

4-27-93  
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MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE FLORIDA DEPARTMENT OF ENVIRONMENTAL REGULATION  
AND  
METROPOLITAN DADE COUNTY  
(DEPARTMENT OF ENVIRONMENTAL RESOURCES MANAGEMENT)

THIS AGREEMENT is made and entered into this 27<sup>th</sup> day of APRIL 1993, by and between the Florida Department of Environmental Regulation (hereinafter the "DER") and Metropolitan Dade County, a political subdivision of the State of Florida, by and through its Department of Environmental Resources Management (hereinafter the "COUNTY").

ARTICLE I. BACKGROUND AND OBJECTIVES

WHEREAS, the Bird Drive Everglades Wetland Basin and the North Trail Wetland Basin are part of a vast expanse of seasonally-inundated lands, known as the Everglades;

WHEREAS, the Bird Drive Wetland Basin is that freshwater wetland described as that portion of Section 3, Township 54 South, Range 39 East lying south of U.S. Highway 41 (Tamiami Trail) and lying west of S.W. 143 Avenue north of

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S.W. 9th Terrace and lying west of S.W. 144 Avenue south of S.W. 9th Terrace; those portions of Sections 4,5, and 6, Township 54 South, Range 39 East lying south of U.S. Highway 41 (Tamiami Trail); that portion of Section 10, Township 54 South, Range 39 East lying west of S.W. 144 Avenue; that portion of Section 31, Township 54 South, Range 39 East, lying north of S.W. 88th Street (North Kendall Drive); and Sections 7,8,9,16,17,18,19,20,29,30 and 32, Township 54 South, Range 39 East; and

WHEREAS, the North Trail Wetland Basin is that freshwater wetland described as that portion of Section 3, Township 54 South, Range 39 East lying north of U.S. Highway 41 (Tamiami Trail); that portion of Section 4, Township 54 South, Range 39 East lying north of U.S. Highway 41 (Tamiami Trail); Government Lot 2, located between Townships 53 and 54 South, Range 39 East; Government Lot 3, located between Townships 53 and 54 South, Range 39 East and Government Lot 4 located between Townships 53 and 54 South, Range 39 East; and

WHEREAS, the Bird Drive Everglades Wetland Basin and the North Trail Wetland Basin have been the subject of agricultural, residential and industrial development; and

WHEREAS, in 1987, the County, at the request of the U.S. Army Corps of Engineers, convened the Special Area Management Plan (SAMP) Committee for the purposes of

evaluating the environmental resources of the Bird Drive Everglades Wetland Basin and developing a management plan which would identify the types, locations and time-phasing of acceptable development activities for this basin, water management activities and regulations; the location and type of wetland protection and mitigation areas; and the implementation strategies, including a financing plan and required environmental regulations; and

WHEREAS, the SAMP Committee included representatives of the U.S. Environmental Protection Agency, the U.S. Army Corps of Engineers, the U.S. Fish & Wildlife Service, the Florida Department of Environmental Regulation, the South Florida Water Management District, the Dade County Planning Department and the Dade County Department of Environmental Resources Management (DERM); and

WHEREAS, in 1989 and 1990, the COUNTY prepared, and the SAMP Committee reviewed and approved, several resource identification studies including: the Bird Drive Everglades Basin / Pennsuco Wetlands Vegetation and Cover Type Mapping Study (DERM Technical Report 89-5); Bird Drive Everglades Basin Special Area Management Plan: Baseline Studies and Resource Evaluation (DERM Technical Report 90-6) and Bird Drive Everglades Basin Special Area Management Plan: Off-site Mitigation Alternatives (DERM Technical Report 90-5); and

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WHEREAS, in 1991, the COUNTY prepared, and the SAMP Committee reviewed, the North Trail Basin: Baseline Studies and Resource Evaluation Report (DERM Technical Report 91-3); and

WHEREAS, upon the review of all the aforementioned technical documents and site inspections of each wetland basin, the SAMP Committee agreed that both wetland areas have been adversely impacted by past drainage and the invasion of exotic plant species (in particular Melaleuca quinquenervia) and concluded that the restoration of portions of these basins was neither practical nor feasible; and

WHEREAS, the member agencies of SAMP Committee are prepared to permit limited development within those portions of the Bird Drive Everglades Wetland Basin and North Trail Wetland Basin located within the Year 2000 Urban Development Boundary Line as depicted on the 1988 Comprehensive Development Master Plan's Land Use Map, which is maintained by the Dade County Planning Department; and

WHEREAS, the SAMP Committee has determined that, given the existing hydrologic conditions in each basin and the potential impacts associated with the proposed Dade County West Wellfield, on-site mitigation is not feasible; and

WHEREAS, the member agencies of the SAMP Committee and Everglades National Park (hereinafter referred to as "the Park") have agreed to establish a cooperative program to restore freshwater wetlands in the area of the Park known as the "Hole-in-the-Donut" (a description of which is attached as Attachment "A"); and

WHEREAS, on July 21, 1992, the Dade County Board of County Commissioners created Section 24-58.21 of the Code of Metropolitan Dade County, which established the Freshwater Wetland Mitigation Trust Fund for receiving mitigation contributions from developers in the Bird Drive Everglades Wetland Basin and the North Trail Wetland Basin; and

WHEREAS, the Freshwater Wetlands Mitigation Trust Fund was created for use in acquiring, (including by eminent domain,) restoring, enhancing, managing or monitoring wetlands within Dade County.

NOW, THEREFORE, in consideration of these premises and mutual covenants contained herein, the parties agree as follows:

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ARTICLE II. STATEMENT OF WORK

1) The COUNTY shall be responsible for the collection of the mitigation contributions for work approved by the COUNTY and the DER, in the amounts determined by the COUNTY and the DER as part of that approval, for those properties located within the Urban Development Boundary Line in the Bird Drive Everglades Wetland Basin and the North Trail Wetland Basin. Said funds shall be deposited by the COUNTY into the Dade County Freshwater Wetlands Mitigation Trust Fund (the "FWMT Fund"); which, pursuant to Section 24-58.21(A)(3) of the Code of Metropolitan Dade County, shall not be commingled with other County Funds until disbursed for an authorized purpose pursuant to Section 24-58.21(A)(4) of the Code of Metropolitan Dade County.

2) The COUNTY shall disburse monies from the FWMT Fund, in accordance with the provisions of Section 24-58.21(A)(4) of the Code of Metropolitan Dade County, for mitigation projects selected and approved pursuant to paragraph 4 of this Article. Specifically, funds may only be disbursed for the acquisition, (including by eminent domain,) restoration, enhancement, management or monitoring of wetland properties located within Dade County. Funds may also be disbursed for all costs associated with each such acquisition (as applicable) including, but not limited to, appraisals, surveys, title search work, real property taxes, documentary

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stamps and surtax fees, and other transaction costs. Costs of administering the activities identified above will be funded from the proceeds of the Freshwater Wetlands Trust until such time as the fund is closed.

3) The COUNTY shall disburse funds to Everglades National Park, for use in the restoration of that area of the Park known as the "Hole-in-the-Donut". The cumulative amount payable to the Park in any calendar year shall not exceed the monetary figure equal to that percentage of the total amount collected which has been designated (by consultation with the SAMP Committee and approval by DER, DERM, and the Corps of Engineers) for use in restoring the Hole-in-the-Donut. Interest accrued on this principal amount prior to disbursement to the Park may be retained by the COUNTY for use for reimbursement for reasonably-incurred administrative costs.

4) The COUNTY shall maintain the balance of the total contribution amount collected for work in the subject wetland basins in Trust until DER, DERM and the Corps of Engineers, following consultation with the SAMP Committee, have selected and approved mitigation project(s) located in Dade County for which those monies are to be utilized, at which time, disbursement of those funds for such project(s) shall be made.

5) The COUNTY shall keep accounting records which conform with generally accepted accounting principles which shall include, but not be limited to, a cash receipt journal, cash disbursement journal, general ledger, and all such subsidiary ledgers as reasonably necessary. All such reports will be retained by the COUNTY for not less than five (5) years beyond the term of this Agreement.

6) The COUNTY shall provide access to all of its records which relate to this Agreement and agrees to provide such assistance as may be necessary to facilitate their review by the DER when deemed necessary by the DER to insure compliance with accounting and financial standards. The DER shall have the right to access all such records for not less than five (5) years beyond the term of this Agreement.

7) The COUNTY shall make all records or documents which relate to this Agreement available to the DER at the office of the DERM during regular business hours.

ARTICLE III. TERM OF AGREEMENT; EXTENSION

(a) Initial Term. This Agreement shall be for an initial term of five (5) years, beginning on the date of execution.

(b) Extension Term(s). This Agreement may be extended upon the same terms and conditions by mutual written agreement of

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both parties.

(c) Continuation of this Agreement (in whole or in part) beyond the term specified in paragraph (a) above is contingent upon the availability of funds.

ARTICLE IV. KEY OFFICIALS

THE FLORIDA DEPARTMENT OF ENVIRONMENTAL REGULATION :

The Secretary, or authorized delegatee, will provide review and approval of terms of all agreements, and will exercise the authority to approve conduct of cooperative projects with regards to the conditions contained herein. The Chief of the Bureau of Wetland Resource Management shall act as the authorized technical representative for DER with regard to the technical scope of this Agreement.

The DER shall provide written notice to DERM of any change in key officials within four (4) weeks of such change.

DERM: Frank Bernardino, Assistant to the Director, shall act as the authorized technical representative for DERM with regard to the technical scope of this Agreement. The COUNTY shall provide written notice to the DER of any change in authorized technical representative within four (4) weeks of such change.

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ARTICLE V.        PROPERTY UTILIZATION        N/A

ARTICLE VI.       PRIOR APPROVAL        N/A

ARTICLE VII.     REPORTS

1)        Quarterly reports will be generated by Everglades National Park for the restoration work occurring in the "Hole-in-the-Donut" and provided to the member agencies of the SAMP Committee to communicate progress of the program.

2)        The COUNTY shall provide to the DER a monthly statement in writing, showing the net amount remaining in the FWMT Fund (which "net amount" shall equal the monthly gross income to the FWMT Fund, plus the accrued monthly interests, minus any disbursements made pursuant to Article II, Paragraphs 2 and 3 of this Agreement, including payment of invoices for project costs associated with the restoration of that area of the Park known as the "Hole-in-the-Donut"), by no later than thirty (30) days after the end of each month.

3)        The COUNTY shall submit an annual report to the DER for the previous fiscal year (October 1st through September 30th), due on January 1st of every year, detailing the amounts of monies collected and disbursed, including any disbursement to the COUNTY for administrative costs pursuant to Article II, Paragraph 3.

ARTICLE VIII. AMENDMENT

This Agreement may be modified by amendment upon mutual written agreement of both parties.

ARTICLE IX. TERMINATION

(a) This Agreement shall terminate automatically unless the same is extended pursuant to Article III by mutual written agreement prior to the expiration date of this Agreement.

(b) Either the DER or the COUNTY may terminate this Agreement at any time by providing sixty (60) days written notice to the other party, provided that all monies have been disbursed to the Park as required by DER permit conditions and that no other monies required to be deposited into the FWMT Fund by DER permit conditions remain in the fund.

ARTICLE X. REQUIRED CLAUSES

"During the performance of this Agreement, the participants agree to abide by the terms of Executive Order 11246 on nondiscrimination and will not discriminate against any person because of race, color, religion, sex or national origin. The participants will take affirmative action to ensure that applicants are employed without regard to their

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race, color, religion, sex or national origin."

"No member or delegate to Congress, the State Legislature, or resident Commissioner, shall be admitted to any share or part of this agreement, or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this Agreement if made with a corporation for its general benefit."

ARTICLE XI. NOTICES

All notices required or permitted to be given under the terms and provisions of this agreement by either party to the other shall be in writing and shall be sent by registered or certified mail, return receipt requested, to the parties as follows:

As to the COUNTY:

John W. Renfrow, Director  
Attn.: Frank Bernardino  
111 N.W. 1st Street, Suite 1310  
Miami, Florida 33128

As to the DER:

Virginia B. Wetherell, Secretary  
Attn.: Janet Llewellyn  
Florida Department of Environmental Regulation  
2600 Blair Stone Road  
Twin Towers  
Tallahassee, Florida 32399

or to such other address as may hereafter be provided by the

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

FLORIDA DEPARTMENT OF ENVIRONMENTAL REGULATION

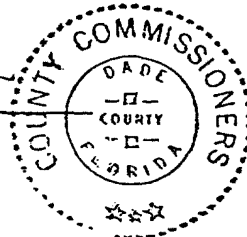
By: Virginia B. Wetherell 6/29/93  
Virginia B. Wetherell Date  
Secretary

METROPOLITAN DADE COUNTY

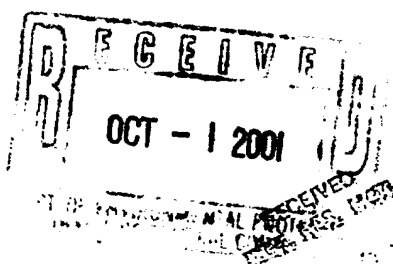
By: [Signature]  
Joaquin G. Avino Date  
P.E., P.L.S.  
County Manager

Attest:

[Signature]  
By: Deputy Clerk



Approved by County Attorney as to form and legal sufficiency TM



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 XII. VENUE

Any litigation hereunder shall be brought in the applicable state or federal court in Dade County or Leon County, Florida.

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