

**MEMORANDUM OF AGREEMENT between
STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION,
DIVISION OF RECREATION AND PARKS and
FLORIDAN RESOURCE CONSERVATION AND DEVELOPMENT COUNCIL, INC.
WETLAND RESTORATION PROJECT at
NORTH PENINSULA STATE PARK**

THIS MEMORANDUM OF AGREEMENT, hereinafter referred to as "MOA," is hereby made and entered into by and between the STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, DIVISION OF RECREATION AND PARKS, hereinafter referred to as the "GRANTOR" and the FLORIDAN RESOURCE CONSERVATION AND DEVELOPMENT COUNCIL, INC., a Florida non-profit corporation, hereinafter referred to as the "GRANTEE," on this 2nd day of December, 2019.

WITNESSETH

WHEREAS, GRANTEE, has obtained the funds necessary to restore a historic marsh habitat currently covered by dredge soil from the intracoastal waterway; and;

WHEREAS, GRANTOR is willing to allow GRANTEE and GRANTEE'S contractors to conduct a restoration project (the "Project") as described in the Restoration Plan, which is attached hereto as **Exhibit "A"**, said Project being conducted on a 6.54-acre parcel at North Peninsula State Park (the "Park").

WHEREAS GRANTOR manages the Park under Board of Trustees of the Internal Improvement Trust Fund of the State of Florida ("Board of Trustees") Lease No. 3421.

NOW THEREFORE, in consideration of the faithful and timely performance of and compliance with all the terms and conditions stated herein, GRANTOR does hereby grant to GRANTEE, the right to use the Park subject to the following terms and conditions:

1. **TERM:** This MOA is for a period of five (5) years commencing on the execution date of this MOA unless sooner terminated by GRANTOR or otherwise extended in writing by both parties or terminated as provided for herein.
2. **EXTENT OF AGREEMENT:** This MOA authorizes the use of the Park for the purposes of restoring saltmarsh within the Restoration Site, being the area south of Highbridge Road as depicted in **Exhibit "B"**. All such activities shall be consistent with the conditions contained in all required permits and the Restoration Plan.
3. **UNDUE WASTE:** GRANTEE shall not permit or commit undue waste upon the Restoration Site or within the Park. GRANTEE shall restore landscape features damaged during construction or implementation of any aspect of the Restoration Plan to the satisfaction of the manager of the Park ("Park Manager"). Vegetation, if any, shall be replaced with plants stated in the Restoration Plan.
4. **PRIORITY OF LEASE AND MANAGEMENT PLAN:** Nothing in this MOA shall be interpreted as or create a conflict with the terms and conditions of Lease No. 3421 issued to DRP by the Board of Trustees on December 12, 1985, as may be amended, which Lease shall take priority.

5. RIGHT OF INSPECTION: GRANTOR or its duly authorized agent shall have the right at any time to inspect the works and operations of GRANTEE pertaining to this MOA, as well as the ability to halt work as provided by Section 27 special condition C below.
6. PROPERTY RIGHTS: This MOA constitutes permissive use only, and is subject to the terms of this MOA. GRANTEE agrees that while undertaking the work, it does not and shall not claim at any time any interest of any kind whatsoever in the Park or the Restoration Site.
7. USE OF PROPERTY: This MOA shall be non-exclusive. GRANTOR, or its duly authorized agents, shall retain the right to enter and use the Restoration Site covered by this MOA or to engage in management activities. GRANTOR shall retain the right to grant compatible uses of the Restoration Site subject to this MOA to third parties during the term of this MOA.
8. NO INTEREST IN LAND: The parties agree that the rights herein conveyed by this MOA are permissive rights only and shall not operate to create or vest any real property rights or interest in GRANTEE.
9. LIABILITY: GRANTEE agrees to be fully responsible and liable and to indemnify, protect, defend, save and hold harmless GRANTOR, the State of Florida, and the Board of Trustees for all claims, liabilities, damages, costs, actions, suits or proceedings at law or in equity which may occur as a result of the negligent acts or omissions of GRANTEE, its agents and employees.
10. APPLICABLE LAW AND VENUE: This MOA shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Venue for litigation concerning this MOA shall be in Leon County, Florida.
11. AMENDMENTS: No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this MOA and executed by GRANTOR and GRANTEE.
12. ENTIRE AGREEMENT: This MOA incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this MOA that are not contained in this MOA. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms and conditions contained herein shall be effective unless contained in a written document in accordance with Paragraph 11 above.
13. SUCCESSION OF AGREEMENT: This MOA and the rights and obligations contained herein shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.
14. ASSIGNMENT: This MOA is personal to GRANTEE and may not be transferred or assigned without the prior written approval of GRANTOR. Notwithstanding the foregoing, GRANTOR and GRANTEE recognize and agree that some or all of the activities permitted under

this MOA may be performed by GRANTEE or GRANTEE'S contractor under a separate agreement. Such performance by GRANTEE'S contractor does not relieve GRANTEE of any duty, responsibility, or liability under this MOA.

15. REMOVAL OF DEBRIS: GRANTEE shall clear, remove and pick up all of GRANTEE'S and its contractor's debris including but not limited to mud containers, oil containers, papers, discarded tools and trash foreign to the work locations and dispose of the same offsite in such a manner as to leave work locations clean and free of any such debris on a daily basis.

16. ARCHAEOLOGICAL AND HISTORIC SITES: Execution of this MOA in no way affects either of the parties' obligations pursuant to Chapter 267, Florida Statutes. The collection of artifacts or the disturbance of archaeological and historic sites on state-owned lands is prohibited unless prior authorization has been obtained from the Division of Historical Resources of the State of Florida Department of State. If a historical site is uncovered during the duration of this Project, GRANTEE will be responsible for any associated costs, such as archaeological testing, excavation, and monitoring required by the Division of Historical Resources of the State of Florida Department of State.

17. COMPLIANCE WITH LAWS: This MOA is contingent upon and subject to GRANTEE obtaining all applicable permits and complying with all applicable permits, regulations, ordinances, rules, and laws of the State of Florida, the United States or of any political subdivision or agency thereof.

18. RESPONSIBILITY FOR COMPLIANCE: The parties hereto contemplate the performance of all or a part of the activities authorized herein by GRANTEE. Notwithstanding the foregoing, GRANTEE shall bear the full and ultimate responsibility and liability for the faithful and timely compliance with the terms and conditions set forth herein.

19. TITLE: GRANTOR neither warrants title to the Restoration Site nor guarantees the suitability of the Restoration Site for any particular use.

20. DAMAGE: GRANTEE shall not damage the Park, or unduly interfere with public or private rights therein.

21. TERMINATION: GRANTEE by acceptance of this MOA, binds itself, its successors and assigns, to abide by the provisions and conditions herein set forth, and said provisions and conditions shall be deemed covenants of GRANTEE, its successors and assigns. In the event GRANTEE fails or refuses to comply with the provisions and conditions herein set forth or in the event GRANTEE violates any of the provisions and conditions herein, GRANTOR, shall give notice to GRANTEE that curative action must be completed within thirty (30) days, during which time work may be halted by the Park Manager as provided herein. In the event that the matter is not resolved within the thirty (30) day curative period, GRANTOR may elect to terminate this MOA by means of a letter of termination. The Grantor may also terminate this MOA for any reason, or for convenience, with notice to Grantee. In the event that this MOA is terminated, all rights inuring to GRANTEE or its successors shall cease upon the effective date of the letter of termination with the exception of those activities necessary to demobilize and remove

personnel and equipment, but GRANTEE'S obligations and responsibilities under Paragraph 23 of this MOA shall survive termination.

22. **NOTICE:** All notices given under this MOA shall be in writing and shall be served by certified mail including, but not limited to, notice of any violation served pursuant to Section 253.04, Florida Statutes, to the other party at the address provided below, or at last address of the party to whom notice is to be given, as designated by such party in writing. GRANTOR and GRANTEE hereby designate their address as follows:

GRANTOR: State of Florida Department of Environmental Protection
Division of Recreation and Parks
Attn: Park Manager
North Peninsula State Park
3100 South A1A
Flagler Beach, FL 32136-4109

GRANTEE: Floridan Resource Conservation and Development Council, Inc.
Attn: John R Newbold, President
1093 A1A Beach Blvd. #143
St. Augustine, FL 32080

23. **REMOVAL OF EQUIPMENT:** Upon termination or expiration of this MOA, the removable equipment and removable improvements placed on the Restoration Site by GRANTEE that have not become a permanent part of the Restoration Site and are not desired by the GRANTOR, shall be removed by GRANTEE, at its sole cost and expense, within thirty (30) days after the termination or expiration of this MOA. Further, GRANTEE shall restore the Restoration Site to substantially the same or better condition than it was upon the effective date of this MOA.

24. **ENFORCEMENT OF PROVISIONS:** No failure, or successive failures, on the part of the GRANTOR to enforce any provision nor any waiver or successive waivers on its part of any provision herein, shall operate as a discharge thereof or render the same inoperative or impair the right to GRANTOR to enforce the same upon any renewal thereof or in the event of subsequent breach or breaches.

25. **PROHIBITIONS AGAINST LIENS OR OTHER ENCUMBRANCES:** Fee title to the Park is held by the Board of Trustees and GRANTOR has a leasehold interest in the Park. GRANTEE shall not do or permit anything to be done which purports to create a lien or encumbrance of any nature against the real property contained in the Restoration Site including, but not limited to, mortgages or construction liens against the Park or against any interest of the Board of Trustees or GRANTOR therein.

26. **PARTIAL INVALIDITY:** If any term, covenant, condition or provision of this MOA shall be ruled by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

27. **SPECIAL CONDITIONS:** Notwithstanding any other provisions of this MOA, the following special conditions shall apply:

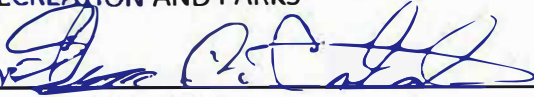
- A. GRANTEE shall be responsible for obtaining all required permits associated with the Project. GRANTEE shall provide copies of all permits to the Park Manager prior to the commencement of construction.
- B. GRANTEE shall coordinate with and obtain approval of the Park Manager or district biologist before undertaking any construction, maintenance, or repair activity in the Park.
- C. It is understood and agreed that the Park Manager or district biologist shall have the authority to direct GRANTEE, including its agents, representatives and employees, regarding activities onsite, and shall have the authority to halt activities of the Project in cases where public safety is at risk; for failure to meet the Project design outlined and depicted in the Restoration Plan; or for any other reason where halting work may be necessary to protect the public interest.
- D. GRANTEE shall not remove or destroy any trees, shrubs, or other vegetation (other than exotics), outside of the Restoration Site where the Project will take place unless agreed upon in advance by the Park Manager or district biologist.
- E. GRANTEE shall not dump or place soil or other substances or materials as land fill or dump or place trash, waste or unsightly offensive material.
- F. GRANTEE shall not dike or perform any other activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation or fish and wildlife habitat preservation unless outlined in the Restoration Plan.
- G. GRANTEE shall not negatively impact any state or federally listed plant or animal species.
- H. GRANTEE shall not construct or place buildings, roads, signs, billboards or other advertising, utilities or other structures on or above the ground unless approved beforehand by the Park Manager or district biologist. GRANTEE shall place signage on the road alerting traffic travelling A1A as to the potential hazards of vehicles entering and exiting the Park.
- I. No exotic plant or animal species are to be brought into the Park. GRANTEE shall make sure that all equipment brought onsite is washed and free of all vegetative debris (seeds, leaves, woody material) prior to entering the site. GRANTEE will coordinate inspection of the equipment with the Park Manager or district biologist prior to entering the Park.
- J. GRANTEE shall remove offsite all of the woody and vegetative debris associated with undesirable vegetation that currently occupies the Restoration Site. GRANTEE may use some of the vegetation as road stabilization within the spoil area during the construction phase of the Project, but all debris material must be removed from the Park prior to completion of the Project.
- K. GRANTEE shall provide a copy of a current commercial liability insurance policy and commercial automobile liability insurance covering operations under this MOA to

GRANTOR at the time this MOA is executed. Limits of liability for personal injury and property damage will not be less than \$300,000 each occurrence, combined single limit. Such insurance policies shall name GRANTOR, and the Board of Trustees of the Internal Improvement Trust Fund, as additional parties insured. GRANTEE warrants and represents that such liability insurance offers protection applicable to GRANTEE'S officers, employees, agents and contactors. GRANTEE shall be responsible for any loss due to failure to obtain adequate insurance coverage and GRANTEE'S failure to maintain such a liability insurance policy in the amounts set forth herein shall constitute a breach of this MOA. Insurance policy certificates shall be mailed to Department of Environmental Protection, Division of Administrative Services, Bureau of Finance and Accounting, 3900 Commonwealth Blvd., MS#77, Tallahassee, Florida 32399. Additionally, GRANTEE shall comply with all laws requiring workers' compensation insurance. A copy of the workers' compensation policy shall be provided to GRANTOR.

- L. GRANTOR has applied to the Division of Historical Resources, State of Florida Department of State and a copy of the letter can be found attached as **Exhibit "C"**. Division of Historical Resources did not require a certified monitor be onsite during the Project, however, recommended one. GRANTEE will provide its own archaeological monitor during groundbreaking activities.
- M. All herbicides used for exotic and nuisance plant removal shall be used in accordance with the instructions printed on the herbicide label.
- N. GRANTEE shall not cause additional impacts to wetlands or uplands outside of the restoration Project unless approved by the Park Manager or district biologist and the St. Johns River Water Management District.
- O. GRANTOR shall receive copies of all monitoring reports submitted by GRANTEE to the St. Johns River Water Management District, the United States Army Corps of Engineers, and other relevant agencies.
- P. GRANTEE shall remove all exotic and nuisance plant species in the restoration area and new infestations that may appear along the access roads during the Project. All plant removal reports will be submitted to GRANTOR annually.
- Q. GRANTEE must obtain written approvals from the local Mosquito Control District prior to any alterations or modifications to impoundments, ditches, or structures.

The parties have caused this MOA to be executed on the day and year first above written.

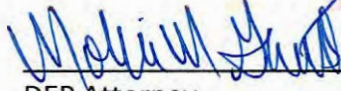
STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION, DIVISION OF
RECREATION AND PARKS

By: 


Steven A. Cutshaw
Environmental Administrator
Office of Park Planning

"GRANTOR"

Approved for Form and Legality:


DEP Attorney

FLORIDAN RESOURCE CONSERVATION
AND DEVELOPMENT COUNCIL, INC.,
a Florida non- profit corporation

By: 
John R. Newbold, President

"GRANTEE"

Exhibit “A”

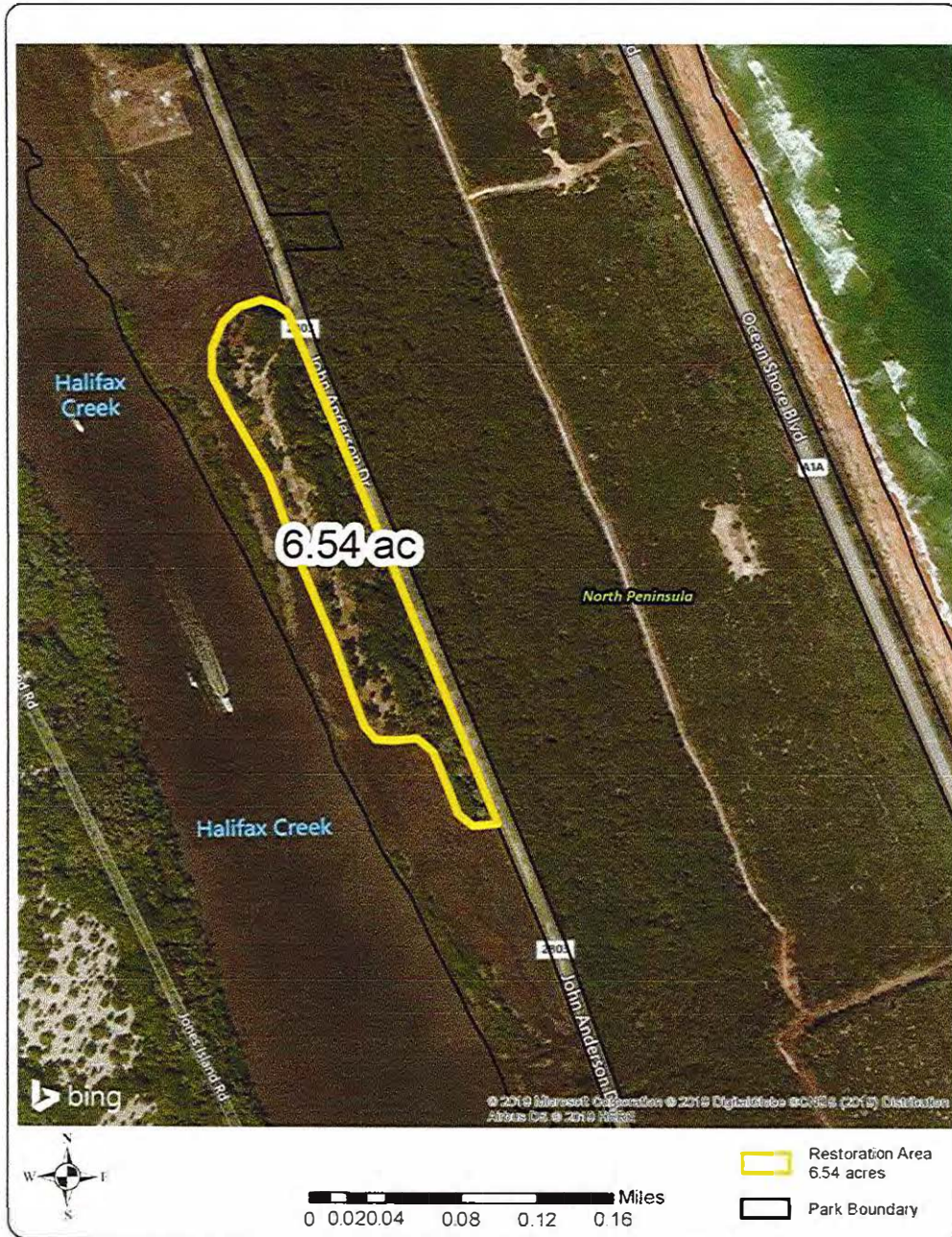
Restoration Plan

North Peninsula State Park Dredge Spoil-impacted Wetland Restoration

From the 1880s through 1950s, significant navigation channels were dredged to create and maintain what is now Northeast Florida’s section of the Intracoastal Waterway. In many areas, the channel was cut through pristine wetlands with large amounts of spoil deposited adjacent to the new channel on over 1,400 acres of this essential estuarine nursery habitat. Removal of spoil from coastal wetlands at North Peninsula State Park (NPSP) began in 2007 with funding from the NOAA Restoration Center (4 grants), St. Johns River Water Management District (SJRWMD), Southeast Aquatic Resource Partnership, and National Association of Counties. In addition, a portion of this work was completed as a Florida Department of Transportation mitigation site through a separate funding arrangement. These efforts are supported by the Florida Fish and Wildlife Conservation Commission (FWC), Florida Department of Environmental Protection (FDEP) Coastal Office, and the Northeast Florida Estuarine Restoration Team (NERT). The work has been implemented under a Memorandum of Understanding between the Floridan Resource, Conservation, and Development Council, a Florida non-profit corporation with an IRS 501(c) 3 designation and District 3 of FDEP Division of Parks and Recreation. Approximately 90 acres of impacted wetlands have been restored by this team. The remaining piece of impacted wetland that is accessible for restoration comprises 6.54 acres along John Anderson Blvd. south of Highbridge Rd. in the southern portion of NPSP (See Map). This funding would support restoration of approximately 4 acres of the remaining area. The balance of the area would be enhanced by removing exotics and modified to better host the oyster shell recycling center run by NPSP volunteers.

The process will include clearing vegetation from the site, excavating and disposing of spoil, grading the site to match existing elevations in adjacent marshes, and revegetating with *Spartina alterniflora* to stabilize the surface and trap propagules of other species. Over the 10 plus years of work, the cost per acre has averaged \$30,000. Our FWC/SJRWMD team would commit to restoring 4 acres of the remaining targeted area.

Exhibit "B"



DELEGATION OF AUTHORITY COVER SHEET

PARK NAME: North Peninsula State Park

BTIITF Lease Number: 4193 **Unit ID:**

Type of Instrument: MOA

Delegation Type and Number

General: DEP **Number:** 150

Specific: DRP **Number:** 26

ACTION BEING TAKEN:

Form and Legality.

PROJECT INFORMATION:

The MOA will allow for the restoration of salt marsh that had been previously impacted for the Intracoastal Waterway. This has been an ongoing project since 2007.

Partners in this project FWCC, FDOT, DEP Coastal Office, North Florida Estuarine Restoration Team (NERT) Currently over 90 acres have been restored with a 6.54 remainder. This MOA supports restoration of 4 more acres with the balance enhanced by removing exotics.

CONSIDERATION:

[There is no consideration required of either party.]

STAFF REMARKS:

APPROVAL ROUTING

Approval routing not required

Signature

Date

1. Originator OPP/dp *D. Palmer*

12/2/2019

2. Bureau Chief Steve Cutshaw

SC 12/2/19

3. Legal Mollie Garrett

M Garrett 12/2/19

4. _____

Distribution: Original – OPP Legal File