

RESOLUTION NO. 2019-201

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS, PROVISIONS, CONDITIONS, AND REQUIREMENTS OF THE CONSTRUCTION AND MAINTENANCE AGREEMENT BETWEEN ST. JOHNS COUNTY AND SAWGRASS ASSOCIATION, INC., RELATING TO MAINTENANCE OF OLD BARN WEIR CHANNEL; AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO EXECUTE THE AGREEMENT ON BEHALF OF ST. JOHNS COUNTY; INSTRUCTING THE CLERK OF COURTS TO FILE THE AGREEMENT IN THE PUBLIC RECORDS OF THE COUNTY; AND APPROVING THE TRANSFER OF FUNDS FROM THE TRANSPORTATION TRUST FUND AND AUTHORIZING ITS EXPENDITURE.

WHEREAS, Sawgrass Association, Inc. administers a residential community that includes an oceanfront resort style, private country club, featuring a 27-hole championship golf course, which attracts residents, guests and tourists from around the world to the County; and

WHEREAS, the community is situated near the Guana Tolomato Matanzas National Estuarine Research Reserve and shares hydraulically interrelated channels and waterways with the Guana Basin; and

WHEREAS, as part of the Guana Basin Master Plan, St. Johns County ("County"), from time to time, harvests nuisance aquatic vegetation within the main channel of the Guana Basin to increase flow to the waterways and channels and to reduce the occurrence of flooding in residential neighborhoods within the Guana Basin; and

WHEREAS, since such harvesting has taken place, increased levels of sediment deposits have been detected in a channel located on property owned by Sawgrass commonly known as the Old Barn Weir Channel; and

WHEREAS, neither the County nor Sawgrass is able to determine whether harvesting the nuisance aquatic vegetation, caused or contributed to the increased sediment levels, however both parties seek to cooperatively work to ameliorate the condition; and

WHEREAS, the County and Sawgrass desire to enter into a formal, written Construction and Maintenance Agreement, attached hereto as Exhibit A and incorporated herein, setting forth their participation in a one-time maintenance project to mechanically remove aquatic vegetation, trees, and brush from Old Barn Weir Channel ("Old Barn Weir Channel Project") and to document their agreement and understanding as to the ownership and continuing maintenance responsibility of the Old Barn Channel and Old Barn Weir; and

WHEREAS, under the terms of the Construction and Maintenance Agreement, Sawgrass would construct, or have constructed, the Old Barn Weir Project, including design, survey, water quality testing, project management, construction management, inspection, landscape repair, obtaining and coordination of permits, and contract close out, and the County would reimburse

Sawgrass one-half (1/2) of the total cost for the work upon final completion, up to \$103,950.00; and

WHEREAS, the County finds that its contribution to the project under the agreement is appropriately funded from the Transportation Trust Fund Reserves and that there are presently adequate reserves to do so; and

WHEREAS, undertaking the Old Barn Weir Project, entering into the Construction and Maintenance Agreement, and appropriating the required funds serve the interests of local citizens and visitors of the County and for a public purpose and benefit.

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 are adopted as Findings of Fact.

Section 2. The Board of County Commissioners of St. Johns County, Florida hereby approves the terms, provisions, conditions, and requirements of the Construction and Maintenance Agreement with Sawgrass Association, Inc., and authorizes the County Administrator, or designee, to execute the agreement in substantially the same form and format as attached, as well as any other paperwork associated with, or necessary to accomplish, the purpose of the agreement.

Section 3. The Clerk of Courts of St. Johns County is instructed to file the executed Construction and Maintenance Agreement in the public records of St. Johns County.

Section 4. The Board of County Commissioners approves the transfer of \$103,950 from Transportation Trust Fund Capital Outlay Reserves (1131-59927) to Engineering Aid to Private Organizations (1128-58200) and authorizes its expenditure by the Public Works Department.

Section 5. To the extent that there are typographical or administrative errors that do not change the tone, tenor, or concept of this Resolution, then this Resolution may be revised without subsequent approval by the Board of County Commissioners.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, State of Florida, this 18 day of June, 2019.

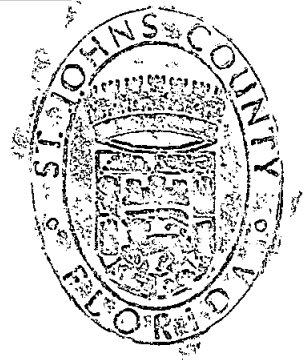
BOARD OF COUNTY COMMISSIONERS OF ST.
JOHNS COUNTY, FLORIDA

Paul M. Waldron
By: Paul M. Waldron, Chair

ATTEST: Hunter S. Conrad, Clerk

By: *Sam Halterman*
Deputy Clerk

RENDITION DATE 6/30/19



CONSTRUCTION AND MAINTENANCE AGREEMENT

THIS CONSTRUCTION AND MAINTENANCE AGREEMENT ("Agreement") is made by and between SAWGRASS ASSOCIATION, INC., a Florida not for profit corporation, having a mailing address of 240 Canal Blvd., Ponte Vedra Beach, Florida 32082 ("Sawgrass") and ST. JOHNS COUNTY, FLORIDA, a political subdivision of the State of Florida, having a mailing address of 500 San Sebastian View, St. Augustine, Florida 32084 ("County") (collectively, "Parties").

RECITALS

WHEREAS, Sawgrass administers a residential community that includes an oceanfront resort style, private country club, featuring a 27-hole championship golf course, which attracts residents, guests and tourists from around the world to the County; and

WHEREAS, the community is situated near the Guana Tolomato Matanzas National Estuarine Research Reserve (GTMNERR) and shares hydraulically interrelated channels and waterways with the Guana Basin; and

WHEREAS, as part of the Guana Basin Master Plan, the County, from time to time, harvests nuisance aquatic vegetation within the main channel of the Guana Basin to increase flow to the waterways and channels and to reduce the occurrence of flooding in residential neighborhoods within the Guana Basin; and

WHEREAS, since such harvesting has taken place, increased levels of sediment deposits have been detected in a channel located on property owned by Sawgrass commonly known as the Old Barn Weir Channel, the approximate location of which is more specifically depicted in the aerial map attached hereto as **Exhibit A** and incorporated herein by reference thereby reducing flow; and

WHEREAS, neither the County nor Sawgrass is able to determine whether harvesting the nuisance aquatic vegetation, caused or contributed to the increased sediment levels, however both parties seek to cooperatively work to ameliorate the condition; and

WHEREAS, the County and Sawgrass desire to set forth in this Agreement their participation in a one-time maintenance project to mechanically remove aquatic vegetation, trees, and brush from Old Barn Weir Channel ("Old Barn Weir Channel Project") and to document their agreement and understanding as to the ownership and continuing maintenance responsibility of the Old Barn Channel and Old Barn Weir; and

WHEREAS, Sawgrass has preliminarily estimated the cost of the Old Barn Weir Channel Project, including surveying, water quality testing, project administration, landscape repairs, and a reasonable contingency, to total \$207,900.00 ("Project Estimate"); as reflected in the budget projection and quotation attached hereto as **Exhibit B** and incorporated herein; and

WHEREAS, undertaking such work and entering into this Agreement serve the interests of local citizens and visitors of the County and for a public purpose and benefit.

NOW THEREFORE, for and in consideration of the mutual covenants, promises, terms, conditions, and restrictions contained herein, the sufficiency of which is hereby acknowledged, the parties hereto, the County and Sawgrass, do hereby agree as follows:

1. Recitals. The above Recitals are true and correct and incorporated herein as part of this Agreement for all purposes.

2. Responsibilities of Sawgrass.

a. Construction of the Old Barn Weir Channel Project. Sawgrass shall construct, or have constructed, the Old Barn Weir Channel Project substantially as described in Exhibit B. Sawgrass shall provide for all design, surveying, water quality testing, project management, construction management, inspection, landscape repair, obtaining and coordination of permits, and contract close-outs for the construction of the Old Barn Weir Channel Project, subject to all applicable federal, state, and local laws, rules, and regulations. Sawgrass shall be solely responsible for selecting, engaging, directing, managing, and supervising any contractor performing the work specified in this paragraph.

b. Sawgrass's Contribution.

i. Sawgrass shall fund the work specified in subsection 2.a, above, and, upon final completion of the work, shall be reimbursed by the County for one-half (1/2) of the total cost, up to a maximum total cost of the amount of the Project Estimate. Sawgrass shall provide with any request for reimbursement an invoice and sufficient documentation to establish satisfactory final completion of the work and payment by Sawgrass of the costs requested for reimbursement.

ii. Sawgrass shall promptly notify the County if the total amount of the actual costs and expenses incurred for the work specified in subsection 2.a, above, have reached the Project Estimate. No costs or expenses in excess of the Project Estimate shall be incurred without prior written approval of the County in accordance with the following procedure. For any such costs or expenses in excess of the Project Estimate ("Additional Costs"), Sawgrass shall submit an estimate to the County for review and good faith determination of the County's agreement to reimburse Sawgrass for one-half (1/2) of said Additional Costs provided in the estimate. Only after and to the extent the County has agreed to pay any specific estimate for Additional Costs, and Sawgrass and the County have agreed to a final sum for that specific estimate, shall Sawgrass authorize the work related to the specific estimate as agreed upon, and shall the County be obligated to reimburse Sawgrass the agreed upon amount, upon Sawgrass's submission to the County of a request for reimbursement.

c. Design, Permitting, and Maintenance of the Old Barn Weir Channel. Sawgrass shall engage a properly licensed engineer or other qualified design professional to design and to obtain and coordinate all necessary permits for the Old Barn Weir Channel Project and for the ongoing maintenance of the Old Barn Weir Channel. The parties acknowledge and agree that Sawgrass is the legal owner of the Old Barn Weir and the Old

Barn Weir Channel and is solely responsible for the operation and maintenance of the Old Barn Weir and the Old Barn Weir Channel as permitted by the St. Johns River Water Management District.

3. Responsibilities of the County. Upon final completion of the work specified in subsection 2.a, above, the County shall reimburse Sawgrass one-half (1/2) of the total cost for the work, up to a maximum County reimbursement of \$103,950.00. The County shall process and issue payment within forty-five (45) days of a complete request for reimbursement under subsection 2.b.i, above. Any payment by the County for Additional Costs shall be as provided in subsection 2.b.ii, above.

4. Review of Records. As a condition of entering into this Agreement, and to ensure compliance with any applicable law, rule, or regulation, Sawgrass authorizes the County to examine, review, inspect and audit all records associated with this Agreement, except any materials protected by the attorney-client or other legal privilege. Sawgrass shall not be required to provide review of records not related to this Agreement and is otherwise protected by local, state, or federal law, rule, or regulation.

5. Availability of Funds. The parties understand and acknowledge that the County's obligations and performance under this Agreement are subject to and contingent upon the availability of lawfully appropriated funds for that purpose. While the County will make all reasonable efforts in order to provide funds needed for the County's performance under this Agreement, the County makes no express commitment to provide such funds in any given County fiscal year. Moreover, it is expressly noted that Sawgrass cannot demand that the County provide any such funds in any given County fiscal year. The parties further understand and acknowledge that, pursuant Section 129.07, Florida Statutes, funds expended by the County under this Agreement shall not exceed the amount appropriated in the County's budget for that purpose.

6. Release. Sawgrass, its successors and assigns, hereby release and discharge the County of and from any and all claims, lawsuits, liability, damages, costs, expenses, and fees, including attorneys' fees, of every kind and nature, whether known or unknown, which Sawgrass has, may have, or at any time heretofore had, related to or by reason of the accretion, deposition, or presence of silt, soil, or sediment on, along, over, through, across, or under the Old Barn Weir or Old Barn Weir Channel. This provision shall survive the termination of this Agreement.

7. Indemnification. To the extent allowed by Florida law, Sawgrass shall protect, defend, indemnify, and hold the County, its officials, officers, employees, agents, and assigns harmless from and against any and all claims, lawsuits, causes of action, liability, losses, injuries, death, or damages, including costs and attorneys' fees, resulting from, arising out of, or related to the Old Barn Weir Channel Project. This provision shall survive the termination of this Agreement. Nothing contained in this section is intended to nor shall be construed to operate as a waiver on the part of the County of the limitations of liability set forth in Section 768.28, Florida Statutes, or of the County's sovereign immunity.

8. Assignment. This Agreement may be assigned, in whole or in part, by either party only upon the written consent of the other, which consent shall not be unreasonably withheld.

9. Successors. The covenants, terms, conditions, and restrictions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors, and assigns.

10. Notices. All notices pertaining to this Agreement shall be delivered either by hand or by certified mail, return receipt requested, to:

The County: St. Johns County Engineering Division
2740 Industry Center Road
St. Augustine, FL 32084
Attn: Jay Brawley, P.E., County Engineer

With copy to: St. Johns County
Office of the County Attorney
500 San Sebastian View
St. Augustine, FL 32804

Sawgrass: Sawgrass Association, Inc.
240 Canal Blvd.
Ponte Vedra Beach, FL 32082
Attn: Jane Sapere

All other correspondence not classified as an official notice may be delivered, disseminated or submitted by any means acceptable to both parties, specifically including faxing, emailing, or text messaging.

11. Relationship of the Parties. The parties agree that this Agreement does not and shall not be construed as or constitute an agency, partnership, joint venture, or other fiduciary or confidential relationship between the County and Sawgrass.

12. No Third Party Beneficiaries. This Agreement is entered into only for the benefit of the parties hereto, and their respective successors and assigns. Both the County and Sawgrass expressly agree that nothing in this Agreement shall be construed to create any third party beneficiary status on any person or entity.

13. Non-Waiver. The failure of either party to insist upon strict performance or compliance with any provision of this Agreement on one or more occasions shall not be construed as a waiver of such provision, and all such provisions shall remain in full force and effect. No waiver of any portion of the provisions hereof shall be effective unless it is in writing and signed by the party against whom the waiver is asserted. Any such written waiver shall be applicable only to the specific instance to which it relates and shall not be deemed to be a continuing waiver or waiver of any future matter.

14. Compliance with all Local, State, and Federal Rules, Regulations, and Laws. Each of the parties shall abide by and comply with all applicable local, state, and federal laws, rules, regulations, orders, and policies in performance of this Agreement.

15. Entire Agreement. This Agreement, together with the attached exhibits, constitutes the entire agreement among the parties and supersedes any prior understanding or agreement among them respecting the subject matter hereof. There are no representations, arrangements, understandings, or agreements, either oral or written, among the parties hereto relating to the subject matter of this Agreement except those fully expressed herein, and each party agrees that, in entering into this Agreement, it has not relied on and is not entitled to rely on any statements, promises, or representations other than those set forth herein. This Agreement may not be modified or amended except by the mutual written agreement of the parties.

16. Negotiated Agreement. This Agreement was negotiated and prepared by both parties with each party having had the opportunity to consult with counsel and advisers of their own choosing. The parties have agreed to the text of this Agreement, and none of the provisions hereof shall be construed against either party on the ground that such party is the author of this Agreement or any part thereof.

17. Severability. If any word, phrase, sentence, part, subsection, section, or other portion of this Agreement, or any application thereof, to any person, or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, subsection, other portion, or the proscribed application thereof, shall be severable, and the remaining portions of this Agreement, and all applications thereof, not having been declared void, unconstitutional, or invalid shall remain in full force and effect, provided that the removal of the voided portion shall not deprive either party of the benefit of its bargain.

18. Section Headings. Section headings in this Agreement are intended for convenience only and shall not be taken into consideration in any construction or interpretation of this Agreement or any of its provisions.

19. Access to Records. The access to, disclosure, non-disclosure, or exemption of records, data, documents, and/or materials, associated with this Agreement shall be subject to the applicable provisions of the Florida Public Records Law (Chapter 119, Florida Statutes) and other applicable State or Federal law. Access to such public records may not be blocked, thwarted, and/or hindered by placing the public records in the possession of a third party, or an unaffiliated party.

20. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Florida. Venue for any administrative and/or legal action arising under this Agreement shall be in St. Johns County, Florida.

21. Authority to Execute. Each party to this Agreement covenants to the other party that it has the lawful authority to enter into this Agreement and that it has authorized the execution of this Agreement by the representative noted below.

22. Counterparts. This Agreement may be executed in any number of counterparts, including facsimile, and each counterpart shall be deemed an original and all of which together will constitute one and the same instrument.

23. Effective Date. This Agreement shall be effective on the date of the last signature of the parties hereto.

IN WITNESS WHEREOF, Sawgrass and the County have set their hands and seals on the day and year set forth written.

SAWGRASS ASSOCIATION, INC., a Florida not for profit corporation

By: _____
Print Name: _____
Title: _____

STATE OF FLORIDA
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by _____ as _____ of Sawgrass Association, Inc., a Florida not for profit corporation, on behalf of Sawgrass, who is personally known to me or has produced _____ as identification.

Notary Public
My Commission expires: _____

ST. JOHNS COUNTY, FLORIDA, a political subdivision of the State of Florida

By: _____
Michael D. Wanchick, County Administrator

STATE OF FLORIDA
COUNTY OF ST. JOHNS

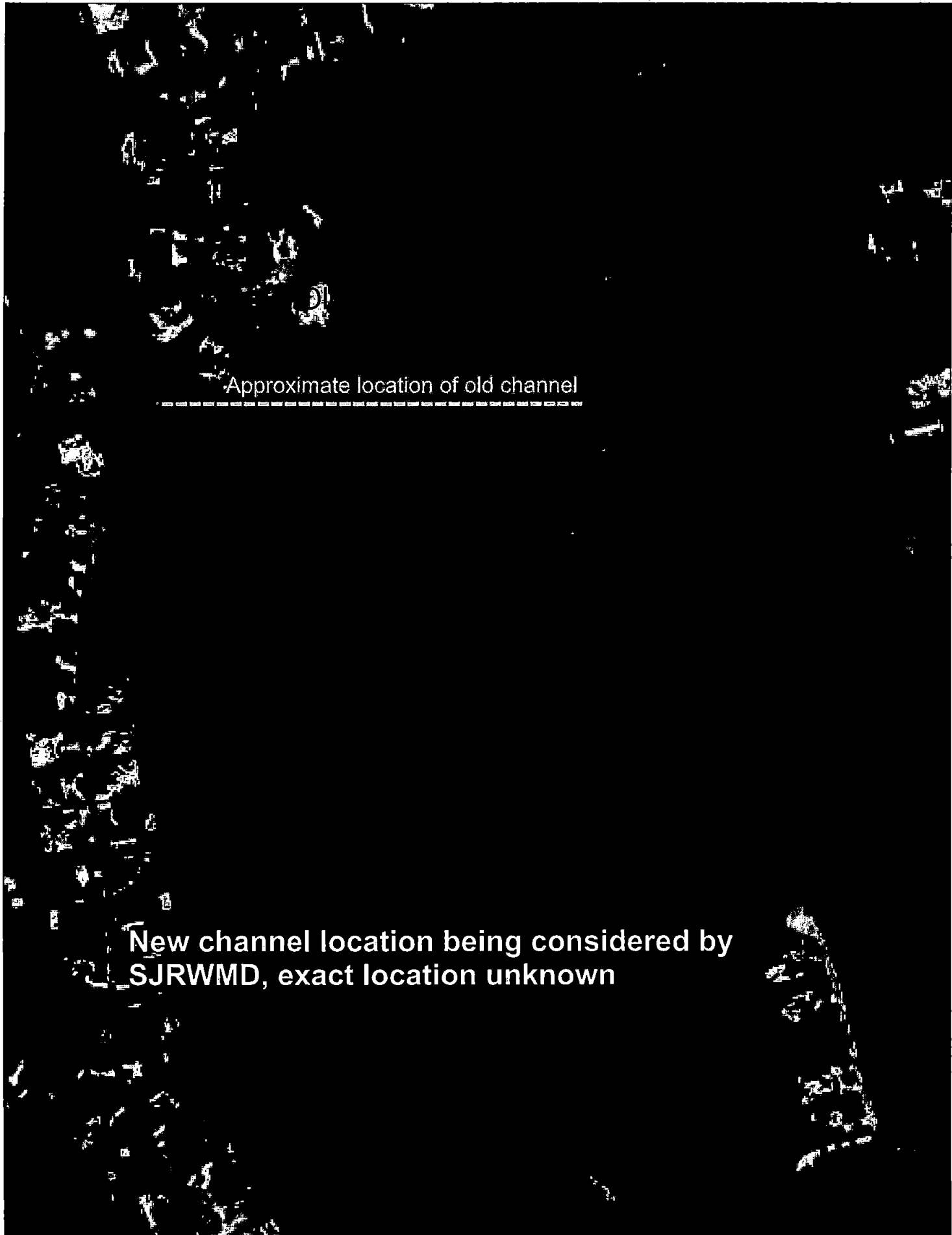
The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by Michael D. Wanchick, County Administrator, on behalf of St. Johns County, Florida, who is personally known to me or has produced _____ as identification.

Notary Public
My Commission expires: _____

Exhibit "A"

"Aerial Map of Old Barn Weir Channel"

Exhibit A



Approximate location of old channel

New channel location being considered by SJRWMD, exact location unknown

Exhibit "B"

"Budget Proposal and Quotation"



May 10, 2019

QUOTATION

TO: Sawgrass H.O.A.

Attn: Marc Stearns
562-762-5400
mstearns2@bellsouth.net

We are pleased to offer you the following quote: **Old Barn Channel**

Description Price

<p>FUTURE HORIZONS, INC. will mechanically remove all the aquatic vegetation, trees, and brush(including Rootmass) from the 30 ft. wide Old Barn Channel Outfall Canal @ Sawgrass H.O.A. in Ponte Vedra, FL out to the main Guana Channel. Floating turbidity barriers will be installed @ the discharge point of the Old Barn Channel where it intersects the Guana Channel. Silt fencing will be installed at the loading and transfer site at Mickler Road. All removed material will be loaded on to barges and transported to the landing @ Ponte Vedra Blvd. at A1A. All material will be offloaded into dump trucks & hauled to a properly licensed and permitted disposal facility. FUTURE HORIZONS, INC. is not responsible for the surveying and flagging of the channel to be cleared. This price includes all equipment, labor, mobilization, & setup to remove, transport, and dispose of all removed material from the site.</p>	<p>\$134,400.00</p>
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FUTURE HORIZONS, INC.

Chris Railing
Chris Railing/cm
Field Operations Supervisor

Based on the above, the budget for the project based on the Future Horizons is summarized below:

Future Horizons-	\$134,400
Survey-	\$20,000
Water Quality Testing-	\$10,000
Landscape Repair-	\$5,000
Project Administration-	\$22,000
Contingency -	\$16,500
Total-	\$207,900