

## MEMORANDUM OF AGREEMENT

### To Establish the North Golden Gate Estates

#### Regional Offsite Mitigation Area

THIS MEMORANDUM OF AGREEMENT, entered into on this \_\_\_\_ day of \_\_\_\_\_, 2003 by and between the Collier Soil and Water Conservation District ("District") and the Florida Department of Environmental Protection ("DEP"), is for the purpose of creating and maintaining a regional offsite mitigation area pursuant to *Florida Statutes* § 373.4135, known as the "North Golden Gate Estates Regional Offsite Mitigation Area" ("ROMA").

1. PURPOSE. By this agreement, the DEP hereby establishes the ROMA for the purpose of providing compensatory mitigation for unavoidable wetland impacts due to construction of single family residential units, pursuant to *Florida Statutes* § 373.4135(7), within certain areas of the Big Cypress Basin and particularly the Faka Union Canal, Golden Gate Canal and Cocohatchee Canal Watersheds, more particularly described in the attached Service Area Map. The DEP enters into this Agreement to induce the District to acquire fee simple interests or conservation easement interests, to restore and enhance the ROMA to a more natural vegetative composition and hydrologic condition, and to cause such area to be managed permanently in the resulting vegetative composition and hydrologic condition. The ROMA, depicted in the attached map, excludes existing residences.
  
2. DEFINITIONS.
  - A. "Enhancement" means an activity that has the potential to result in a native vegetation community. Enhancement includes but is not limited to the removal of invasive exotic, disturbance and nuisance vegetation in such a manner so as not to disturb wetland soils to the extent practicable, creation of fire breaks, prescribed burning and brush control to maintain native vegetation and reduce fuel loads.
  
  - B. "Restoration" means the re-establishment of wetland functions to a specified area that historically may have been a wetland and currently does not meet the definition of wetland, or is still defined as a wetland but has been substantially altered in vegetative composition and/or hydrologic condition. Restoration includes but is not limited to grading soil (removing berms and filling ditches), planting native vegetation, conducting prescribed burns, placing and/or removing culverts and removing or installing pumping mechanisms.

C. "Natural condition" means the state prior to invasion by exotic invasive, nuisance or disturbance species of vegetation or the state in which the impacts to water flow by placement or movement of fill, roads, berms, ditches, canals or structures by anthropomorphic means are minimized.

D. "Wetland" means any area defined as a wetland by Rule 62-340 FAC.

E. "Recreation" means any lawful activity determined by the District to constitute appropriate public use, including but not limited to walking, hiking, wildlife viewing and other activities.

1. DESCRIPTION OF WORK. The District shall acquire and restore and/or enhance the ROMA and shall establish areas within the ROMA where particular recreational opportunities are determined by the District to be appropriate.

A. ACQUISITION. Generally, acquisition of properties within the ROMA shall be accomplished as sufficient funding becomes available according to the schedule described in the attached Mitigation Plan. Acquisition of the ROMA is urgently needed, as residential development to the north and within the ROMA is an immediate threat and hydrologic restoration adjacent to the ROMA is imminent.

B. RESTORATION AND ENHANCEMENT. The District shall improve the ecological conditions of the watershed, provide viable and sustainable ecological functions for the ROMA, provide stormwater treatment, encourage water flow away from residences and uplands and increase water flow into depressional areas, enhance water quality, contribute to Everglades restoration, restore the natural vegetation and wildlife composition, provide a buffer between the built NGGE environment and undeveloped SGGE, and improve wildlife habitat in the area. Planned restoration and enhancement activities and schedule of costs and timing are detailed in the Mitigation Plan.

C. RECREATION and EDUCATION. To the extent practicable and funding becomes available as determined by the District, recreational and educational opportunities within each project shall be constructed and/or created by the District at any time during or after it completes restoration and enhancement of such project. Educational activities may commence during the restoration or enhancement of the wetlands for demonstration purposes. Such work includes but is not limited to construction of trails, boardwalks and interpretive signs and encouragement and promotion of group educational activities. A schedule of planned recreational and educational facilities is detailed in the Mitigation Plan.

The District will coordinate educational opportunities with local, state and private non-profit entities. For example, the District may participate in Project Wild with the Collier County School District, the Florida Master Naturalist Program through the University of Florida and suburban sprawl educational activities through the National Wildlife Federation. Partnerships with private nature tour companies also may be available as guided nature walks through wetland areas within the ROMA.

D. RESEARCH. The District shall encourage scientific research by universities, and by local, state and federal governments. The ROMA is an ideal reference site to study the impacts of suburban sprawl on natural buffers, to document the effects of restoration within and surrounding the ROMA and to survey corridor usage by wildlife. Research opportunities exist through the DEP Wetland Restoration Information Program, Florida Gulf Coast University, University of Florida's Institute of Food and Agricultural Services and NRCS, for example.

A. ESTIMATED TIMELINE. Acquisition and mitigation timelines are detailed in the Mitigation Plan.

1. ESTIMATED TIMELINE FOR OBTAINING ERPs. ERPs will be needed for culverts and grading operations in the ROMA. The estimated cost to hire a consultant to obtain such permits will be incorporated into the cost of completing the identified activities. The estimated time for obtaining an ERP for each proposed culvert is three to six months. The estimated time for obtaining an ERP for grading operations is eight to ten months.

## 2. ENVIRONMENTAL SUCCESS CRITERIA.

The Environmental Success Criteria for this ROMA are taken directly from South Florida Water Management District, Wetland Rapid Assessment Procedures, Technical Publication REG-001 ([www.sfwmd.gov/newsr/3\\_publications.html](http://www.sfwmd.gov/newsr/3_publications.html)). The Wetland Rapid Assessment Procedure (WRAP) is a rating index developed by the South Florida Water Management District (SFWMD) to assist the regulatory evaluation of mitigation sites that are permitted through the SFWMD's Management and Storage of Surface Water or Environmental Resource Permit Process. The District will use WRAP as its wetlands evaluative method, unless the State of Florida adopts a different method of evaluation, at which time the District will adopt the new method in lieu of WRAP. The objectives of WRAP (or its successor) when used for the ROMA are to provide for an accurate and consistent method of wetland site evaluation to be enhanced and/or restored and preserved, and to track trends over time of enhancement and/or restoration efforts so that success will be achieved. A detailed description of the specific success criteria that the District will use to evaluate restoration and enhancement success over time is found in the Mitigation Plan.

The ROMA will be deemed successful and completed upon the implementation of the success criteria.

6. MONITORING. After the District completes restoration and enhancement within any given project, the District shall monitor the project annually until title to the ROMA is transferred from the District (see paragraph 14, below). Documentation of monitoring activities will be provided in annual reports to the DEP.

Long-term monitoring will involve annual water level and water quality testing in each project, surveying for resident community structure, native plant recovery and growth of exotic invasive, disturbance or nuisance vegetation in each project, establishing long-term photographic points for temporal comparisons and comparing annual aerial maps of the ROMA projects when available. The District will cooperate with the BCB in gathering additional data on hydroperiod, water quality, flood attenuation and groundwater recharge in the ROMA.

Monitoring of recreational activities will be conducted through the use of written evaluations available on-site to recreational users and/or through mail surveys to North Golden Gate Estates residents.

1. LONG TERM MANAGEMENT. Long-term management of the ROMA will be consistent with the Florida Division of Forestry's Final Forest Resource Management Plan for the Picayune Strand State Forest. Management and projected cost schedules over a 10-year period are found in the Mitigation Plan. A management plan for each project within the ROMA will be drafted when the District acquires sufficient land within the project such that restoration and/or enhancement is feasible.

A. Removal of invasive exotic and nuisance vegetation. If monitoring data reveal >5% exotic invasive or nuisance vegetation re-growth within any particular project, the District shall remove such vegetation until 1% or less exotic invasive or nuisance vegetation remains.

B. At such time as culverts are installed within the ROMA, the ROMA shall be managed in accordance with the Mitigation Plan and project-specific management plan, if applicable. Culverts will be monitored periodically and maintained for prevention of detritus buildup and other potential blockages. Because the BCB may incorporate the ROMA into the Restoration Plan and the Southwest Florida Feasibility Study, Big Cypress Basin (BCB) will be a partner in long-term management and monitoring and will work cooperatively with the District to restore the functionality of the ROMA's wetlands.

C. After the exotic invasive and nuisance vegetation has been removed from any given project, prescribed burning will be conducted periodically within each project on a schedule recommended by the NRCS and the Florida Division of Forestry, which will resemble as closely as possible the historic fire intensity and frequency. Also, fire control measures will be completed, such as fire breaks. The precise location of these fire breaks

will be known after the ROMA is extensively surveyed.

1. ASSESSMENT. Historic, current and proposed conditions relating to hydrology, soils, vegetation, wildlife and population/land use are depicted in the Mitigation Plan.

9. VALUATION. To be completed by DEP. Mitigation within the ROMA will be governed by the criteria contained in § 373.4136(4), *Florida Statutes*, and established ratio guidelines.

10. ENTITY RESPONSIBLE FOR COMPLETION OF MITIGATION. The District shall be responsible for completion of all mitigation.

11. SERVICE AREA. In accordance with *Florida Statutes* § 373.4136(6), the geographic area of the mitigation service area is depicted in Exhibit 1. The boundaries of the service area correspond to the occurrence of single-family residential development in North Golden Gate Estates within the watersheds of North Golden Gate Estates.

12. FULL COST ACCOUNTING. Full cost accounting is not required to establish or maintain the ROMA, in accordance with *Florida Statutes* § 373.4135(7). However, mitigation funding held pursuant to this Agreement will be maintained in separate, interest-bearing accounts that will be held in the District's name and managed by the District. If applicable, the District may further distinguish funds for specific projects in one or more separate accounts. In addition, the District shall cause to be deposited in a separate, interest-bearing account at least 20% of all mitigation money collected, for the purpose of restoration, enhancement and long-term management of the ROMA.

The estimated cost of acquiring the ROMA, including the purchase price (market value) and costs associated with acquisition of approximately 5,873 acres: \$51 million. A summary of costs associated with acquisition is found in the Mitigation Plan. The costs of implementing and monitoring the ROMA are found in the Mitigation Plan. These costs are estimates only and are based on EQIP, NRCS and BCB field experience, title insurance rates and the experience of scientific and real estate professionals in Collier County.

13. ACQUISITION OF LANDS. Acquisition of properties within the ROMA will be completed by the District, as empowered by *Florida Statutes* § 582.20. The acquisition process, schedule and estimated budget spanning the first ten (10) years of the ROMA are found in the Mitigation Plan. The goal is to acquire 33% of the ROMA area within the first ten (10) years of the ROMA. Eminent domain will not be used to acquire ROMA parcels.

14. PRESERVATION. After mitigation in the ROMA is substantially complete (90% acquired, restored and enhanced, excluding existing residences), title to all properties lying within the ROMA of which the District owns an interest may be transferred as follows:

a. If a water control district has been established in the Service Area in accordance with Chapter 298,

*Florida Statutes*, and if such water control district can provide reasonable assurance to the District that it has the financial and management resources to sufficiently manage the entire ROMA in perpetuity, the District may offer to transfer the ROMA to such water control district prior to offering to transfer the ROMA to any other entity, and such offer shall be effective for three (3) months from the date written notice to the water control district is received from the District that the District intends to transfer ownership of the ROMA. The water control district has three (3) months from the date of receipt of said notice to enter into a real estate purchase contract with the District for the transfer of the entire ROMA. The water control district then has three (3) months to acquire the entire ROMA.

b. Thereafter, the District may transfer the ROMA into local, state or federal government ownership or into the ownership of a private, not-for-profit corporation operating under articles or by-laws that are consistent with Internal Revenue Code § 170(h).

c. Title and interest to all properties held by the District under this Agreement must be transferred, if at all, from the District in fee simple containing permanent restrictions on residential, agricultural and commercial development of those properties, or by Warranty Deed or Special Warranty Deed with a conservation easement agreement executed simultaneously and incorporated into said Deed. The entire interest to all properties held by the District as conservation easements under this Agreement must be transferred, if at all, from the District with the conservation easement intact. Thereafter, any and all management of transferred properties shall be the sole responsibility and liability of the transferee.

15. APPLICATION OF MONEYS RECEIVED. The District shall ensure that all funds received through the ROMA are used exclusively for acquisition, restoration, enhancement, monitoring, management and administration of the ROMA.

16. EMINENT DOMAIN. Notwithstanding that Chapter 582, *Florida Statutes* does not expressly confer eminent domain authority unto the District, it is the District's intent to and the District shall never acquire any property or properties within the ROMA through the use of eminent domain.

17. EFFECTIVE DATE. The terms of this Agreement will take effect upon the execution of this Agreement.

18. AMENDMENT. This Agreement may be amended, altered, modified, released or revoked by written agreement between the parties hereto or their assigns or successors.

19. INVALIDITY. The invalidity of one or more of the phrases, sentences, clauses, paragraphs or articles contained in this Memorandum of Agreement shall not affect the validity of the remainder of this Memorandum of Agreement.

## 20. TERMINATION.

### A. Reasons for termination.

1. Cost of land increases to the point that the District determines it is not financially feasible to acquire sufficient percentages within each Project to restore or enhance such Project(s).
2. The failure of any material contingency of this Agreement.
3. The District is dissolved in the manner prescribed in *Florida Statutes* Chapter 582.
4. Successful completion of restoration and enhancement within the ROMA, as determined by the District with concurrence by the DEP, and the District subsequently decides to transfer title to all ROMA properties from the District.
5. The purposes of this Agreement cannot be achieved.
6. Acquisition of at least 70% of at least five (5) projects each is not feasible, as determined by the inability to identify any further willing sellers within a particular project after acquisition of that project has begun, for a period of 1.5 years.

B.

Process of termination. When this Agreement is terminated, the property shall remain in the ownership of the entity then owning the subject properties within the ROMA pursuant to this Agreement. If at the time of termination any funds remain in the District's name under this Agreement, the District shall be entitled to use those funds for the purpose of providing invasive exotic vegetation control services to North Golden Gate Estates landowners on a cost-share basis.

Signed, sealed and delivered by:

FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

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By:

# COLLIER SOIL AND WATER CONSERVATION DISTRICT

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