

RESOLUTION NO. 2015- 105

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS AND AUTHORIZING THE CHAIRMAN TO EXECUTE A MEMORANDUM OF AGREEMENT BETWEEN ST. JOHNS COUNTY AND THE ST. JOHNS RIVER WATER MANAGEMENT DISTRICT FOR THE BASIN 9 MOSES CREEK REGIONAL OFFSITE MITIGATION AREA

RECITALS

WHEREAS, St. Johns County (County) and St. Johns River Water Management District (District) wish to formalize an agreement relating to the Basin 9 Regional Offsite Mitigation Area (ROMA) located in St. Johns County, Florida; and

WHEREAS, Section 373.4135(1), Florida Statutes (F.S.) directs the District to participate in and encourage the establishment of public offsite regional mitigation; and

WHEREAS, the County desires to establish a ROMA to serve as mitigation for future environmental resource permits issued by the District to the County for County projects; and

WHEREAS, although Section 373.4135(6), F.S., does not require that this Basin 9 ROMA be established and operated under an MOA because no money will be donated or paid as mitigation as the site will provide solely for County mitigation, the parties have determined that an MOA would be mutually beneficial.

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


Section 1. The above Recitals are incorporated by reference 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, provisions, conditions and requirements of the attached Memorandum of Agreement (MOA) and authorizes the County Administrator, or designee, to execute said MOA.


Section 3. To the extent that there are typographical or administrative errors or omissions that do not change the tone, tenor, or context of this Resolution, then this Resolution may be revised without subsequent approval of the Board of County Commissioners.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 21st day of April, 2015.

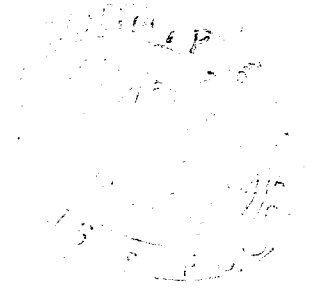
BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA

By: 
Priscilla L. Bennett, Chair

ATTEST: Cheryl Strickland, Clerk

By: 
Deputy Clerk

RENDITION DATE 4/23/15



**MEMORANDUM OF AGREEMENT BETWEEN
ST. JOHNS RIVER WATER MANAGEMENT DISTRICT AND ST. JOHNS COUNTY
FOR ST. JOHNS COUNTY BASIN 9 REGIONAL OFFSITE MITIGATION AREA
(ROMA)**

THIS MEMORANDUM OF AGREEMENT is entered into by the St. Johns River Water Management District (District) and St. Johns County (County) regarding the St. Johns County Basin 9 Regional Offsite Mitigation Area (ROMA).

WITNESSETH:

WHEREAS, Section 373.4135(1), Florida Statutes (F.S.), directs the District to participate in and encourage the establishment of public offsite regional mitigation;

WHEREAS, the County desires to establish a ROMA to serve as mitigation for future environmental resource permits (ERPs) issued by the District to the County for County projects;

WHEREAS, Section 373.4135(6), F.S., requires that certain ROMAs for which money is donated or paid as mitigation be established and operated pursuant to a Memorandum of Agreement (MOA);

WHEREAS, although Section 373.4135(6), F.S., does not require that this St. Johns County Basin 9 ROMA be established and operated under an MOA because no money will be donated or paid as mitigation, the parties have determined that an MOA would be mutually beneficial;

WHEREAS, Section 373.4135, F.S., provides that such MOA need not be adopted by rule;

NOW THEREFORE, for and in consideration of the foregoing, which are made a part of the MOA, the District and the County hereby agree to the following:

Section 1. The County will implement the St. Johns County Basin 9 ROMA as described in the following five documents: (1) The approved construction plans for permit 40-109-123748-1, as received by the District on October 1, 2010, attached as Exhibit A; (2) Revised and supplemental drawings as Exhibit B; (3) Basin 9 ROMA Burn Plan as Exhibit C; (4) Uniform Mitigation Assessment Methodology (UMAM) functional gain summary table as Exhibit D, and (5) this MOA. Each of the exhibits described in this section shall be incorporated into and made part of this MOA.

Section 2. In exchange for the County's implementation of the St. Johns County Basin 9 ROMA as described above, the County is authorized to use 45.11 Total Functional Gain Units (FGUs) from the ROMA as mitigation for ERPs issued by the District to the County for County projects in Basin 9.

Section 3. Responsibilities.

A. *Description of work.* The County will conduct the following activities to return the sites to a more natural state:

Rayonier Tract

- Forested Wetland Enhancement Area 1 of 168.7 acres
- Forested Wetland Enhancement Area 1A of 24.0 acres
- Forested Wetland Enhancement Area 2 of 27.7 acres
- Forested Wetland Enhancement Area 3 of 27.0 acres
- Forested Wetland Enhancement Area 3A of 6.0 acres
- Wetland Buffer Enhancement of 0.7 acres

Terra Pointe Tract

- Forested Wetland Enhancement Area 1 of 110.3 acres
- Forested Wetland Enhancement Area 2 of 2.3 acres
- Forested Wetland Preservation 59.3 acres
- Forested Wetland Enhancement Area 1 of 1.2 acres
- Wetland Buffer Enhancement Area 2 of 27.5 acres

The County will begin conducting these activities in 2015 and expects to complete construction in 2019.

B. *Timeline for obtaining any required ERP.* Some of the mitigation activities required an ERP, which the County obtained on November 3, 2010 (40-109-123748-1).

C. *Environmental success criteria.*

Rayonier Tract:

- (a) Preserve the entire property in perpetuity by conveying a conservation easement approved in writing by District staff.
- (b) Perform annual inspection and exotic species removal/maintenance as needed. Invasive exotic species covers must be 1% or less in any one acre area.
- (c) For the planted areas within wetland enhancement areas 3 and 3A, plantings must meet the following success criteria within five years after initial planting:

i. At least 75 percent of the planted individuals in each stratum have survived or desirable native recruits become established throughout the monitoring period and are showing signs of normal growth, based upon standard growth parameters such as height and base diameter, or canopy circumference.

ii. At least 80 percent cover by appropriate wetland or upland species has been obtained.

iii. Hydrologic conditions generally conform to those specified for wetlands in Chapter 62-340, F.A.C.

iv. If successful establishment has not occurred as stated above within 5 years following initial planting, then within 30 days of the termination of the monitoring period, the County shall submit to the District a narrative describing the type and causes of failure and a complete set of plans for the redesign or replacement planting of the wetland mitigation area so that the success criteria will be achieved. If an ERP is required for the activity, then the County shall apply for a permit modification. Within 30 days of District approval and, if applicable, issuance of the permit modification, the permittee must implement the redesign and/or replacement planting. Following completion of such work, success criteria as stated above or modified by subsequent permit must again be achieved. In addition, the monitoring must be conducted.

v. In the event that 50 percent or greater mortality of planted wetland or upland species in any stratum within the planted enhancement mitigation area occurs, the permittee must undertake a remediation program approved by District staff.

Planting Plan for Rayonier Tract					
Wetland Enhancement Area 3 and 3A (33.0-Acres)					
Type	Scientific Name	Common Name	Feet on Center	Size	Number of Plants
Tree	<i>Acer rubrum</i>	Red Maple	20	1 gal	2,767
	<i>Quercus laurifolia</i>	Laurel Oak			1,384
	<i>Liquidambar styraciflua</i>	Sweetgum			1,384
	<i>Nyssa sylvatica var. biflora</i>	Swamp Tupelo			1,384
<i>Subtotal</i>					6,919

Terra Pointe Tract:

- (a) Preserve the entire property in perpetuity by conveying a conservation easement approved in writing by District staff.
- (b) Perform annual inspection and exotic species removal/maintenance as needed. Invasive exotic species covers 1% or less in any one acre area.
- (c) Perform the activities described in Exhibit B and ERP 4-109-123748-1.
- (d) Implement the burn plan as outlined in Exhibit C.
- (e) For the planted areas within wetland buffer enhancement area 1, the plantings must meet the following success criteria within five years after initial planting:
 - i. At least 75 percent of the planted individuals in each stratum have survived or desirable native recruits become established throughout the monitoring period and are showing signs of normal growth, based upon standard growth parameters such as height and base diameter, or canopy circumference.
 - ii. At least 80 percent cover by appropriate wetland or upland species has been obtained.
 - iii. Hydrologic conditions generally conform to those specified for wetlands in Chapter 62-340, F.A.C.
 - iv. If successful establishment has not occurred as stated above within 5 years following initial planting, then within 30 days of the termination of the monitoring period, the County shall submit to the District a narrative describing the type and causes of failure and a complete set of plans for the redesign or replacement planting of the wetland mitigation area so that the success criteria will be achieved. If an ERP is required for the activity, then the County shall apply for a permit modification. Within 30 days of District approval and, if applicable, issuance of the permit modification, the permittee must implement the redesign and/or replacement planting. Following completion of such work, success criteria as stated above or modified by subsequent permit must again be achieved. In addition, the monitoring must be conducted.
 - v. In the event that 50 percent or greater mortality of planted wetland or upland species in any stratum within the planted enhancement mitigation area occurs, the permittee must undertake a remediation program approved by District staff.

Planting Plan for Terra Pointe Tract					
Wetland Buffer Enhancement 1 (1.2-Acres)					
Type	Scientific Name	Common Name	Feet on Center	Size	Number of Plants
Tree	<i>Quercus virginiana</i>	Live Oak	20	1 gal	144
	<i>Aristida Stricta</i>	Wire Grass			1,597
	<i>Callicarpa americana</i>	Beautyberry			615
	<i>Sabal palmetto</i>	Cabbage palm			410
<i>Subtotal</i>					3,338

D. *Monitoring and long-term management requirements.* The County will monitor the planted areas for a total of 5 years following planting. In addition, the County shall furnish the District with an annual monitoring report for all wetland enhancement areas and upland enhancement areas for four growing seasons after establishment of this MOA unless otherwise notified by the District.

The County shall perform exotic species removal and maintenance activities and land management activities as described in this MOA.

The County will operate and maintain the site in a manner consistent with the Plans (Exhibits A and B), permit 40-109-123748-1, this MOA, and the conservation easement.

E. *Project Assessment.* Mitigation value was assessed pursuant to the UMAM in Chapter 62-345, Florida Administrative Code. The District has determined that the ROMA can provide 45.11 Total Functional Gain Units (FGUs). The final UMAM assessment is attached as Exhibit D. Because this assessment accounts for time lag and risk, all of the FGUs will be available once the County records the District-approved conservation easements. To track the use of FGUs, the County and District will maintain a list containing the project name, ERP number, FGUs used, and date used, until all FGUs have been used.

F. *Completion of the mitigation work.* The County is responsible for all work at the ROMA.

G. *Geographic area where the project may be used.* The FGUs from the ROMA may be used as mitigation for ERPs issued for County projects proposing impacts to forested freshwater wetlands in the District's Basin 9, which is where the ROMA is located.

H. *Cost accounting, annual review and adjustment.* Because the County will be using the ROMA only for County projects and will not be collecting funds from others to implement the ROMA, and because an MOA is not required for this type of ROMA, the District has determined that a procedure for full cost accounting is not needed in this case.

- I. *Land Acquisition.* The County owns the property and does not need to acquire any lands for the ROMA.
- J. *Preservation of the site.* The County will convey conservation easements to the District, as explained above.
- K. *Funds.* Because the County will not collect moneys from others to implement the ROMA, the District has concluded that a procedure to track funds is not needed in this case.
- L. *Termination.* If the District determines that the County is not in material compliance with the terms and conditions of this MOA, it shall provide the County with written notice of its material non-compliance and give the County ninety (90) calendar days, or another time period mutually agreed upon in writing, to correct the non-compliance. During the time period provided for correcting the non-compliance, the County may not use FGUs as mitigation for newly issued ERPs from the District.

If the County does not correct the material non-compliance within the stated timeframe, the District may terminate use of the remaining FGUs for future ERPs from the District.

If the District determines that the material non-compliance diminishes the value of FGUs already used from the ROMA, then the District shall provide the County with written notice of this determination. The District shall give the County ninety (90) calendar days, or another time period mutually agreed upon in writing, to correct the non-compliance or submit for District approval alternative mitigation for any permits that were not fully mitigated within the ROMA.

The County is obligated to manage the lands in accordance with the Plan, the conservation easement, and this MOA, regardless of whether FGUs have been used or terminated.

Section 4. Notices.

All notices required by this MOA shall be in writing and shall be sent by registered or certified mail, return receipt requested, as follows:

To the District: St. Johns River Water Management District
P.O. Box 1429
Palatka, FL 32178
Attention: David Jeff

To the County: St. Johns County

St. Johns County Environmental Division
4040 Lewis Speedway
St. Augustine, FL 32084
Attention: Ryan Mauch

Each party may unilaterally change the person to whom notices are sent by notifying the other party in writing.

Section 5. Effective Date and Term.

This MOA shall become effective upon the date the last party signs the agreement. This MOA shall remain in effect in perpetuity, unless both parties amend or terminate the MOA.

Section 6. Amendments.

This MOA, including its exhibits, may be amended in writing by the District and County.

Section 7. Severance Clause.

The invalidity of one or more of the phrases, sentences, clauses, or articles contained in the MOA shall not affect the validity of the remainder of this MOA, provided that the material purposes of this MOA can be determined and effectuated.

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IN WITNESS WHEREOF, the parties have caused this Memorandum of Agreement to be executed.

Approved as to Form and Legality
District Office of General Counsel

By: _____

ST. JOHNS RIVER WATER
MANAGEMENT DISTRICT

By: _____
Printed Name: _____
Title: _____
Date: _____

Approved as to Form and Legality
St. Johns County Office of General Counsel

By: _____

ST. JOHNS COUNTY

By: _____
Printed Name: _____
Title: _____
Date: _____