

**AGREEMENT BETWEEN
THE ST. JOHNS RIVER WATER MANAGEMENT DISTRICT
AND LAKE COUNTY, FLORIDA
FOR AQUATIC RESOURCE CONSERVATION OR RESTORATION OR RECREATION
IMPROVEMENTS WITHIN THE OCKLAWAHA RIVER BASIN**

THIS AGREEMENT (the "Agreement") is entered into by and between the GOVERNING BOARD of the ST. JOHNS RIVER WATER MANAGEMENT DISTRICT (the "District"), whose address is 4049 Reid Street, Palatka, Florida 32177, and LAKE COUNTY, a political subdivision of the State of Florida, whose address is 315 West Main Street, P.O. Box 7800, Tavares, Florida (the "County"). All references to the parties hereto include the parties, their officers, employees, agents, successors, and assigns.

WHEREAS, the District has entered into a lease with a SunGro to remove nutrient-laden sediments and peat (the "Restoration Project") from the District-owned Emerald Marsh Conservation Area connected to Lake Griffin and within the Upper Ocklawaha Basin in Lake County, Florida; and

WHEREAS, the Restoration Project is permitted by the State of Florida Department of Environmental Protection and is intended to aid in the restoration of aquatic resources and will aid in the reduction of nutrient levels in waters on-site and in water discharged from the site, all of which will aid in reducing nutrient levels downstream; and

WHEREAS, because the Restoration Project is permitted by the State of Florida Department of Environmental Protection, it is otherwise exempt from the County's regulatory requirements found in Chapter VI of the County Ordinances; and

WHEREAS, the Restoration Project will generate revenue to the District; and

WHEREAS, the County has requested that the District utilize all or part of the revenue from the Restoration Project for eligible aquatic resource conservation or restoration or recreation improvement projects located within the geographic boundaries of Lake County, Florida; and

WHEREAS, the parties are desirous of entering into this agreement to set forth the terms and conditions under which such funding may be provided to the County for eligible projects.

IN CONSIDERATION of the above recitals, and the funding assistance described below, the County agrees to perform and complete the activities provided for in the Project Descriptions. The County shall complete the Projects in conformity with the contract documents and the Descriptions. The parties hereby agree to the following terms and conditions:

1. **TERM.** The term of this Agreement shall be from the Effective Date, which is the date the last party to this agreement signs, to the Completion Date, which is five years after the Effective Date. The District and County may renew the term of this agreement for one year increments. Time is of the essence as to the completion of the approved projects for reimbursement from the funds that fund this Agreement.
2. **AMOUNT OF FUNDING.** For satisfactory performance of the Work, the District agrees to pay the County a sum not to exceed \$200,000 (the "Total Compensation") per year. The total amount of all approved projects under this Agreement shall not exceed the Total Compensation and the Total Compensation shall not exceed funds actually received by the District. The compensation for each approved project shall be set forth in a Project Description (Attachment A) and billed in accordance with the terms of the Project Description.

3. **FUNDING CONTINGENCY.** The availability of funds each year is contingent upon the annual revenues received from peat removed under the District's agreement with SunGro for peat removal from the Emerald Marsh Conservation Area.

4. **APPROVED PROJECTS**

(a) The County is responsible for planning, designing, and proposing projects that would qualify for funding and that further the goals of District Land Management Plans for relevant properties or Surface Water Improvement and Management Act (SWIM) plans for waterbodies within the Ocklawaha River basin or as identified in the Upper Ocklawaha Basin Management Action Plan. Projects should focus on those that will improve aquatic resources or aquatic resource-based recreation. Project proposals must be submitted using the Project Description form attached as Attachment A. The County will complete the projects within one year from the Effective Date unless otherwise agreed to by the parties in writing.

(b) The District is responsible for reviewing the proposed projects, suggesting revisions if necessary, and, if the projects qualify for funding, the proportion of funding to be provided by the District, providing a progress reporting schedule and project approval.

(c) The approval of the projects will be documented on a Project Description form. It shall describe with specificity the project, the relationship to District plans, the relationship to the benefits, location, quantity, work limits, time frames, deliverables, progress payments (if any), total cost, cost-share proportions, operation and maintenance responsibilities for the project's lifespan, ownership and any other matters pertaining to the Work. The County shall not proceed with any Work prior to the receipt of an executed Project Description. All Work shall be done to the satisfaction of the District's Project Manager and subject to the terms of this Agreement.

5. **DELIVERABLES.** The District or County may assert an ownership interest in any of the deliverables under this Agreement depending upon project plan. The County is responsible for the professional quality, technical accuracy, and timely completion of the Projects. The County shall provide or pay for their share of materials, labor, and other facilities and equipment necessary to complete the Project. The District's Project Manager shall inspect and approve the project as complete before reimbursement.

6. **PAYMENT OF INVOICES**

(a) **Submittal.** When approved projects are complete, the County shall submit itemized invoices by e-mail to District Project Manager. Individual projects may be designed and implemented in phases, with invoicing for each phase. Each invoice shall include copies of contractor's and materials invoices and be submitted in sufficient detail for proper pre-audit and post-audit review. If necessary for audit purposes, the County shall provide additional supporting information as required to document invoices.

(b) **Final Invoice.** The final invoice must be submitted no later than thirty (30) days after the Completion Date.

(c) **Required Information.** All invoices shall include the following information: (1) District contract number; (2) Project Description number; (3) County's name and address (include remit address, if necessary); (4) County's invoice number and date of invoice; (5) District Project Manager; (6) County's Project Manager; (7) supporting documentation as to cost and/or project completion. Invoices that do not correspond with this paragraph shall be returned without action, stating the basis for rejection. Payment shall be made within 45 days of receipt of an approved invoice.

- (d) **Payments.** The District shall pay the County the approved project proportion of each approved invoice.
- (e) **Payments withheld.** The District may withhold or, on account of subsequently discovered evidence, nullify, in whole or in part, any payment to such an extent as may be necessary to protect the District from loss as a result of defective work not remedied or a material breach of this Agreement. Amounts withheld shall not be considered due and shall not be paid until the ground(s) for withholding payment have been remedied.

7. PROJECT MANAGEMENT

- (a) The Project Managers listed below shall be responsible for overall coordination and management of the Project. Either party may change its Project Manager upon three (3) business days' prior written notice to the other party. Written notice of change of address shall be provided within five business days. All notices shall be in writing to the Project Managers at the addresses below and shall be sent by one of the following methods: (1) hand delivery; (2) U.S. certified mail; (3) national overnight courier; (4) e-mail or, (5) fax. Notices via certified mail are deemed delivered upon receipt. Notices via overnight courier are deemed delivered one business day after having been deposited with the courier. Notices via e-mail or fax are deemed delivered on the date transmitted and received.

DISTRICT

Dianne Hall, Project Manager
 St. Johns River Water Management District
 4049 Reid Street
 Palatka, Florida 32177
 Phone: (386) 329-4898
 E-mail: dhall@sjrwmd.com

COUNTY

Mary Hamilton,
 Environmental Services Manager
 P.O. Box 7800
 Tavares, Florida 32778
 Phone: 352-253-6006
 E-mail: mhamilton@lakecountyfl.gov

- (b) The District's Project Manager shall have sole responsibility for transmitting instructions, receiving information, and communicating District policies and decisions regarding all matters pertinent to performance of the Projects.

8. PROGRESS REPORTS AND PERFORMANCE MONITORING

- (a) **Progress Reports.** The County shall provide to the District Project progress reports as specified in project plan. Reports will provide detail on progress of the Projects. Reports may be submitted in any form agreed to by the District's and the County's Project Managers, and may include emails, memos, and letters.
- (b) **Performance Monitoring.** As appropriate, for as long as the Project is operational, the District shall have the right to inspect the operation of the Project during normal business hours upon reasonable prior notice. The County shall make available to the District any data that is requested pertaining to performance of the Project.

- 9. **TERMINATION.** This Agreement may be terminated by mutual written agreement of the parties without further obligation to the other party, except that all outstanding invoices submitted and approved under Section 6 shall be paid.

- 10. **LIABILITY AND INSURANCE.** Each party is responsible for all personal injury and property damage attributable to the negligent acts or omissions of that party, its officers, employees and agents. Nothing contained herein shall be construed or interpreted as denying to any party any remedy or defense available under the laws of the state of Florida, nor as a waiver of sovereign immunity of the state of Florida beyond the waiver provided for in §768.28, Fla. Stat., as amended. Each party shall acquire and maintain

throughout the term of this Agreement such liability, workers' compensation, and automobile insurance as required by their current rules and regulations.

ADDITIONAL PROVISIONS (Alphabetical)

- 11. AUDIT; ACCESS TO RECORDS; REPAYMENT OF FUNDS.**
- (a) **Maintenance of Records.** The County must preserve its books and other records involving transactions related to this Agreement and provide the District, or its duly authorized representatives, access and necessary facilities to inspect and audit those records for five (5) years after the receipt of funds. If an examination or audit is performed, the County must continue to maintain all required records until such audit has been completed and all questions arising from it are resolved. The County shall refund any payment(s) that are found to not constitute allowable costs based upon an audit examination.
- (b) **Repayment of Funds.** District funding shall be subject to repayment after expiration of this Agreement if, upon audit examination, the District finds that the County has requested reimbursement for and has been paid funds for purposes other than as provided for herein.
- 12. CIVIL RIGHTS.** Pursuant to Chapter 760, Fla. Stat., the County shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, handicap, or marital status.
- 13. DISPUTE RESOLUTION.** The County is under a duty to seek clarification and resolution of any issue, discrepancy, or dispute involving performance of this Agreement by submitting a written statement to the District's Project Manager no later than ten (10) business days after the precipitating event. If not resolved by the Project Manager, the Project Manager shall forward the request to the District's Office of General Counsel, which shall issue a written decision within ten (10) business days of receipt. This determination shall constitute final action of the District and shall then be subject to judicial review upon completion of the Project.
- 14. GOVERNING LAW, VENUE, ATTORNEY'S FEES, WAIVER OF RIGHT TO JURY TRIAL.** This Agreement shall be construed according to the laws of Florida and shall not be construed more strictly against one party than against the other because it may have been drafted by one of the parties. As used herein, "shall" is always mandatory. In the event of any legal proceedings arising from or related to this Agreement: (1) venue for any state or federal legal proceedings shall be in Putnam County; (2) each party shall bear its own attorney's fees, including appeals; (3) for civil proceedings, the parties hereby consent to trial by the court and waive the right to jury trial.
- 15. INDEPENDENT ENTITIES.** The parties to this Agreement, their employees and agents, are independent entities and not employees or agents of each other. Nothing in this Agreement shall be interpreted to establish any relationship other than that of independent entities during and after the term of this Agreement. The County is not a contractor of the District. The District is providing funding to assist the County in accomplishing the Project. The County is solely responsible for accomplishing the Project and directs the means and methods by which the Project is accomplished. The County is solely responsible for compliance with all labor, health insurance (Patient Protection and Affordable Care Act 42 U.S.C. §§ 18001, et seq.), and tax laws pertaining to the County, its officers, agents, and employees.
- 16. INTEREST OF COUNTY.** The County certifies that no officer, agent, or employee of the District has any material interest, as defined in Chapter 112, Fla. Stat., either directly or indirectly, in the business of

the County to be conducted hereby, and that no such person shall have any such interest at any time during the term of this Agreement.

- 17. **NON-LOBBYING.** Pursuant to §216.347, Fla. Stat., as amended, the County agrees that funds received from the District under this Agreement shall not be used for the purpose of lobbying the Legislature or any other state agency.
- 18. **PERMITS.** The County shall comply with all applicable federal, state and local laws and regulations in implementing the Project and shall include this requirement in all subcontracts pertaining to the Project. The County shall obtain any and all governmental permits necessary to implement the Project. Any activity not properly permitted prior to implementation or completed without proper permits does not comply with this Agreement and shall not be approved for funding.
- 19. **PUBLIC RECORDS.** Records of the County that are made or received in the course of performance of the Project may be public records that are subject to the requirements of Chapter 119, Fla. Stat. Each party reserves the right to cancel this Agreement for refusal by the other party to allow public access to all documents, papers, letters, or other material related hereto and subject to the provisions of chapter 119, Fla. Stat., as amended.


IN WITNESS WHEREOF, the St. Johns River Water Management District has caused this Agreement to be executed on the day and year written below in its name by its Executive Director, and the County has caused this Agreement to be executed on the day and year written below in its name by its duly authorized representatives, and, if appropriate, has caused the seal of the corporation to be attached. This Agreement may be executed in separate counterparts, which shall not affect its validity. Upon execution, this Agreement constitutes the entire agreement of the parties, notwithstanding any stipulations, representations, agreements, or promises, oral or otherwise, not printed or inserted herein. This Agreement cannot be changed by any means other than written amendments referencing this Agreement and signed by all parties.

ST. JOHNS RIVER WATER
MANAGEMENT DISTRICT

By: 
Ann B. Shortelle, Ph.D., Executive Director (or designee)

Date: Jan 9, 2018

ONLY AS TO FORM AND LEGALITY

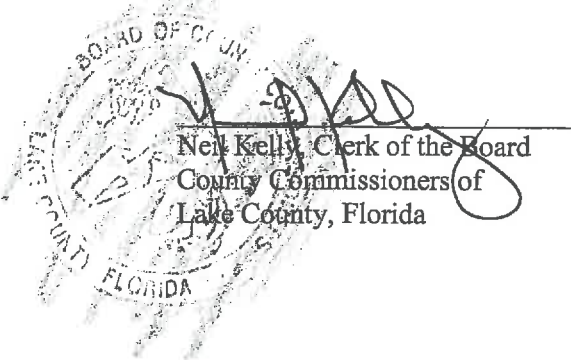

Assistant General Counsel



COUNTY

ATTEST:

LAKE COUNTY, through its
BOARD OF COUNTY COMMISSIONERS




Neil Kelly, Clerk of the Board
County Commissioners of
Lake County, Florida



Timothy J. Sullivan, Chairman

This 19 day of Dec, 2017.

Approved as to form and legality:



Melanie Marsh
County Attorney

ATTACHMENT A
(to be processed by the District as a "Work Order")

PROJECT DESCRIPTION

Project Number _____

(adjust line spacing as necessary)

I. General background

II. Description and Location of Project

III. Objectives and measure of success (include the relationship of the project to District Land Management or SWIM plans and/or County plans)

IV. Time Frames, Milestones, Deliverables, Ownership and Operation and Maintenance Responsibilities

V. Budget, County:District Cost-Share Proportion and Cost schedule

Submitted by:

Approved by:

??
Lake County

Executive Director or Projects Division Director

_____, Project Manager
St. Johns River Water Management District

Date: _____

Date: _____