

**AGREEMENT BETWEEN
THE NORTHWEST FLORIDA WATER MANAGEMENT DISTRICT
AND
THE U.S. ARMY CORPS OF ENGINEERS, JACKSONVILLE DISTRICT**

For Florida Department of Transportation and Other Wetlands Mitigation

THIS AGREEMENT is entered into by the Northwest Florida Water Management District (hereinafter the DISTRICT) and the U.S. Army Corps of Engineers, Jacksonville District (hereinafter the CORPS). In consideration of mutual covenants contained herein, the parties agree as follows:

ARTICLE I. BACKGROUND AND OBJECTIVE

- (1) The parties desire to site wetland mitigation projects in locations that are watershed based, regionally significant and are beneficial to the establishment of high-quality, uninterrupted habitat linking other natural and preserved areas throughout northwest Florida.
- (2) Under section 373.4135 of the Florida Statutes, the DISTRICT has been directed to participate in and encourage the establishment of public off-site regional mitigation areas.
- (3) The DISTRICT currently manages a number of natural areas preservation programs, which include the acquisition, restoration, and long-term management of lands within the Northwest Florida Water Management District using mitigation contributions, as well as other public sources of revenue.
- (4) The DISTRICT and CORPS along with other governmental entities may accept acquisition, creation, restoration, or enhancement and management of ecological communities as mitigation for adverse impacts associated with activities authorized under part IV of Chapter 373 of the Florida Statutes and section 404 of the Clean Water Act, provided that the mitigation off-sets the adverse impacts associated with the permitted activity.
- (5) Under Section 373.4137 of the Florida Statutes, the DISTRICT carries out mitigation to offset the adverse impacts of State of Florida Department of Transportation projects.

ARTICLE II. PURPOSE

- (6) The purpose of this Agreement is to establish the rights and responsibilities of the parties to this Agreement with respect to the DISTRICT'S use of financial contributions or reimbursements from the Florida Department of Transportation and/or other entities for purposes of mitigation and enforcement actions for activities authorized under part IV of Chapter 373 of the Florida Statutes and section 404 of the Clean Water Act for the acquisition, restoration, enhancement, and long-term management of lands within the DISTRICT. This Agreement shall apply to DISTRICT financial contributions or reimbursements directed to the DISTRICT by the CORPS or the Florida Department of Transportation prior to execution of this Agreement, as well as contributions collected and utilized after execution of this Agreement.

ARTICLE III. CORPS AUTHORITY

- (7) The Secretary of the Army is charged with administering Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act. The Secretary of the Army has delegated Section 404 and Section 10 permit authority to the CORPS. Permits issued under these authorities generally require compensatory mitigation to replace aquatic resource functions and values that are unavoidably lost as a result of those permits. Compensatory mitigation objectives and guidance are provided in USACE regulations and the following guidance documents:
- a) February 7, 1990, Memorandum of Agreement between the Environmental Protection Agency and the Department of the Army concerning the Determination of Mitigation under the Clean Water Act Section 404(b) (1) Guidelines, 55 Fed. Reg. 9210-9213.
 - b) November 28, 1995, Federal Guidance on the Establishment, Use and Operation of Mitigation Banks, 60 Fed. Reg. 58605-58614.
 - c) December 26, 2002, Regulatory Guidance Letter, Subject: Guidance on Compensatory Mitigation Projects for Aquatic Resource Impacts Under the Corps Regulatory Program Pursuant to § 404 of the Clean Water Act and § 10 of the Rivers and Harbors Act of 1899.
 - d) Other federal rules and guidance as may from time to time be developed to establish compensatory mitigation requirements.

ARTICLE IV. DISTRICT RESPONSIBILITIES

- (8) The DISTRICT shall implement a watershed based umbrella type regional plan for mitigation within its jurisdictional boundaries (hereinafter the PLAN), attached as Exhibit A and incorporated herein. This PLAN provides:
- (a) the conceptual framework for all acquisition, enhancement, restoration and long-term management of mitigation lands and other mitigation activities undertaken by the DISTRICT under this Agreement;
 - (b) maintenance and monitoring guidelines and success criteria for the enhancement and restoration activities;
 - (c) criteria which establish the obligations of performance by the DISTRICT for the acquisition, enhancement, restoration and long-term management of mitigation lands and other mitigation activity based upon levels of acquisition by the DISTRICT;
 - (d) descriptions of the types of legal instruments to be used to perpetually preserve mitigation sites;
 - (e) typical construction plans anticipated for the individual units of restoration within the DISTRICT;
 - (f) an annual update of the PLAN together with additions and/or deletions of acquisition, restoration, and enhancement projects and an estimate of mitigation credit for each project completed for mitigation purposes;
 - (g) a schedule for the release of mitigation credits developed under the PLAN;
 - (h) identification of mitigation sites and compensatory mitigation requirements including the performance of associated planning, pre-work descriptions and ecological assessments of mitigation sites, acquisition, construction, monitoring, remedial action, and preservation necessary;
 - (i) descriptions of mitigation site ecological and watershed functions, their importance to the region and demonstrable degradation threats;
 - (j) identification of the goals and objectives of the mitigation plan, including a description of the specific aquatic functions to be created, restored, or enhanced;
 - (k) the procedure for addressing potential remediation needs in the event a mitigation site or project does not meet performance or success criteria; and,

- (1) site specific requirements that may not be generically defined in the PLAN or otherwise may be required for PLAN implementation.
- (9) All work on compensatory mitigation projects or mitigation sites shall be performed in accordance with the PLAN. The DISTRICT will ensure that all mitigation sites that are used to satisfy compensatory mitigation requirements in accordance with this MOU will remain forever within the public domain and be dedicated to perpetual conservation use; and,
- (10) With approval by the CORPS, the DISTRICT may transfer ownership or management responsibilities of mitigation site properties to appropriate non-profit conservation organizations, local governments, or land trusts for management and monitoring. In all cases, the District will procure appropriate agreements to ensure that both public domain properties and other properties under conservation easements are maintained in perpetuity as viable compensatory mitigation sites serving the functions required by the permit.
- (11) The DISTRICT is authorized to be reimbursed or receive contributions for purposes of permit requirements and enforcement actions to mitigate for wetland impacts authorized by the DISTRICT, CORPS, or the Florida Department of Environmental Protection. Such contributions will be used for acquisition, enhancement, restoration and long-term management of mitigation lands within the DISTRICT. As indicated on the attached PLAN, individual units of restoration and mitigation service areas have been established. At such time as the DISTRICT acquires the specified lands, the DISTRICT shall implement an associated level of monitoring, exotic removal, other land management activities, restoration, and enhancement within that unit, as referenced in the attached PLAN.
- (12) Prior to the initiation of earthwork, including, but not limited to, road removal, ditch filling, mechanized land clearing or the plugging and filling of canals, the DISTRICT shall obtain all necessary federal and state permits. All work shall be conducted such that access to privately owned property is not adversely impacted and that the existing level of flood protection enjoyed by such properties is maintained.
- (13) All mitigation funds collected by the DISTRICT for the purposes of this Agreement shall be budgeted for in the DISTRICT'S budget as mitigation funds and held until disbursed specifically for the purposes of this Agreement. The Mitigation Funds budgeted for and received including interest shall be disbursed only for land acquisition, restoration, enhancement, and long-term management and monitoring under the terms of this Agreement.
- (14) The DISTRICT shall provide annual provisions for full cost accounting. Annual updates will be provided to estimate the costs per acre for the acquisition, restoration, enhancement, and long-term management of DISTRICT lands. This cost analysis will be based on actual and estimated long-term costs and will be used by the DISTRICT to project the total cost of acquisition, restoration and long-term management on a per-acre basis. This cost analysis will also provide the basis for determining the allocation of contributions into each of the accounts referenced in paragraph (13) above. The final determination of costs and allocation amounts will be the responsibility of the DISTRICT. Funds will be disbursed by the DISTRICT for all activities undertaken as part of the PLAN.
- (15) The DISTRICT shall maintain accounting records for disbursement funds that conform with generally accepted accounting principles which, at a minimum, shall include, but not be limited to, a cash receipt journal, cash disbursement journal, general ledger, and such subsidiary ledgers as reasonably necessary.

- (16) The DISTRICT shall provide access to all of its records which relate to the implementation of this Agreement, and agrees to provide such assistance as may be necessary to facilitate review of the records by the parties when deemed necessary by the parties to insure compliance with accounting and financial standards. In addition to the rights of the parties under chapter 119 of the Florida Statutes, the parties shall have the right to access all such records for not less than five (5) years beyond the term of the Agreement.
- (17) Prior to PLAN implementation The DISTRICT shall submit the PLAN or PLAN updates in accordance with the provisions of paragraph 7 for purposes of review and approval by the CORPS. Annual submittal of the PLAN, or PLAN updates shall follow approval by the DISTRICT's Governing Board or the DISTRICT's Executive Director as the Governing Board's designee. For purposes of approval by the CORPS the DISTRICT may modify the PLAN following the CORPS review.

ARTICLE V. DISTRICT AND CORPS RESPONSIBILITIES

- (18) When consistent with the provisions of the applicable statutes and rules of the agency processing a permit application or enforcement under state statutes or the corresponding federal permit under section 404 of the Clean Water Act, the parties agree to accept contributions of funds to the DISTRICT to be used for implementation of the PLAN. Each agency shall have the sole responsibility for determining whether the contribution of funds for restoration is appropriate mitigation for a particular permitted impact under its applicable statutes and rules. Determination of the amount of mitigation and the corresponding monetary contributions under section 404 of the Clean Water Act is the sole responsibility of the CORPS. Contributions of mitigation funds to the DISTRICT shall only be for wetlands that are impacted within the jurisdictional boundaries of the DISTRICT.
- (19) The above agencies agree to copy the DISTRICT on any permits or enforcement actions that include contributions. All permits shall clearly indicate the wetland impact acres being mitigated by contribution for acquisition, enhancement, restoration, and long-term management in areas identified in the PLAN.
- (20) The CORPS agrees to a timely review of the PLAN not to exceed 30 days from the date of the DISTRICT's submittal of the PLAN or PLAN updates.
- (21) The parties agree to a timely review of the estimates of mitigation credit available for each project identified in the PLAN for the purpose of determining the amount of mitigation credit each project may provide to offset future wetland impacts.

ARTICLE VI. TERM OF AGREEMENT AND EXTENSION

- (22) This Agreement shall be for an initial term of five (5) years, beginning on the date of execution. This Agreement may be extended upon the same terms and conditions by mutual written agreement of all parties.

ARTICLE VII. KEY OFFICIALS

- (23) THE NORTHWEST FLORIDA WATER MANAGEMENT DISTRICT: The Governing Board, or the Executive Director as the authorized designee, will provide review and approval of all activities set forth in ARTICLE III of this Agreement, and will exercise the authority on behalf of the DISTRICT to approve implementation of cooperative projects in accordance with the conditions contained herein. The Director of the Resource Management Division shall act as the authorized technical representative for the DISTRICT with regard to the technical scope of this Agreement.
- (24) THE U.S. ARMY CORPS OF ENGINEERS, JACKSONVILLE DISTRICT: The District Engineer, or authorized designee, will provide review and approval of all activities set forth in ARTICLE III of this AGREEMENT, and will exercise the authority on behalf of the CORPS to approve implementation of cooperative projects in accordance with the conditions contained herein. The Chief of the Regulatory Division shall act as the authorized technical representative for the CORPS with regard to the technical scope of this AGREEMENT.
- (25) Each party shall provide written notice to all parties of any change in authorized technical representative within four (4) weeks of such change.

ARTICLE VII. REPORTS

- (26) The DISTRICT shall submit annual financial reports to all parties for the period of October 1st to September 30th of every year. These reports shall be in a spreadsheet format. Information provided in the financial reports will include full cost accounting, as specified in paragraph (11), as well as the financial status information specified in the "Monitoring, Maintenance, and Reporting" section of the PLAN.
- (27) In addition, the DISTRICT shall submit annual status reports on restoration, including maintenance and monitoring specified in the "Monitoring, Maintenance, and Reporting" section of the PLAN, by January 31st of each year. Annual restoration status reports shall be submitted together with the financial status report, as well as any monitoring required by federal permits, in lieu of separate reports that may currently be required. All reports shall be submitted until such time as all parties agree to discontinue reporting.

ARTICLE VIII. AMENDMENT

- (28) This Agreement may be modified by written amendment upon agreement of all parties.

ARTICLE IX. TERMINATION

- (29) This Agreement shall terminate automatically unless it is extended under Article V by mutual written agreement prior to the expiration date of this Agreement. Any of the parties may terminate, without cause, their participation in this Agreement at any time by providing sixty (60) days prior written notice to the other parties. Within thirty (30) days of such written notice of termination by either party, the District shall provide an accounting of funds received in satisfaction of compensatory mitigation requirements and funds disbursed for implementation of compensatory mitigation requirements. Notwithstanding any termination of this agreement, the DISTRICT shall complete all restoration, creation, enhancement or preservation activities, including any required remediation,

necessary to satisfy the compensatory mitigation requirements of the Section 404 and Section 10 permits for which the DISTRICT is responsible, provided that all monies collected under this Agreement, other than for perpetual management, have been disbursed and all other obligations under the terms of this Agreement have been met.

ARTICLE X. RIGHTS OF OTHERS

- (30) Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the parties hereto; any rights or remedies under or by reason of this Agreement.

ARTICLE XI. WAIVER

- (31) Except as provided in Article IX, there shall be no waiver of any right related to this Agreement unless in writing signed by the party waiving such right. No delay or failure to exercise a right under this Agreement shall impair such right or shall be construed to be a waiver thereof. Any waiver shall be limited to the particular right so waived and shall not be deemed a waiver of the same right at a later time or of any other right under this Agreement.

ARTICLE XII. INVALIDITY OF PROVISIONS

- (32) The invalidity of one or more of the phrases, sentences, clauses, or Articles contained in the Agreement shall not affect the validity of the remaining portion of this Agreement, provided that, in the agreement of all parties, the material purposes of this Agreement can be determined and effectuated.

ARTICLE XIII. NOTICES

- (33) All notices required or permitted to be given under the terms and provisions of this Agreement by one party to the others shall be in writing and shall be sent by registered or certified mail, return receipt requested, as follows:

As to the DISTRICT:

Northwest Florida Water Management District, Resource Management Division
ATTN: Ron Bartel, Director
81 Water Management Drive
Havana, Florida 32333

As to the CORPS:

U.S. Army Corps of Engineers
North Permits Section
ATTN: Kevin O'Kane
1002 West 23rd St, Suite 350
Panama City, Florida 32405

Or to such other address as may hereafter be provided by the parties in writing. Notices by registered or certified mail shall be deemed received on the delivery date indicated by the U.S. Postal Service on the return receipt.

ARTICLE XIV. DISPUTE RESOLUTION

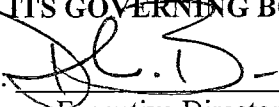
- (34) Parties agree that they will engage in dispute resolution through mediation prior to initiating any litigation in relation to this Agreement.

ARTICLE XV. EXECUTION OF AGREEMENT

- (35) This Agreement shall become effective and binding between the CORPS and the DISTRICT upon signature and execution by both the CORPS and the DISTRICT.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representative(s) on the day and year noted below.

**NORTHWEST FLORIDA WATER MANAGEMENT DISTRICT
BY ITS GOVERNING BOARD**

BY: 
Executive Director

DATE: 07/31/06

U.S. ARMY CORPS OF ENGINEERS, JACKSONVILLE DISTRICT

BY: 
District Engineer

DATE: 7/17/06