRANTEE is permitted to use them.
10. **ASSIGNMENT:** This use agreement is personal to GRANTEE and may not be transferred or assigned without the prior written approval of GRANTOR. However, both GRANTOR and GRANTEE recognize that some or all of these activities permitted under this use agreement may be performed by the ACOE or its contractor under a separate agreement with GRANTEE. Such performance by the ACOE does not relieve GRANTEE of any duty or responsibility under this use agreement.
11. **REMOVAL OF DEBRIS:** GRANTEE shall clear, remove and pick up all of its debris including but not limited to mud containers, oil containers, papers, discarded tools and trash foreign to the work locations and dispose of the same offsite in such a manner as to leave work locations clean and free of any such debris on a daily basis.
12. **ARCHAEOLOGICAL AND HISTORIC SITES:** Execution of this use agreement in no way affects either of the parties' obligations pursuant to Chapter 267, Florida Statutes. The collection of artifacts or the disturbance of archaeological and historic sites on state-owned lands is prohibited unless prior authorization has been obtained from the Division of Historical Resources of the State of Florida Department of State.
13. **TRIPLICATE ORIGINALS:** This use agreement is executed in triplicate originals each of which for all purposes shall be considered an original.
14. **COMPLIANCE WITH LAWS:** This use agreement is contingent upon and subject to GRANTEE obtaining all applicable permits and complying with all applicable permits, regulations, ordinances, rules, and laws of the State of Florida, the United States or of any political subdivision or agency thereof.

15. **RESPONSIBILITY FOR COMPLIANCE:** GRANTEE shall bear the full and ultimate responsibility and liability to GRANTOR for the faithful and timely compliance with the terms and conditions set forth herein.

16. **TITLE:** GRANTOR neither warrants title to the premises nor guarantees the suitability of the premises for any particular use.

17. **DAMAGE:** GRANTEE shall not damage the premises, or perform any act which may result in damages or that would excessively interfere with the public's right to enjoy the premises or private rights therein. Grantee will take all necessary precautions to ensure that its activities do not adversely affect the daily operations of the Park.

18. **VENUE:** GRANTEE waives venue as to any litigation arising from matters relating to this use agreement and any such litigation between GRANTOR and GRANTEE shall be limited and maintained only in Leon County, Florida.

19. **TERMINATION:** In the event GRANTEE fails or refuses to comply with the provisions and conditions herein set forth or in the event GRANTEE violates any of the provisions and conditions herein, then GRANTOR shall give notice to GRANTEE that curative action must be completed within thirty (30) days. In the event that the matter is not resolved within the thirty-day curative period, GRANTOR may elect to terminate this use agreement by means of a letter of termination notifying GRANTEE that the use agreement is terminated. In the event that this use agreement is terminated by GRANTOR for the reasons herein set forth in this use agreement, all rights inuring to GRANTEE or its successors shall cease upon the effective date of the letter of termination with the exception of those activities necessary to demobilize and remove personnel and equipment. GRANTEE's obligations and responsibilities under paragraphs 9. and 21. shall survive termination of this use agreement.

20. **NOTICE:** All notices required to be given by GRANTOR to GRANTEE or by GRANTEE to GRANTOR by this use agreement or applicable law or administrative rules shall be sufficient if sent by certified mail to the following address:

If to GRANTEE: St. Johns County Board of Commissioners  
Attn: Chairman  
4020 Lewis Speedway  
St. Augustine, Florida 32084

With copies to: U.S. Army Corps of Engineers  
Coastal /Navigation, Antilles Branch (DP-C)  
Attn: DP-C Dan Haubner  
701 San Marco Blvd  
Jacksonville, Florida 32207

St. Johns County Engineering Division  
Attn: Andy Ames, Assistant County Engineer  
2740 Industry Center Road  
St. Augustine, FL 32084

If to GRANTOR: Board of Trustees of the Internal Improvement Trust Fund  
of the State of Florida c/o State of Florida Department of  
Environmental Protection, Division of State Lands  
Bureau of Public Land Administration  
3800 Commonwealth Boulevard, Mail Station. 130  
Tallahassee, Florida 32399-3000  
Attn: Scott Woolam, Bureau Chief

With copies to: State of Florida Department of Environmental Protection  
Division of Recreation and Parks  
Office of Park Planning, Mail Station 525  
3900 Commonwealth Boulevard  
Tallahassee, Florida  
Attn: Albert Gregory, Bureau Chief

State of Florida Department of Environmental Protection  
Division of Recreation and Parks  
Bureau of Natural and Cultural Resources, Mail Station 530  
3900 Commonwealth Boulevard  
Tallahassee, Florida  
Attn: Parks Small, Bureau Chief

2011 Anastasia State Park Use Agreement NO. 0375 between BOT and St. Johns County DRAFT 10/14/10  
GRANTEE, GRANTOR, and their respective successors shall notify each other by certified mail of any changes to the above addresses at least ten (10) days before the change is effective.

21. REMOVAL OF EQUIPMENT: GRANTEE shall remove any equipment occupying the premises within sixty (60) days of the date of expiration of this use agreement or, in the event of termination in accordance with paragraph 19. of this use agreement, and within sixty (60) days of the effective date of the letter of termination.

22. ENFORCEMENT OF PROVISIONS: No failure, or successive failures, on the part of GRANTOR to enforce any provision nor any waiver or successive waivers on its part of any provision herein, shall operate as a discharge thereof or render the same inoperative or impair GRANTOR to enforce the same upon any renewal thereof or in the event of subsequent breach or breaches.

23. AGREEMENT: This use agreement is the entire and only agreement between the parties. Any amendment or modification to this use agreement must be in writing and must be accepted, acknowledged and executed by GRANTEE and GRANTOR.

24. SOVEREIGNTY SUBMERGED LANDS: This use agreement does not authorize the use of any lands located waterward of the erosion control line or any other applicable mean or ordinary high water line of any lake, river, stream, creek bay, estuary, or other water body or the waters or the air space above.

25. PROHIBITIONS AGAINST LIENS OR OTHER ENCUMBRANCES: Fee title to the premises is held by GRANTOR and DRP has a leasehold estate in the premises. GRANTEE shall not do or permit anything to be done which purports to create a lien or encumbrance of any nature against the real property contained in the premises including, but not limited to, mortgages or construction liens against the premises or against any interest of GRANTOR or DRP therein.

26. GOVERNING LAW: This use agreement shall be governed by and interpreted according to the laws of the State of Florida.

27. PARTIAL INVALIDITY: If any term, covenant, condition, or provision of this use agreement shall be ruled by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

28. SPECIAL CONDITIONS: GRANTEE, its designees, employees, agents, and assigns shall:

- A. Meet for a mandatory pre-work conference with Park Manager and DRP within two (2) weeks after the project has been awarded to the ACOE's subcontractor. Issues to discuss will include, but are not limited to, park access, operations, animal protection and relocation, vegetation restoration after demobilization, and other resource management issues. GRANTEE shall also coordinate with the Park Manager and DRP for future weekly meetings during the sand placement and dredging to discuss these and any other issues that may arise, including visitor safety, and resource management.
- B. Notify Park Manager at least three (3) weeks prior to mobilizing equipment and piping so that the protected Anastasia Beach Mouse trapping can be completed in the impacted areas.
- C. Notify the Park Manager twenty-four (24) hours in advance before commencing pumping operations, or changing staging areas.
- D. Meet with the Park Manager or his designee regarding after hour permits for entering the Park during after Park operating hours.
- E. Help protect Park facilities, natural communities, and other natural resources by accessing the Park at the points designated by the Park Manager and driving only on those areas of beach as identified by the Park Manager.
- F. Keep fuel and other poisonous, hazardous, or flammable liquids, and powders in a double walled container with a catch basin, and conduct refueling operations within approved staging area only.
- G. Establish a safe zone by providing signage and fencing as needed to prevent access to the staging area, the worksite and areas worked by heavy equipment.
- H. Follow the Park Manager's instructions concerning special Park rules with special regards to protection of the Park's plants, animals, vehicular traffic and Park visitors. Take all necessary safety measures as

2011 Anastasia State Park Use Agreement NO. 0375 between BOT and St. Johns County DRAFT 10/14/10  
determined by the Park Manager to ensure the safety of Park visitors during all dredging and fill  
processes.

- I. If needed, provide and maintain crossings for vehicular and pedestrian access over sections of the pipeline not within the project safe zone. The number of crossings and locations will be determined on site by GRANTEE and Park Manager prior to the project award. However, once the project has begun, additional crossings or underpasses for shorebirds may be required in the event that shorebirds nest and fledge their young on the landward side of the pipeline. GRANTEE agrees to cooperate with the Park Manager to determine where the additional crossings and underpasses will go.
- J. Work cooperatively with the Park Manager and district biologists to resolve issues regarding safety, access, or environmental concerns resulting from this project.
- K. Not undertake any activity within 200 feet of nesting shorebirds, including, but not limited to, least terns and Wilson's plovers.
- L. Prior to laying the pipeline or storing materials and equipment on the premises, GRANTEE shall survey between the frontal dune and Salt Run in the vicinity of proposed pipeline placement or stockpile areas to document existing grade and vegetation. Damages caused by the installation or removal of the pipeline, or by breach of the pipeline during sediment pumping operations, shall be restored by GRANTEE with all affected areas restored to pre-existing conditions. This may include removal of accidentally deposited materials, restoring grade, and planting native vegetation in the areas of damage.
- M. Ensure that access to the Park or any portion of the Park is not disrupted while construction is underway or at anytime during the term of this use agreement. In the event, due to the nature of activities related to the project, it becomes necessary to disrupt access to the Park or a portion of the Park for a limited period of time, GRANTEE, at its sole cost and expense, shall provide reasonable alternative access to the disrupted areas.
- N. Keep all equipment, work materials and workers no less than 15 feet seaward from the toe of the primary dune at all times.
- O. Stop work in the event the Park Manager observes conditions in which the general public or cultural and natural resources are deemed to be in imminent danger. GRANTEE shall be instructed by Park Manager to stop work on that particular activity. However, the Park Manager may only stop that particular activity which is the source of danger and not the entire operation. The Park Manager will also notify GRANTEE's contracting officer or project manager if such an event should occur.
- P. Comply with all of the conditions contained in the Consolidated Joint Coastal Permit and Sovereign Submerged Lands Authorization No. \_\_\_\_\_-002 JC issued by the State of Florida Department of Environmental Protection on \_\_\_\_\_, 20\_\_\_\_, attached hereto as Exhibit "B" and made a part hereof.

IN WITNESS WHEREOF, the parties have caused this use agreement to be executed on the day and first above written.

BOARD OF TRUSTEES OF THE INTERNAL  
IMPROVEMENT TRUST FUND OF THE  
STATE OF FLORIDA

By: \_\_\_\_\_(SEAL)  
GLORIA C. BARBER, OPERATIONS  
AND MANAGEMENT CONSULTANT  
MANAGER, BUREAU OF PUBLIC LAND  
ADMINISTRATION, DIVISION OF  
STATE LANDS, STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Print/Type Witness Name

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Print/Type Witness Name

"GRANTOR"

STATE OF FLORIDA  
COUNTY OF LEON

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by Gloria C. Barber, Operations and Management Consultant Manager, Bureau of Public Land Administration, Division of State Lands, State of Florida Department of Environmental Protection, as agent for and on behalf of the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida. She is personally known to me.

By: \_\_\_\_\_  
Notary Public, State of Florida

\_\_\_\_\_  
Print/Type Notary Name

Commission Number:

Commission Expires:

Approved as to Form and Legality

By: \_\_\_\_\_  
DEP Attorney

ST. JOHNS COUNTY, FLORIDA  
BY ITS BOARD OF COMMISSIONERS

By: \_\_\_\_\_

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Print/Type Witness Name

\_\_\_\_\_  
Print/Type Name

Title: Chairman

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Print/Type Witness Name

“GRANTEE”

(OFFICIAL SEAL)

STATE OF FLORIDA  
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2011, by \_\_\_\_\_, \_\_\_\_\_ Chairman \_\_\_\_\_, on behalf of the Board of Commissioners, St. Johns County, Florida. He/she is personally known to me.

\_\_\_\_\_  
Notary Public, State of Florida

\_\_\_\_\_  
Print/Type Notary Name

Commission Number:

Commission Expires: