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ORDER OF DELEGATION AND OPERATING AGREEMENT
BETWEEN
THE FLORIDA DEPARTMENT OF ENVIRONMENTAL
PROTECTION
AND
PALM BEACH COUNTY THROUGH ITS DEPARTMENT OF ENVIRONMENTAL
RESOURCES MANAGEMENT
REGARDING
ENVIRONMENTAL RESOURCE NOTICED GENERAL PERMIT 62-341.630, F.A.C.,
FOR SINGLE FAMILY RESIDENTIAL LOTS WITHIN THE
INDIAN TRAIL WATER CONTROL DISTRICT

THIS ORDER OF DELEGATION AND OPERATING AGREEMENT is executed and entered into by and between the Florida Department of Environmental Protection (the Department) and Palm Beach County through its Department of Environmental Resources Management (ERM). By execution of this order of delegation and operating agreement, the Department delegates its authority to ERM to implement, as described in Part III of the Agreement, the noticed general environmental resources permit for single family residential lots within the Indian Trail Water Control District adopted in rule 62-341.630, Florida Administrative Code (F.A.C.). The effective date of this delegation order and operating agreement is as provided herein.

PART I. FINDINGS

A. Palm Beach County through its Department of Environmental Resources Management (hereinafter referred to as ERM), is operating pursuant to the Charter of Palm Beach County, Florida, promulgated by Ordinance 84-8, as amended, and has the legal ability to accept and fully implement the delegation described herein.

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B. Pursuant to Part IV of Chapter 373, F.S., and chapters 62-113, 62-330, 62-340, 62-341 and 62-343, F.A.C., the Department has established an environmental resource permit program. As part of that program, the Department has established, through rule 62-341.630, F.A.C., a noticed general environmental resource permit pursuant to Part IV of Chapter 373, F.S., for single family residential lots within the M-1 and M-2 basins of the Indian Trail Water Control District in Palm Beach County.

C. The Department, pursuant to section 373.441, F.S., is authorized to delegate all or part of its authority to implement an environmental resource permit program under Part IV of Chapter 373, F.S., to a county, municipality or local pollution control program which has the financial, technical, and administrative capabilities and desire to implement the environmental resource permit program.

D. The Department, pursuant to Section 373.441, F.S., has adopted Chapter 62-344, F.A.C., establishing the procedures for delegating the environmental resource permit program to local governments, and guiding the participation of counties, municipalities, and local pollution control programs in the implementation of the environmental resource permit program.

E. The Department and ERM desire to increase governmental efficiency while maintaining levels of environmental protection.

F. The Indian Trail Water Resource Task Force, comprised of representatives of the Department, Palm Beach County, the South Florida Water Management District, the U.S. Army Corps of Engineers, the Acreage Land Owners Association, the Palm Beach County Public Health Unit, and the Indian Trail Water Control District, at the request of the Department, voluntarily convened several times during 1995 to address and resolve wetland permitting issues in the M-1 and M-2 basins of the Indian Trail Water Control District.

G. On June 30, 1995, the Indian Trail Water Resource Task Force, through its Final Report, presented to the Department proposed recommendations to address wetland permitting issues. To accomplish these recommendations, the Department proposed promulgating an environmental resource noticed general permit for single family residential lots within the M1 and M2 Basins of the Indian Trail Water Control District, with subsequent Department delegation to ERM of the authority to implement a noticed general environmental resource permit, such as that established in rule 62-341.630, F.A.C. This proposed solution has been approved conceptually by the Board of County Commissioners of Palm Beach County.

H. ERM has the financial, technical, and administrative capabilities to implement the delegation set forth herein regarding implementation of the noticed general environmental resource permit program established in rule 62-341.630, F.A.C., for single family residential lots within the Indian Trail Water Control District in Palm Beach County.

THEREFORE, in consideration of the above and the mutual covenants and agreements hereinafter contained, it is ORDERED AND AGREED as follows.

PART II. ORDER OF DELEGATION

A. Under section 373.441, Florida Statutes, and chapter 62-344, Florida Administrative Code, the Florida Department of Environmental Protection hereby delegates to ERM, the authority to implement, the noticed general environmental resource permit for single family residential lots with the Indian Trail Water Control District adopted in rule 62-341.630, Florida Administrative Code.

B. This delegation shall become effective as provided in the operating agreement set forth in *Part III* below, and shall remain in effect until terminated pursuant to the provisions of Article I, paragraph J of the operating agreement.

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C. Nothing herein shall limit or restrict ERM's authority to enforce any lawful regulations adopted by Palm Beach County to the fullest extent possible.

PART III. OPERATING AGREEMENT

ARTICLE I. ADMINISTRATION OF AGREEMENT

A. PARTIES AND PURPOSE

1. The parties to this agreement are the Department and Palm Beach County (through its Department of Environmental Resources Management, as noted above).

2. The purpose of this Agreement is to establish the framework and procedures for the implementation of the above delegation.

3. This Agreement also describes the enforcement, compliance, guidance and oversight responsibilities of the Department as they relate to the delegated program. Further, the Agreement establishes the responsibilities of ERM regarding maintaining adequate levels of administrative, technical and financial capabilities to implement the delegated part of the environmental resource permit program, and ERM's responsibilities for reporting to and maintaining communication with the Department.

B. DEFINITIONS

1. The terms used in this Agreement are as defined in Chapter 62-344, F.A.C.

2. The term "implement", as used in this Agreement, shall mean determining whether an applicant qualifies to conduct the activities authorized in the noticed general in rule 62-341.630, F.A.C., and the responsibility for collecting the moneys and administering the purchase, restoration and management of the lands specified in the noticed general permit.

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C. SCOPE OF PERMITTING, COMPLIANCE AND ENFORCEMENT RESPONSIBILITIES UNDER THE AGREEMENT

1. ERM's Responsibilities

a. ERM shall implement the noticed general environmental resource permit for single family residential lots within the Indian Trail Water Control District adopted in rule 62-341.630, F.A.C., including the collection of a \$250 payment per lot from lot owners proposing to conduct activities under the noticed general permit, as mitigation for all adverse impacts of each activity carried out under the noticed general permit. Such moneys collected shall be applied to the purchase, restoration or management of at least 200 acres of land, including wetlands and other surface waters, within Unit 11 of the Indian Trail Water Control District.

b. ERM shall refer cases of non-compliance on single family lots to the Department for enforcement action through a standard case referral. These referrals may include non-compliance with any of the conditions set forth in paragraph 2 of the noticed general permit adopted by rule 62-341.630, F.A.C.

c. ERM shall monitor the implementation of Recommendation #2 of the Task Force Report, which requires the Indian Trail Water Control District to assess a one-time fee of approximately \$56 per acre (to be collected over a two-year period), from all M-1 and M-2 landowners within its jurisdiction, which moneys are to be used to create an acquisition fund of \$1.18 million, to be used by Palm Beach County for use in purchasing a 200 acre wildlife corridor in Unit 11. In addition, ERM shall monitor the implementation of the mitigation requirements of the noticed general permit in rule 62-341.630(2)(c), F.A.C., regarding the application of money collected for the purchase, restoration, or management of this land.

2. Department's Responsibilities

a. The Department retains compliance and enforcement responsibilities for single family residential lots within the Indian Trail Water Control District.

b. The Department shall review the reports required herein to ensure the terms of this Agreement and order of delegation are met.

c. The Department retains all other responsibilities it has under the environmental permitting program under Part IV of Chapter 373, F.S..

D. EFFECTIVE DATE

This Agreement shall become effective upon execution by the Secretary of the Department and by the Board of County Commissioners of Palm Beach County on behalf of ERM, and after adoption by rule by the Department.

E. DURATION OF AGREEMENT

This Agreement shall remain in effect until amended or terminated pursuant to paragraphs F and J of this Article.

F. MODIFICATION OF AGREEMENT

This Agreement, and any Appendices or Exhibits ("Attachments") may be modified in writing at any time as necessary by mutual consent of the Department and ERM. Modifications may be made in whole, by part, or by section, and upon execution by the parties and incorporation by reference by rule amendment as noted below shall supersede previous versions of this Agreement. Any proposed changes shall be identified and set forth in writing by the party proposing the change. Modification to the text of this Agreement shall be executed in the same manner as this Agreement. Any such

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modifications shall be effective after incorporation by reference through an amendment to the Department's rule which adopts the delegation agreement by reference.

G. CONFLICT BETWEEN AGREEMENTS

This Agreement shall supersede any prior understanding, Agreement, memorandum, letter or other written or verbal arrangement between the parties regarding the delegation of authority to issue, or regarding the processing of, management and storage of surface waters permit or environmental resource permits under Part IV of Chapter 373, F.S., and wetland resource permits pursuant to Section 403.91-938, F.S. (1984, as amended), within the geographical territory of the Indian Trail Water Control District in Palm Beach County.

H. REVIEW OF AGREEMENT

This Agreement shall be jointly reviewed by the parties after the first year following the effective date of this Agreement. The purpose of the review is to determine the effectiveness and efficiency of this Agreement and identify and negotiate any needed modifications. Similar reviews may be held at any other time at the request of either party.

I. SEVERABILITY

If any part of this Agreement is judicially, administratively or otherwise determined to be invalid or unenforceable, the other provisions of this Agreement shall remain in full force and effect, provided that both parties agree that the material purposes of this Agreement can be determined and effectuated.

J. TERMINATION OF AGREEMENT

Either party may terminate this Agreement as provided herein with or without cause following prior written notice to the other. The notice submitted by the Department shall be signed by the

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Secretary; the notice submitted by ERM shall be signed by the Director. If both parties agree, termination may be immediately effective. Otherwise, within 60 days of a notice of intent to terminate this Agreement, both parties shall make good faith efforts to preserve the Agreement by attempting to resolve any basis for the termination. If after 60 days one or both of the parties still wish to terminate this Agreement, it shall then be formally terminated 150 days following receipt of the above written termination notification. This Agreement may also be terminated by future agreements between the parties which expressly provide for supersedure of this Agreement.

ARTICLE II. PROGRAM MANAGEMENT

A. RESPONSIBLE STAFF

The Department's Director of the Division of Environmental Resource Permitting, the Department's Director of District Management, or their designees, and ERM's Director or designee shall coordinate the implementation of their respective portions of the environmental resource permit program to insure consistent and effective implementation of the program.

B. BUDGET

ERM shall, not later than the end of the first quarter of each of its fiscal years, provide a summary of its approved budget outlining funding and staffing relevant to the delegated program. ERM shall make its budget summary available to the Department upon request. ERM shall maintain an adequate level of program funding, staffing, and equipment to comply with all statutes, rules, and policies pertaining to the delegated authority.

C. PERSONNEL

Attached to this Agreement as Exhibit 1 is a Table of Organization of ERM which gives detailed description of existing or proposed staff positions to carry out ERM's obligations under this

Agreement. Attached as Exhibit 2 are the detailed job descriptions and qualifications required of actual incumbents. ERM shall hire and maintain a staff capable of performing the duties specified in this Agreement. ERM shall provide the Department with updated copies of Exhibit 1 at least annually on the anniversary of the effective date of this Agreement.

D. PERMIT AND MITIGATION FEES

ERM may elect to waive the noticed general permit application fee in Section 62-4.050, F.A.C. However, at a minimum, ERM shall collect from the owner proposing to conduct activities under the noticed general permit, a \$250 payment per lot as full mitigation for all adverse impacts of the activity to be carried out under the noticed general permit. If an individual lot owner proposing to conduct activities under the noticed general permit fails to comply with the requirement for the \$250 payment, ERM shall notify the lot owner that the proposed activity may not be conducted under the noticed general permit and that an individual permit may be required from the Department. These funds shall be retained in a segregated account in the Palm Beach County Pollution Recovery Trust Fund and applied as set forth in rule 62-341.630, F.A.C.

ARTICLE III. RECORDS MANAGEMENT

A. GENERAL REQUIREMENTS

ERM shall maintain organized files of all public records and materials prepared or received in connection with any official business taken pursuant to this Agreement which is intended to perpetuate, communicate or formalize knowledge. ERM shall comply with Chapter 119, F.S., with regard to the inspection, copying, maintenance and disposition of these records.

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B. REPORTING TO THE DEPARTMENT

To ensure the correct application of the terms of Section 62-341.630, F.A.C., to determine if the funds received by ERM for the delegated activities have been accounted for and distributed in accordance with this agreement, and to determine the progress of the purchase, restoration and management of the 200 acres of land within Unit 11, ERM shall submit an annual report to the Department which describes ERM's activities for the previous year for its responsibilities outlined in this Agreement. The report shall include:

1. A summary of the use of the noticed general permit, consisting of a list of all lots which contain wetlands within the M1 and M2 Basins of the Indian Trail Water Control District, with an identification of those lots for which a building permit has been issued or for which a \$250 payment has been made, the date of payment, the name of the property owner, and the location of the lot in the form of a property control number as it appears on the tax rolls;

2. A summary of the mitigation undertaken to offset the loss of wetlands within the M1 and M2 Basins of the Indian Trail Water Control District, consisting of an annual report from ERM to the Department which summarizes the status of:

a. The total dollars collected from the \$56 per lot assessment on all lands within the Indian Trail Water Control District M1 and M2 Basins;

b. The total dollars collected from the \$250 per lot payment from owners of wetland properties within the Indian Trail Water Control District M1 and M2 Basins;

c. The total acreage and location of lands purchased within Unit 11 of the Indian Trail Water Control District, including the total moneys expended to purchase such lands per reporting period;

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d. A summary of all restoration activities undertaken on the lands purchased within Unit 11, including the costs associated with such restoration efforts per reporting period;

e. A summary of all management efforts undertaken on the lands purchased within Unit 11, including the costs associated with such management efforts per reporting period; and

f. A summary of acquisition, restoration, and management efforts targeted for the next reporting period, including estimated costs for such efforts.

3. The above reports are to be submitted during January for the previous year until the acquisition and restoration efforts are completed. The reports shall be submitted to the Department offices listed in Article IV.

ARTICLE IV. NOTICES

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

DEPARTMENT OF ENVIRONMENTAL
PROTECTION
Program Administrator,
Environmental Resource Permitting
Southeast District Office
1900 S. Congress Ave., Suite K
P.O. Box 15425
West Palm Beach, FL 33416

PALM BEACH COUNTY DEPARTMENT
OF ENVIRONMENTAL RESOURCES
MANAGEMENT
Richard E. Walesky, Director
3323 Belvedere Road, Bldg. 502
West Palm Beach, FL 33406

DEPARTMENT OF ENVIRONMENTAL
PROTECTION
Division of Environmental Resource Permitting
Division Director, M.S. 2505
2600 Blair Stone Road
Tallahassee, FL 32399-2400

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P.O. BOX 15425
WEST PALM BEACH, FL 33416

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 V. RIGHTS OF OTHERS

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.

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

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

By: Virginia B. Wetherell
VIRGINIA B. WETHERELL
Secretary
3900 Commonwealth Blvd.
Tallahassee, FL 32399-3000

PALM BEACH COUNTY
BOARD OF COUNTY
COMMISSIONERS

By: Ken Foster
Ken Foster, Chair
Palm Beach County Board of County
Commissioners

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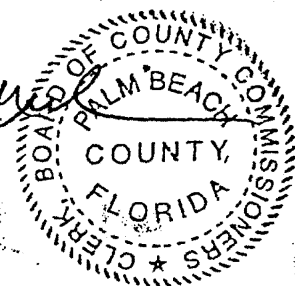
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Clerked and filed this ____ day of _____
by the above noted duly appointed Clerk of the
Department of Environmental Protection.

Attest:
Dorothy H. Wilken, Clerk

By: Barbara A. Meek
Deputy Clerk

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY
[Signature]
COUNTY ATTORNEY



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DOROTHY H. WILKEN