

**MEMORANDUM OF AGREEMENT BETWEEN THE
ST. JOHNS RIVER WATER MANAGEMENT DISTRICT
AND THE CITY OF APOPKA
FOR THE USE OF WATER FROM THE
NORTH SHORE RESTORATION AREA AT LAKE APOPKA**

THIS MEMORANDUM OF AGREEMENT (MOA) is entered into between the GOVERNING BOARD of the ST. JOHNS RIVER WATER MANAGEMENT DISTRICT ("the District"), whose address is 4049 Reid Street, Palatka, Florida 32177, and the CITY OF APOPKA (the "City"), whose address is P.O. Box 1229, Apopka, Florida 32704-1229.

WITNESSETH THAT:

WHEREAS, the District is a special taxing district created by the Florida Legislature and given those powers and responsibilities enumerated in Chapter 373, Fla. Stat., and the City is a municipality incorporated under Chapter 166, Fla. Stat.; and

WHEREAS, the City has a reclaimed water system called the City of Apopka Reclaimed Water Supplement ("the Project"); and

WHEREAS, the District owns and manages the North Shore Restoration Area (NSRA) at Lake Apopka; and

WHEREAS, the need for reclaimed water from the Project is rapidly expanding as the population of the City's service area increases, and the City and the District both desire to reduce the need for groundwater withdrawals for irrigation; and

WHEREAS, the City has applied for a Consumptive Use Permit (CUP) to withdraw up to 5.0 mgd (average day) of surface water from the NSRA to supplement the Project; and

WHEREAS, the City seeks to construct a facility within the NSRA that will withdraw surface water from the NSRA, and treat that water through a wetland filtration system prior to introducing the surface water into the Project (the Facility); and

WHEREAS, pursuant to subsection 373.461(1)(c), Fla. Stat., the Legislature has found that the acquisition of the lands in agricultural production which discharge phosphorus to Lake Apopka would serve the public interest by eliminating the impacts of introduction of phosphorus from these sources into the lake; and

WHEREAS, the Facility will reduce the need to discharge water from the NSRA into Lake Apopka, which will improve the water quality of Lake Apopka and lower the District's cost of operation, which includes providing alum treatment for water that is discharged from the NSRA into Lake Apopka; and

WHEREAS, the Facility will require approximately 35 acres of District-owned land within the NSRA, and will also require modification of the water control infrastructure within the NSRA; and

WHEREAS, in addition to this MOA, in order to utilize the lands subject to this MOA the parties will enter into a lease regarding the lands necessary for the Facility; and

WHEREAS, the Facility is intended to be located on land that is subject to a conservation easement granted by the District to the United States Department of Agriculture, Natural Resources Conservation Service (NRCS), under the Wetland Reserve Program (WRP); and

WHEREAS, pursuant to that conservation easement, the NRCS must grant a Compatible Use Authorization (CUA) for the construction of the Facility, upon a determination that the use of the Facility will not conflict with the purposes of the conservation easement; and

WHEREAS, in order to grant said CUA, NRCS has determined that it is necessary for the District to informally consult with the United States Fish and Wildlife Service (USFWS) as to potential impact upon threatened and endangered species and take such remedial measures as may be required by USFWS; and

WHEREAS, in order to consult with the USFWS, it will be necessary for the District to prepare a Biological Assessment of the lands upon which the Facility will be constructed, which will include an Environmental Risk Assessment of the effect any environmental contaminants associated with former agricultural operations on said lands may have upon threatened and endangered species when surface waters are introduced into the Facility for the purpose of the Project; and

WHEREAS, it is the intention of the parties that the City bear the full cost of construction and operation of the Facility, including any cost associated with preparing the Biological Assessment and taking any remedial measures that may be recommended by USFWS as a result of informal consultation.

NOW, THEREFORE, in consideration of the aforesaid premises, which are hereby incorporated by reference and made a part of this MOA, and other good and valuable consideration, receipt of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

1. **Term.** The Effective Date of this MOA shall be the date upon which the last party to this MOA has dated and executed the same. This MOA shall remain in effect for so long as the City is authorized by District Consumptive Use Permit No. 102497 (including any modifications or renewals of this permit) to withdraw surface water from the NSRA to supplement its reclaimed water supply.

2. Statement of Work.

(a) The District and City shall perform their respective responsibilities, as described in the Statement of Work, attached Exhibit "A" (the Work), which is by reference made a part hereof. The District and the City shall jointly review the existing NSRA canal system infrastructure and determine the modifications necessary for construction and operation of the Facility. Upon District and NRCS approval, the District may design and/or construct the necessary modifications to the NSRA infrastructure, or may, at its discretion, authorize the City to design and/or construct said modifications, or any portion thereof, with full reimbursement by the City, as provided in paragraph 3, below.

(b) Nothing in this MOA shall be construed to afford the City any right or entitlement to water from the NSRA. The operation of the Facility to withdraw and treat water from the NSRA is at all times subordinate to the operational requirements and management objectives of the NSRA, as established by the District and NRCS within their sole judgment and discretion, as they presently exist and may be modified in the future. The City bears the sole risk that the construction, operation, and use of the Facility will meet its objectives for the Project. It is presently understood and agreed that operational limitations shall include the following:

- (1) Water levels in the wetlands will be managed separately for each of the eight phases within the NSRA. The average minimum water level for withdrawal across all of the wetlands has been estimated at 62.25 in the NSRA. Since all eight phases will be managed at different levels, a single value does not provide sufficient guidance for setting trigger values for when withdrawal can occur. Therefore, the water level in the Lust Road Canal, a main NSRA collection canal, shall be used as the sole trigger value within the NSRA as to when withdrawal can occur. No water shall be withdrawn for the City from the NSRA when the water level at the intersection of the Lust Road Canal and Airport Road Canal drops below 58.25 feet NGVD, and
- (2) In addition to water levels in the Lust Road Canal, no water shall be withdrawn for the City from the NSRA when the water level in Lake Apopka is at or below 66.25 feet NGVD, as measured by the District's Lake Apopka staff gauge at Oakland, FL.
- (3) The operational limitations of this paragraph are supplemental to and independent of the terms or conditions incorporated within Consumptive Use Permit No. 102497 authorizing the water withdrawals that are the subject of this MOA.

(c) The quantities that are available for withdrawal from the NSRA and the related operational limitations are based upon the District's estimate of presently available surplus surface water supplies, after taking into consideration the District's management objectives for Lake Apopka and the NSRA. The above operational limitations on available quantities are subject to modification by the District at any time based upon the availability of surplus surface water from these areas, which may change in conjunction with changes to management practices for Lake Apopka and/or the NSRA. If the District modifies the above operational limitations,

the District shall provide written notice of such modification to the City at least 180 days prior to such modification becoming effective. Prior to undertaking such modification District staff shall consult with the City staff in good faith to help ensure City staff are aware of a pending modification change so that the City can address its reclaimed water system accordingly.

(d) This MOA constitutes the entire agreement of the parties and can be amended only by a written instrument referencing this MOA and signed by both parties. The parties are not bound by any stipulations, representations, agreements, or promises, oral or otherwise, not printed or inserted in this MOA. In addition to the express terms and conditions hereof, this MOA is subject to the terms and conditions of the following: (1) the City's receipt of a consumptive use permit from the District for withdrawal of water from the NSRA to supplement the City's reclaimed water supply; (2) the City's responsibility for compliance with any and all permit(s) granted to the City for the Project; (3) the lease agreement between the District and the City; (4) the above-described NRCS conservation easement; and (5) the City's responsibility for compliance with all environmental laws applicable to its construction and operation of the Facility.

(e) This MOA shall govern construction and operation of the Facility, including any improvements that are to be made to the infrastructure within the NSRA. Upon development of a plan pursuant to this MOA for the specific infrastructure modifications necessary for construction of the Facility, the parties shall prepare a memorandum, which shall be signed by the parties' duly authorized representatives, apportioning responsibility between the parties for the construction of such modifications. This memorandum shall become a supplement to this MOA and shall be binding upon the parties and subject to all of the terms and conditions provided herein, unless expressly stated otherwise in said memorandum. This memorandum shall also include any other related matters agreed upon by the parties that are not expressly addressed herein.

(f) At all times the parties hereto are separate and distinct governmental entities. Each party is acting independently of the other under its governmental authority, as governed and coordinated by this MOA regarding their respective responsibilities. Neither party is the agent of the other, except as may otherwise be expressly provided herein. Neither party is a contractor of the other with regard to design, construction, or operation of the Facility.

3. **Cost of Improvements and Operation.** The City shall be responsible for all costs associated with: (1) design, construction, and operation of the Facility; (2) modifications to the water control infrastructure within the NSRA that are necessary for or related to the Facility; (3) obtaining all governmental approvals, including preparation of a Biological Assessment for USFWS; (4) any sampling, analysis and remediation costs for the lands that will be utilized for the Facility; (5) maintenance and repair of the Facility; and (6) any other costs attributable to design, construction, or operation of the Facility. The District shall bear the cost of District staff time and expenses incurred in fulfilling the District's duties under this MOA; provided, however, that the City shall reimburse the District for any costs associated with independent contractors retained by the District to provide services related to this MOA, including contingent workers provided by third-party employers. The District shall notify the City in advance of retaining any contractor(s) to provide services related to this MOA and the estimated cost thereof.

Notwithstanding the provisions of paragraph 8, below, to the extent permitted by Florida law, the City shall hold the District harmless from any and all losses or damages that may occur as a result of construction activities that are implemented by the City and/or its contractors, and shall require its contractors to obtain commercial general liability insurance on an "Occurrence Basis," with limits of liability not less than \$1,000,000 per occurrence and/or aggregate combined single limit, personal injury, bodily injury, and property damage coverage. The City agrees that prior to execution of this MOA, the District retained a contractor to take soil samples of the lands that will be utilized for the Facility, and that these costs shall be reimbursed by the City. This MOA shall not be construed to prevent the City from applying for funding for the Facility pursuant to any of the alternative water supply cost-sharing programs administered by the District. In such event, the District cost-share shall be applied toward the costs the City is responsible for payment of pursuant to this MOA.

4. **Project Management.** The District and the City designate the following Project Managers:

For the District:
Dave Walker
Division of Project Management
Department of Water Resources
St. Johns River Water Management District
4049 Reid Street,
Palatka, Florida 32178-1429
Telephone: (386) 329-4833
Fax: (386) 329-4329
dwalker@sjrwmd.com

For the City:
John Jjreji, P.E.
Public Service Director
City of Apopka
P.O. Box 1229
Apopka, Florida 32704-1229
Telephone: (407) 703-1731
Fax: (407) 703-1748
jjreji@apopka.net

The parties shall direct all matters arising in connection with the performance of this MOA to the attention of the Project Managers for attempted resolution or action. The Project Managers shall be responsible for overall coordination and oversight relating to the performance of the work under this MOA. All notices to the parties under this MOA shall be in writing and sent via certified mail to each Project Manager at the names and addresses specified above. All notices shall be considered delivered upon receipt. Should either party change its address or project manager, immediate written notice of the new address shall be promptly sent to the other parties.

5. **Access.** The District will provide the City sufficient access to accomplish the Work. Land access to the work area shall be restricted to the route designated by the District. All access routes shall be used for the purpose of the Work only. The City shall not disturb lands or waters outside the area of activity, except as may be found necessary and authorized by the District. The City shall keep all gates to District lands or easements closed and locked in accordance with District specifications when not in use, and shall immediately notify the District when a gate has become impaired due to vandalism or other cause. The City shall be responsible for providing lock(s) to District properties, unless otherwise stated in the Statement of Work.

6. **Audit.** Each party agrees that the other party or their duly authorized representatives shall, until the expiration of three (3) years after the completion of this MOA, and subject to

attorney-client privileges and attorney work product, have access to examine the other party's documents, papers, and records related to this MOA.

7. **Governing law, venue, attorney's fees, waiver of jury trial.** This MOA shall be construed according to the laws of Florida and shall not be construed more strictly against one party than against the other because it may have been drafted by one of the parties. In the event of any legal proceedings arising from or related to this contract: (1) venue shall be in Orange County; (2) each party shall bear its own attorney's fees, including appeals; (3) for civil proceedings, the parties hereby consent to trial by the court and waive the right to jury trial.

8. **Indemnity.** Each party is responsible for all personal injury and property damage attributable to the negligent acts or omissions of that party, its officers, employees, agents, and contractors. In addition, each party is subject to the provisions of section 768.28, Fla. Stat., as amended. Nothing in this MOA shall be construed as a waiver of sovereign immunity by either party.

9. **Insurance.** Each party shall also acquire and maintain throughout the term of this Agreement such general liability, automobile insurance, and workers' compensation insurance as required by their current rules and regulations.

10. **Land and water resources.** The City shall not discharge or permit the discharge, directly or indirectly, of any fuels, oils, calcium chloride, acids, insecticides, herbicides, wastes, toxic or hazardous substances, or other pollutants or harmful materials, onto any lands or into any surface or ground waters, including, but not limited to, streams, lakes, rivers, canals, ditches, or reservoirs. The City shall investigate and comply with all applicable federal, state, county, and municipal laws concerning toxic wastes, hazardous substances, and pollution of surface and ground waters. If any waste, toxic or hazardous substance, or other material that can cause pollution, as defined in section 403.031, Fla. Stat., is dumped or spilled in unauthorized areas, the City shall notify the District thereof within one (1) workday and thereafter shall remove the material and restore the area to its original condition. If necessary, contaminated ground shall be excavated and disposed of as directed by the District and replaced with suitable fill material, compacted and finished with topsoil, and planted as required to re-establish vegetation. All cleanup and disposal costs shall be borne by the City.

11. **Organochlorine Pesticides.** The NSRA is former agricultural property. Soil samples from the NSRA indicate organochlorine pesticide levels that exceed Florida Department of Environmental Protection's Industrial/Commercial soil cleanup target levels. The City and its contractors working in the NSRA are responsible for taking all appropriate measures to provide for employee safety. Recommended measures should be designed to minimize contact with the soil through engineering controls, which may include: (1) wearing waders or rubber boots and gloves to minimize contact with soil and sediments, (2) washing thoroughly with soap and water after contact with soils or sediments, (3) decontaminating any equipment in contact with soil or sediment through washing with soap and water and (4) using enclosed cabs or dust masks to minimize exposure to dust created by the City and its contractor's activities.

12. **Permits.** Except as otherwise provided herein, the City is responsible for obtaining all regulatory approvals necessary for construction and operation of the Facility. Permit applications shall be reviewed and approved by the District prior to submittal.

13. **Petroleum storage tanks.** Any petroleum storage tanks with a capacity of 55 gallons or greater that the City brings onto District property must be either double-walled or kept within secondary containment that will contain 110% of the tank volume.

14. **Public records.** The parties shall allow public access to all documents made or received in performance of this MOA that are subject to Chapter 119, F.S. If either party receives a request pursuant to Chapter 119, F.S., that party shall promptly notify the other of the request. The parties shall cooperate with regard to all such requests so as to respond in a timely manner. Each party to this MOA reserves the right to unilaterally cancel this MOA for refusal by the other party to allow public access to all documents, papers, letters, or other materials related to this MOA and subject to the provisions of Chapter 119, Fla. Stat., as amended.

15. **Safety.** The City has the sole duty to ensure the safety of its employees, contractors, subcontractors, and the general public. The City shall enforce strict discipline and good order among its contractors and employees. Neither the City nor its contractors, subcontractors and servants shall allow any hunting, or any weapons, animals, alcohol, or drugs, on District property. The City shall provide and maintain sufficient protection for the lives and health and safety of its employees and other persons who may utilize any District premise and shall comply with applicable state, federal, and local governmental safety laws, rules, and ordinances.

16. **Termination.** Prior to commencement of construction of the Facility, either party, upon thirty (30) days written notice to the other party, may terminate this MOA for any reason; provided, however, that in the event of termination by the City, the City shall reimburse the District for all non-staff costs incurred prior to the effective date of termination, and all such costs after said date that cannot be avoided. After commencing construction of the Facility, this agreement may only be terminated by either party for cause in the event of any material breach hereof. In such event, the terminating party shall provide the non-terminating party not less than thirty (30) days written notice of the grounds for termination and opportunity to cure within that time period.

IN WITNESS WHEREOF, the ST. JOHNS RIVER WATER MANAGEMENT DISTRICT has caused this MOA to be executed in its name by its Executive Director and the CITY of APOPKA has caused this agreement to be executed in its name by its appropriate representative, all on the day and year below written.

ST. JOHNS RIVER WATER
MANAGEMENT DISTRICT

CITY OF APOPKA

By: 
Kirby B. Green III, Executive Director
St. Johns River Water Management District

By: 
Richard D. Anderson, Chief Administrative
Officer, City of Apopka

Date: December 10, 2008

Date: 1/5/09

Approved as to form and legality


Stanley J. Niego
Sr. Assistant General Counsel, SJRWMD
Attachments:
Exhibit A – Statement of Work

Typed Name and Title

EXHIBIT A - STATEMENT OF WORK

I. INTRODUCTION/BACKGROUND

In addition to applying for a Consumptive Use Permit (CUP) to supplement the supply of reclaimed water for the City of Apopka (City), certain infrastructure requirements within the North Shore Restoration Area (NSRA) at Lake Apopka will be necessary for the City to operate and maintain the Facility and for the District to continue its North Shore Restoration Project operations in the NSRA. The District and the City shall jointly review the existing NSRA canal system infrastructure and determine the modifications necessary for construction and operation of the Facility. Upon District and NRCS approval, the District may design and/or construct the necessary modifications to the NSRA infrastructure, or may, at its discretion, authorize the City to design and/or construct said modifications, or any portion thereof with full reimbursement by the City, as provided in this MOA.

II. OBJECTIVES

The objective of the MOA is to outline the process to review infrastructure needs and complete design and construction of infrastructure necessary for the City's proposed use of water from the NSRA and to explore water storage potential/ reservoir feasibility in Unit 1.

III. TASK IDENTIFICATION – NSRA

- A. The City shall meet with District staff to review the existing NSRA Canal system infrastructure and shall follow up with field visits and surveys as necessary to acquire information necessary to evaluate the existing system in order to determine modifications necessary to provide sufficient hydraulic capacity for the peak pump flow rate proposed at the City's withdrawal point. Hydraulic capacity shall be sufficient to maintain water levels throughout the NSRA Canal system for District project needs and to maintain the peak pump capacity at the City's point of withdrawal. The investigation is expected to include at a minimum a hydraulic analysis and a recommendation of infrastructure modifications. The City shall provide a technical memorandum with the results of the investigation.
- B. A Biological Assessment will be performed by the District and/or its contractors as to the potential impact of the Facility on threatened and endangered species and migratory birds. The Biological Assessment shall include an Environmental Risk Assessment of the effect any environmental contaminants associated with former agricultural operations on Facility lands may have upon threatened and endangered species and migratory birds when surface waters are introduced into the Facility for the purpose of surface water supplementation of the Project. Upon preparation of the Biological Assessment, the District shall engage in informal consultation with USFWS regarding any remedial measures that may be recommended by USFWS. If remedial measures are needed, the parties shall jointly determine the best manner in which to proceed with such measures.

C. Based upon currently available information, required modifications to the NSRA infrastructure shall include the following:

1. Excavation/dredging of the Lust Road canal from Airport Road to the City's proposed point of withdrawal.
2. The deeper section of the Lust Road Canal comes to an east terminus at the Airport Road crossing. The Canal east of this point is shallower and separated by a field road and pump. To hydraulically connect the deepened and widened section of canal described in sub-paragraph 2, above, the pump must be removed and replaced with a culvert.
3. Modifications to the main NSRA canal systems draining to the Lust Road Canal. These modifications are necessary to ensure that District operations are not affected by the lowering of water levels that may occur as a result of the City's withdrawal. The most likely potential alternative is the placement of control structures at the connection points of the main NSRA canals to the Lust Road Canal.

D. In addition to the above modifications, additional modifications may be required based upon the information to be developed pursuant to this MOA.

V. TIME FRAMES

The parties anticipate that the infrastructure modifications in the NSRA necessary to supply surface water to the Facility shall be completed by December 31, 2010. In the event of unanticipated circumstances beyond the reasonable control of the parties, including, but not limited, to delays associated with obtaining any necessary permits or authorizations for the Facility, the parties shall endeavor to complete the Facility as expeditiously as possible, taking into consideration these circumstances.

**AGENDA REQUEST FOR
GOVERNING BOARD MEETING
April 8, 2014**

MEMORANDUM

TO: Governing Board

THROUGH: Hans G. Tanzler III, Executive Director
or
Jeff Cole, Chief of Staff

FROM: Robert Christianson, Director
Strategic Planning and Financial Services

SUBJECT: Memorandum of Agreement between the District and the City of Apopka

RECOMMENDATION

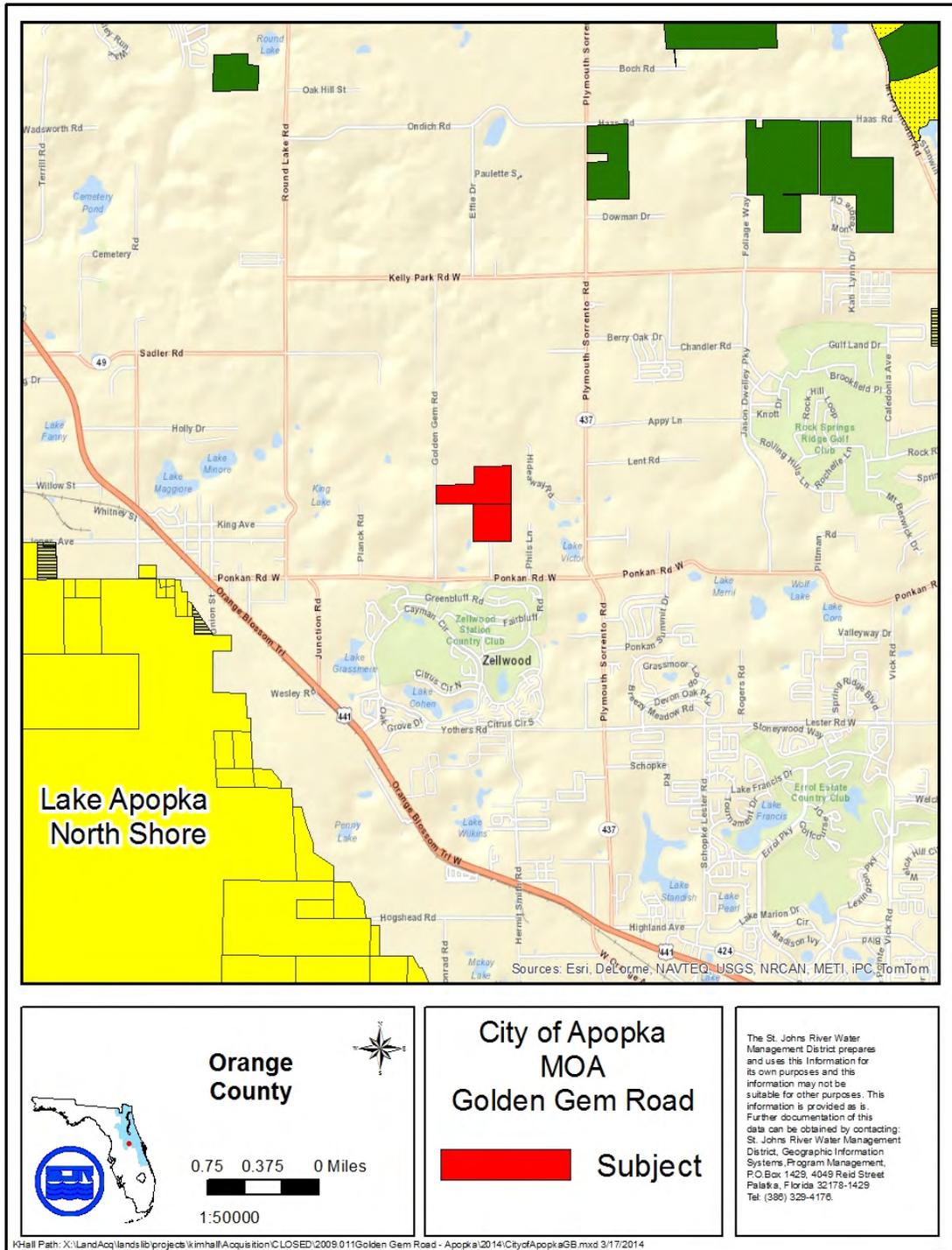
Approval to extend the Memorandum of Agreement between the District and the City of Apopka an additional five years, allowing for the development and management of a reclaimed water storage and aquifer recharge enhancement facility on property donated.

BACKGROUND

The District and City of Apopka (City) entered into a Participation Agreement on April 15, 2009, to identify and acquire parcels of land suitable for a reclaimed water storage and aquifer recharge enhancement facility. Subsequently, the District acquired two parcels of land, one of which is the Golden Gem Road property. The District purchased this 102.75-acre parcel on May 22, 2009, that was subsequently transferred to the City. Following closing, the District entered into a Memorandum of Agreement (MOA) with the City that was recorded on May 27, 2009, for the management and development of a water resource development project for the site. This MOA required the City to complete the design, permitting and construction of the project within five years from that date. If not completed, the District can require, at its option, that the City transfer the ownership to the District or reimburse the full amount that the District funded plus interest at the rate of five percent (5%) per year from the date the payment was made by the District. The purchase price for the property was \$4,492,273.

DISCUSSION

On February 25, 2014, the District received a request from the City to extend the time period for development of this project for an additional five years. The reason for the request is that the City's reclaimed water distribution system does not extend to the site at this time. The City provided the District with a Capital Improvements Plan that shows the schedule and projected funding for this project. This Plan demonstrates that the construction of this project can be completed within the extension period. In addition, the City has committed to fence and secure the property by December 31, 2014, and remove solid waste and treat invasive exotic plants by June 30, 2015.



Review:
Robert Christianson
Jeff Cole

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GOVERNING BOARD MEETING
April 8, 2014**

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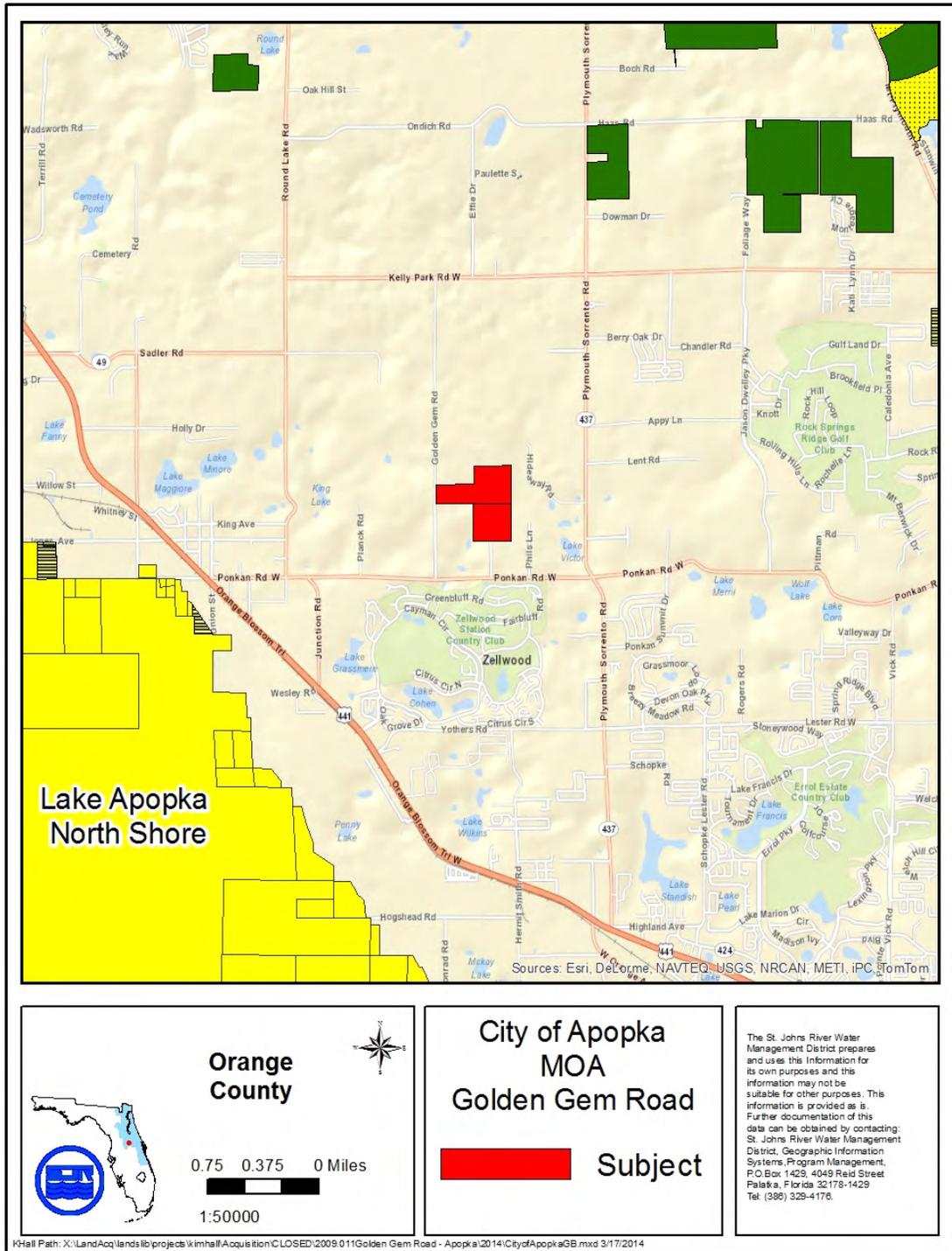
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