



Loblolly Mitigation Bank Audit - #784

Executive Summary

Why CAO Did This Review

Pursuant to Section 5.10 of the City's Charter, Chapter 102 of the Municipal Code, and Section 13 of the Use Agreement between Loblolly Mitigation Preserve, LLC (LMP) and the City of Jacksonville, we conducted an audit of the Loblolly Mitigation Bank (Bank). This audit was conducted at the request of a City Council member. This was the first audit of the Bank.

About Loblolly Mitigation Bank

The Bank is a 6,247 acre plot of land located near US 301, of which the City owns 4,201 acres (67.25%). The City purchased its portion of the land for \$17,444,900 with the understanding that the land would provide wetland credits to offset the impact of numerous roadway and drainage projects that were planned to be undertaken by the City. The bank was also anticipated to produce additional credits that would be available for sale to the general public at the market rate. As of December 31, 2013, the City had received \$25,741,686 in sales proceeds (after taking into account management fees paid to LMP), a net gain of \$8,296,786.

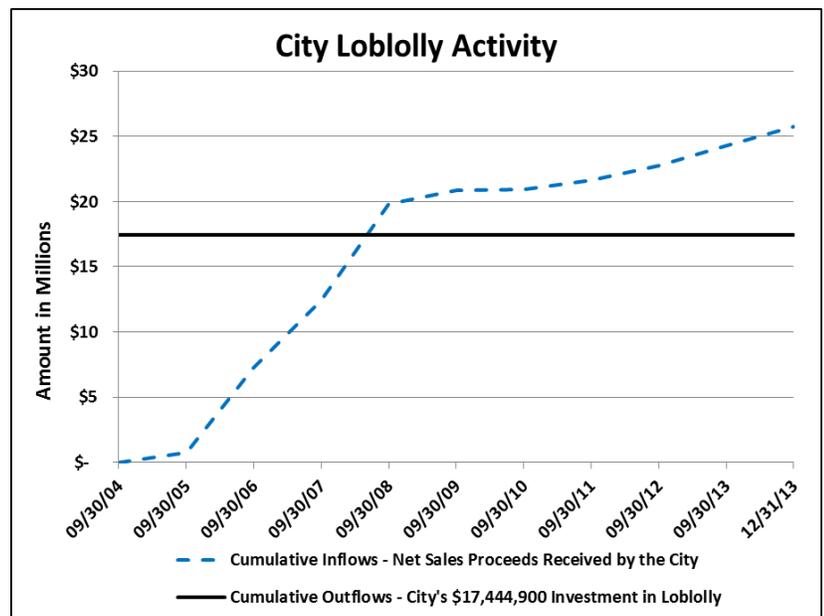
What CAO Recommends

- The City and LMP should cease all activity that is currently occurring outside of the current contract provisions.
- The City and LMP should pursue amendments to the Use Agreement related to ambiguous and non-compliant activity.
- The City should pursue all remedies allowable by the Use Agreement.

What CAO Found

Based on the testing performed, the City and LMP did not follow and fulfill the contractual provisions set forth by the Use Agreement. We found the following issues:

- LMP inappropriately claimed the proceeds from the sale of City-owned mitigation credits in the amount of \$2,123,124.
- The City and LMP participated in a credit trade for which the City was never compensated, and at the time had a value of \$927,510
- LMP owes the City 152+ UMAM credits for future City use or \$1,603,681 from management fees withheld in a manner inconsistent with the provisions of the Use Agreement
- The City was not correctly compensated on some of the credit sales
 - \$27,237 due to differences in price.
 - \$26,957 from the sale of Army Corps of Engineers credits.





Council Auditor's Office

Loblolly Wetland Mitigation Bank Audit

July 16, 2014

Report #784

Released on: September 28, 2016

EXECUTIVE SUMMARY

AUDIT REPORT #784

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OFFICE OF THE COUNCIL AUDITOR
Suite 200, St. James Building



July 16, 2014

Report #784

Honorable Members of the City Council
City of Jacksonville

INTRODUCTION

Pursuant to Section 5.10 of the City's Charter, Chapter 102 of the Municipal Code, and Section 13 of the Use Agreement between Loblolly Mitigation Preserve, LLC (LMP) and the City of Jacksonville, we conducted an audit of the Loblolly Mitigation Bank. During our audit, the Office of the Director in the City's Parks, Recreation and Community Services Department was charged with administering the Use Agreement that was approved by the City Council in Ordinance 2003-488-E.

The Loblolly Mitigation Bank ("Bank") consists of approximately 6,247 acres of land, of which 4,201 (67.25%) is owned by the City, and is permitted by the St. Johns River Water Management District ("District") and the Army Corps of Engineers ("ACOE") for the restoration and preservation of uplands and wetlands. On December 3, 2003, LMP acquired the land from a developer at a price of \$12,250,000. That same day, the City purchased the land from LMP for \$17,444,900. The purpose of the purchase and the Use Agreement was to make 384 wetland credits available to the City to be used in offsetting wetland impacts created by the numerous roadway and drainage projects that the City was going to be undertaking. Rather than purchase the credits outright, the City opted to invest in a mitigation bank that was anticipated to be able to produce excess credits beyond the City's needs. Additionally, LMP was to provide the City excess mitigation credits beyond the 384 credits, which would be available for sale to the general public through the terms of the Use Agreement and were predicted to generate revenue to cover the cost of the initial purchase of land.

The City has benefitted from the decision to invest in a wetland mitigation bank. In addition to receiving wetland credits to be used for City projects, the City has also seen financial gain that can be reinvested in City parks. As of December 31, 2013, the City had received \$25,741,686 in sales proceeds (after taking into account management fees paid to LMP) for a net gain of \$8,296,786 from the initial \$17,444,900 investment.

The wetland mitigation process in Northeast Florida is governed by both the ACOE and the District independently. Mitigation is used to preserve wetland habitats that are damaged or destroyed by construction projects. The mitigation banker is a third party contractor that develops the wetlands that will offset construction projects in the area. The banker's performance is scored based on the completion and success of specified tasks that are then awarded with Mitigation Credits ("credits"). These credits are sold to the construction projects, relieving them of the responsibility of performing the mitigation process themselves.

The Bank, initially permitted by the District on September 9, 2003, was set up to produce Ratio credits under the Wetland Rapid Assessment Procedure (WRAP). At the time, the WRAP method, or Ratio credits, was the most commonly used method of assessing the potential ecological gain of a site. In July of 2012, the Bank underwent a structural change in its reporting with the District. This change consisted of re-evaluating the Bank on the Uniform Mitigation Assessment Method (UMAM). This change was considered necessary to compete in the current market and came at no additional cost to the City. When the structural change was approved by the District, it was determined that all future credits awarded by the District would be UMAM credits. No similar changes were made with the ACOE.

The Bank has been operating continuously since its inception in 2003 and this is the first time that the City has exercised its right to perform an audit.

STATEMENT OF OBJECTIVES

The objective of this audit was to confirm that both the City and LMP have followed and fulfilled the contractual provisions as set forth by the Use Agreement between LMP and the City of Jacksonville.

STATEMENT OF SCOPE AND METHODOLOGY

The initial audit period for detailed testing of contract compliance was June 30, 2003 (effective date of the contract) through September 30, 2013. Our audit included a review of the contractually binding Use Agreement between Loblolly Mitigation Preserve, LLC (LMP) and the City of Jacksonville. We obtained an executed copy of the Use Agreement to determine the responsibilities and requirements of each party.

The audit also included a review of the revenues received and expenditures incurred during the audit period as a result of the Use Agreement. To perform this testing, we obtained a download of the activity (credit ledger) of Loblolly Mitigation Bank from the District's Mitigation Banking website. From this list we created our working population. Some of the testing performed on this population included:

- Matching the City distribution information to the original sale and reservation agreements held by LMP
- Matching the sales and reservation agreements held by LMP to the District credit ledger
- Matching the sales and reservation agreements held by LMP to LMP's bank statements
- Matching the City distribution information to the District credit ledger
- Matching the City distribution information to FAMIS, the City's accounting system
- Recalculating the sales price and applicable City revenue
- Verifying the correct inflation rates were used for calculating City expenses
- Calculating the City's contractually obligated expenses and comparing it to the amounts withheld by LMP

- Cataloging all identifiable credit sales and using the resulting data to identify both the City and LMP's available credits at any point in time

The testing performed for this audit was not done on a limited or sample basis, but rather 100% of the activity within the Bank was subject to the testing described above.

We also reviewed credit releases from other mitigation banks affiliated with LMP that could have been or were partially serviced by the Bank.

Given the significant findings that we found during the audit, we expanded the scope to include all transactions taking place through December 31, 2013.

REPORT FORMAT

Our report is structured to identify Internal Control Weaknesses, Audit Findings, and Opportunities for Improvement as they relate to our audit objectives. Internal control is a process implemented by management to provide reasonable assurance that they achieve their objectives in relation to the effectiveness and efficiency of operations and compliance with applicable laws and regulations. An Internal Control Weakness is therefore defined as either a defect in the design or operation of the internal controls or is an area in which there are currently no internal controls in place to ensure that objectives are met. An Audit Finding is an instance where management has established internal controls and procedures, but responsible parties are not operating in compliance with the established controls and procedures. An Opportunity for Improvement is a suggestion that we believe could enhance operations.

SUGGESTED ADDITIONAL AUDIT WORK

In limiting the scope of this audit, we did not pursue the following areas, and as such they should be considered for future audit work:

- As identified in Finding 9 of this report, LMP failed to provide the required insurance documents to the City's Risk Manager as stipulated in the Use Agreement. Given that most City contracts require some form of certificate of insurance, the City's process for ensuring third parties' compliance with insurance requirements should be examined.

STATEMENT OF AUDITING STANDARDS

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

AUDITEE RESPONSES

Responses from the auditees have been inserted after the respective finding and recommendation. We received original responses from LMP on January 7, 2016, revised responses on February 2, 2016, and second revised responses on May 10, 2016, via Mr. Gresham Stoneburner, an attorney representing LMP. We also received responses from the Administration, via Mr. Sam E. Mousa, Chief Administrative Officer, in a memorandum dated January 5, 2016.

A series of exhibits were provided by LMP along with their responses. These exhibits are attached to the end of this report. The exhibits have been rearranged from the order in which they were received, and have been placed in alphabetical order to prevent any confusion on behalf of the reader. We have also labeled these exhibits as “Provided by LMP.”

AUDIT REPORT TIMELINE

Multiple events took place between the date of audit fieldwork completion (July 16, 2014) and the date of report issuance (September 26, 2016). Several consultations with the Office of General Counsel were necessary to obtain legal interpretations of the terms of the Use Agreement and representations made by LMP. Multiple meetings were necessary with representatives of both LMP and the City in order to attempt to bring the parties to a consensus on the facts of our findings. As such, considerable time was given to LMP to allow them to provide additional documentation to substantiate their claims as evidenced by the sets of responses dated above. Due to the magnitude of the findings identified below, the parties attempted to agree on as many facts as possible prior to audit release.

AUDIT CONCLUSION

Based on the testing performed, LMP and the City have not followed and fulfilled the contractual provisions as set forth by the Use Agreement between LMP and the City of Jacksonville. Additionally, in most instances, the findings we noted were due to LMP operating outside of the contract provisions either intentionally or with the City’s consent. While we acknowledge the City did benefit financially from operating outside of the contract provisions, it appears that deviations from the Use Agreement have also hurt the City financially. Based on our audit work, we determined that LMP owes the City a minimum of \$3,107,178.16. This will need to be offset by amounts owed by the City, which will have to be determined/agreed to between the parties. However, in no instance will the amount owed by the City exceed the amount owed by LMP.

Overall Response Provided by Loblolly Mitigation Preserve

The City entered into the Use Agreement on John Delaney’s last day in office approving the City’s decision to make an investment in Loblolly Mitigation Bank with LMP. Loblolly Mitigation Bank is permitted as a single mitigation bank which develops mitigation credits on behalf of the City and LMP. The City’s investment has proven to be one of the most successful ventures in the City’s history, not only quickly returning to the City substantially more than its entire investment, but also a very handsome profit. In addition, the investment has provided

mitigation credits available to the City for its own use having a value of millions of dollars, as well as a large area to be developed into a public park. To date the City has received in excess of \$26,000,000 in cash and over \$5,000,000 in value from Credits used for City Projects for a total of \$31,000,000. There are remaining Credits with a value of approximately \$24,000,000 and land value in excess of \$10,000,000 for a total value of over \$63,000,000 on an investment of \$17,444,900.¹

The Use Agreement dated June 30, 2004 was the first of its kind in the history of the City so there was no model to work from. As a consequence, the Use Agreement was drafted from scratch with the input of very good attorneys. Over the years the mitigation business has developed (in 2001 there were 219 approved wetland mitigation banks nationwide and in 2013 there were over 1,800 approved wetland mitigation banks nationwide) and the operation of Loblolly Mitigation Bank has been modified to accommodate the City's demands through several different administrations. Throughout Loblolly Mitigation Bank's history, each transaction involving any disposition of the City's mitigation credits was reported to the City and detailed records were forwarded to the City Auditor. Additionally, annual reports were prepared by LMP and submitted to the City and City Auditor.

Shortly after the Use Agreement was entered into, the City passed Ordinance 2004-212 E on April 27, 2004 approving the transfer of 41.12 of City Credits and a sale of 20 City Credits (see Exhibit B). This ordinance was enacted without a modification of Use Agreement and conflicted with the specific requirements of the Use Agreement in several areas including: (i) that the City Credits were used not by the City as required by the Use Agreement but rather were transferred to the Jacksonville Transportation Authority and (ii) City Credits were required to be sold while pursuant to the requirements of the Use Agreement only City Excess Credits could be sold. Unfortunately, the enactment of this ordinance immediately caused a departure from the terms of the Use Agreement.

The City Council during 2005 enacted Ordinance 2005-311-E, which in part requires that the "City shall receive and disburse funds from the sale of **Excess Mitigation Credits** as defined and set forth in the Use Agreement" [emphasis added] (see Exhibit C). The ordinance goes on to provide how the proceeds from "Excess Mitigation Credits" are to be handled. Unfortunately, the term "Excess Mitigation Credits" is not defined in the Use Agreement but presumably refers to City Excess Credits. Once again this ordinance was enacted without the input of LMP and without an indispensable amendment to the Use Agreement defining the term "Excess Mitigation Credits."

Although the Use Agreement requires "City Credits" to be set aside, Mr. Peyton's administration recognized that to do so would not be in the best interests of the City. The Better Jacksonville Plan funded the purchase of the City's portion of the Loblolly Mitigation Bank and the projects to be developed under the Better Jacksonville Plan were anticipated to require the

¹ The City's land consists of 4,201 acres within the mitigation bank and an additional 500 acres which is not encumbered by a conservation easement for a total of 4,701 acres. Based on an estimated value of \$2,000/acre for the property value subject to the conservation easement and \$4,000 for the 500 acres outside of the mitigation bank the value of the land is in excess of \$10,000,000 (see Exhibit A).

384 City Credits. Unfortunately, the projects contemplated by the Better Jacksonville Plan were underfunded and delayed as reported by the Florida Times Union. As a consequence, the Mayor unilaterally reclassified available City Credits as City Excess Credits and instructed LMP to sell the credits (see Exhibit D). The reclassification of the City Credits to City Excess Credits was reported in the Annual Report provided to the City and City Auditor (see Exhibit E). Additional City personnel, including the Council Auditor's office, worked to establish a Trust Fund to receive the monies from the sale of the City Credits which had been reclassified as Excess City Credits (see Exhibit F). The proceeds from the first sales of the Excess City Credits, up to the initial City investment of \$17,444,900, were available to be used to repay the Project Accounts established in connection with implementation of The Better Jacksonville Plan roadway projects or to be reallocated to other City uses.

These policies made economic sense because future City Credits would be produced from future mitigation bank activities so the City would have the required City Credits as needed by the City. As a consequence, with the full knowledge and consent of the City, LMP sold otherwise available City Credits as Excess City Credits and paid the proceeds to the City. Reports of the Excess City Credits were made as the sales occurred and the information on each sale was forwarded to the City Auditor. LMP was at all times available to answer any questions regarding credit sales and to provide the City and City Auditor with any requested information or documentation. This course of action occurred from 2004 through 2015 and was reported in detail not only in the annual reports but also with each and every sale of City Excess Credits (see Exhibits E and G). In the event additional information was needed by the City or City Auditor, LMP made such information available upon request.

The City Auditor's report now adopts the position that the City should have produced 384 City Credits by August 2006 and held them in a lock box, in case they were needed by the City. This interpretation of the Use Agreement ignores the past administrations' interpretation of the Use Agreement as well as the actual language of the Use Agreement. Exhibit B to the Use Agreement specifically provides that the City may "elect to allow LMP to produce City Credits in the next Year to make up the deficit in the prior Year." (see Exhibit I).

The City Council Audit Report, taking into account the events which were requested by the City, and improperly portrays the status and activities of LMP. The City Auditor report fails to acknowledge that the activities of Loblolly Mitigation Bank were fully discussed by, and agreed to by the City. Additionally, the reasonable interpretations of the prior administrations were extremely beneficial to the City and were consistent with prudent business practices and in many cases were to the detriment of LMP.

Council Auditor Rebuttal to LMP Overall Response

LMP makes the statements that "...detailed records were forwarded to the City Auditor" and "Reports of the Excess City Credits were made as the sales occurred and the information on each sale was forwarded to the City Auditor." The records that were forwarded to the Council Auditor's Office were insufficient to confirm the accuracy and validity of each payment made to the City. The documents in reference included spreadsheets (Refer to LMP's Exhibit G) created by LMP identifying the number of credits and price per credit as credits were sold. These values

could not be verified for accuracy and validity without copies of the individual signed contracts between LMP and each purchaser.

LMP also asserts that the City Auditor takes the position that 384 City Credits should have been produced by August 2006 and held in a lockbox until needed. The Council Auditor's Office never takes this stance, but rather assessed compliance with the terms of the Use Agreement and determined that City Credits were sold in a manner not contemplated by the Use Agreement. This issue is further described in Finding 3.

LMP states that "the City Auditor report fails to acknowledge that the activities of Loblolly Mitigation Bank were fully discussed by, and agreed to, by the City." The Council Auditor's comments focus on compliance with the terms of the Use Agreement as this is the only written document in place that governs this third party arrangement. While the Council Auditor's Office acknowledges that the City benefited financially, this does not negate the fact that both the City and LMP operated in direct contradiction to the terms of the Use Agreement. No written evidence of formal changes to the Use Agreement between LMP and the City have been provided to the Council Auditor to substantiate LMP's claims that activities of Loblolly Mitigation Bank were fully discussed by, and agreed to, by the City. Any changes to the Use Agreement between LMP and the City would need to be formally approved by the City Council in order to be in compliance with the terms of the agreement.

LMP refers to the Use Agreement dated June 30, 2004 and a sale of 20 City Credits to JTA. While the information does not have an overall impact on the report, we felt it necessary to correct these two statements. The Use Agreement was dated June 30, 2003 and Ordinance 2004-212-E authorized a sale of 12 City Credits to JTA (see LMP's Exhibit B). LMP also makes reference to the City Council enacting Ordinance 2005-311-E to account for sales proceeds and their allowable uses. The fact that the City established a Loblolly Wetlands Mitigation Special Revenue Fund without the input of LMP or an amendment to the Use Agreement has no bearing on either party's requirements of the Use Agreement.

AUDIT OBJECTIVE #1

To confirm that both the City and LMP have followed and fulfilled the contractual provisions as set forth by the Use Agreement between LMP and the City of Jacksonville.

Internal Control Weakness 1 *Lack of Management Oversight*

The City and LMP operated outside the confines of the Use Agreement in ways that were beneficial, but yet also detrimental to the City's operations. This was caused and allowed by an apparent lack of management oversight from the City. A single City employee was in charge of administering the contract for most of the audit period starting shortly after its inception until the day this employee left City employment. We found no evidence indicating that this employee's manager was involved in overseeing the responsibilities or decisions made by this employee relevant to the Use Agreement. Furthermore, upon the employee's retirement from the City, the

City hired the employee back as a part-time employee because there was not a knowledgeable individual(s) in place as a successor to oversee the Use Agreement.

Recommendation to Internal Control Weakness 1

We recommend that the City provide proper management oversight for the Use Agreement and that a sufficient number of resources are assigned to the process to ensure that the terms of the contract are met by both the City and LMP.

City Response to Internal Control Weakness 1

Agree Disagree Partially Agree

The administration acknowledges and agrees that proper management oversight of the Use Agreement is necessary and that previous to this administration, there appears to have been a complete lack of oversight and contract management, as evidenced by the audit report. We are committed to establishing proper management oversight and precluding any future issues that may adversely affect this important asset of the City.

Loblolly Mitigation Preserve Response to Internal Control Weakness 1

Agree Disagree Partially Agree

The City should determine the extent of internal control it requires. LMP has a sufficient number of resources assigned to ensure the terms of the Use Agreement are met.

Internal Control Weakness 2 *Lack of Review Process SOPs*

The City did not provide nor were we able to locate Standard Operating Procedures (SOPs) to identify the review process of City distribution payments from LMP. A review of the (1) price per credit sold, (2) number of credits sold, (3) availability of credits for LMP and the City, and (4) general accuracy of remittance documents would have prevented a number of issues described below.

Recommendation to Internal Control Weakness 2

We recommend that the City create SOPs and implement a review process to confirm the accuracy and validity of remittances made to the City by LMP.

City Response to Internal Control Weakness 2

Agree Disagree Partially Agree

Based upon the audit investigation, there appears to be a lack of established procedures that would guide the implementation of the Use Agreement, and perhaps even more troubling, no apparent independent review process. This administration will be both establishing procedures and establishing a recurring independent review of these procedures to ensure compliance.

Loblolly Mitigation Preserve Response to Internal Control Weakness 2

Agree Disagree Partially Agree

LMP’s payments to the City are accurate. The City should determine the extent of internal controls it requires. However, LMP is aware that at least through 2010 a binder was maintained by the City with the Use Agreement compliance requirements identified. The binder also contained the annual reports, copies of checks for sales of City Excess Credits, deposits, annual CPI adjustments, written procedures and other information directly related to the management of the agreement.

Detailed information on each sale of City Excess Credits was sent to Council Auditor’s office showing the method of calculating the proceeds from the sale of City Excess Credits, the Management Fee due LMP and payment thereof (see Exhibit G). LMP’s representatives periodically met with the City Auditor and City Representatives to address any and all issues raised by the City Auditors or City Representatives. The City Representatives were in constant contact with the City Auditor regarding the activities of Loblolly Mitigation Bank (see Exhibit H). LMP was available then and remains available now to discuss any issues concerning Loblolly Mitigation Bank. LMP always has been receptive to any inquiry from the City or the City Auditor to any document and information request.

Council Auditor Rebuttal to LMP Response to Internal Control Weakness 2

The referenced binder that contained the information described by LMP did not contain all of the information to ensure that payments to the City were accurate and valid. As discussed in the Council Auditor Rebuttal to LMP Overall Response, the signed contracts between LMP and purchasers of wetland mitigation credits would be necessary to confirm the information provided by LMP. Also, the Council Auditor’s Office is not and has never been involved in the day-to-day operations or the administration of the Use Agreement. Council Auditor staff did perform occasional informal reviews of remittances to the City by LMP; however, a review of mathematical calculations is significantly less in scope than an audit.

Finding 1 *City and LMP Not in Compliance with Use Agreement*

As noted in ICW #1, a lack of management oversight resulted in the City and LMP operating the Bank outside the confines of the Use Agreement in ways that were beneficial, but yet also detrimental to the City’s operations. The following are a list of activities that occurred that were in contradiction to the Use Agreement.

1. Late and Incomplete Annual Reports - The annual reports that document the status of the Bank from the City’s perspective were not being delivered on time and did not always contain all required information. The former Director of the City’s Parks, Recreation and Community Services Department did not have the dates on which the annual reports were received each year, but stated that she was not aware of any year in which the report was received on or before the due date of September 30. Also, the annual reports from 2007 through 2013 failed to include the “plans related to the Land, Bank, and permits for the

next year” as required by the Use Agreement. In addition, the 2012 and 2013 reports failed to include the price schedule for City Excess Credits and LMP Credits. This appears to have had no bearing on operations of the Bank.

2. City Credits were delivered late - LMP failed to deliver the required number of City Credits within the timeframe allotted in the Use Agreement. Section 2 of the Use Agreement states LMP will generate and deliver 384 credits to the City for the City’s use on or before 37 months after the effective date of the agreement (June 30, 2003). According to LMP documentation provided to the City, 341.55 credits were released to the City by July 31, 2006. Additional credits were requested for release by LMP, but were not delivered to the City until January 5, 2007. This appears to have had no bearing on operations of the Bank.
3. Structural change in the Bank - The Bank underwent a structural change from Ratio credits to UMAM credits without a contract amendment. This activity was allowed to occur by the City. Ultimately, the City and LMP benefited from this change in that the Bank was able to compete in the current marketplace. The credits available for sale also became more marketable as a result.
4. Increased Management Fee - As a result of the structural change, there were fewer credits to be sold based on a conversion factor. LMP adjusted the management fee in accordance with the conversion factor such that a higher management fee was being applied to each credit. This activity was allowed to occur by the City without an amendment to the Use Agreement. This action had a financial impact on the City as described in Finding 3 below.
5. Application of Management Fee – The Use Agreement authorized the management fee payable to LMP to be handled in three different ways, but payable no more than once quarterly. LMP’s inconsistent application of the management fee was allowed to occur by the City and had a financial impact on the City as further described in Finding 3 below.
6. FDOT credit trade – LMP did not have sufficient credits to participate in a sale and therefore negotiated a “trade” with the City. LMP utilized 45.435 of the City’s Ratio credits in exchange for a presumed equal amount of LMP UMAM credits to be delivered at a later time. This type of trade was never contemplated in the Use Agreement and had a financial impact on the City as described in Finding 2 below.
7. LMP sales while having no credits – On a few occasions, LMP participated in credit sales when they did not have credits available for sale. According to LMP, this was allowed by the City because LMP was awaiting credit releases by the District, which would replenish their account. This activity is disallowed by the Use Agreement and had a financial impact on the City as described in Finding 2 below.

Recommendation to Finding 1

We recommend that all non-compliant activity be stopped immediately, including the sale of credits. The City and LMP should not resume any activity that is not in compliance with the Use Agreement until the contract is formally amended and approved by City Council.

City Response to Finding 1

Agree Disagree Partially Agree

The administration has proactively notified LMP that all sales of City controlled credits, both City and Excess Credits as defined in the Use Agreement have been terminated until further notice by the City. We do not anticipate selling any City controlled credits until such time as all of the issues identified within the report have been fully addressed, and, in the event additional issues are identified during the course of our remedial actions, we will resolve those completely before active sales are continued.

Loblolly Mitigation Preserve Response to Finding 1

Agree Disagree Partially Agree

1. *Late and incomplete Annual Reports.*

The Annual Report closing date is September 30th of each year. As with all annual financial reports, closing books, clearing accounts and preparation of statements is not finalized on September 30th. Each annual report contained complete information as required including the pricing for the City Excess Credits during the applicable reporting period, LMP eliminated the projected price of the City Excess Credit after the City had competition from other mitigation banks and upon advice from the City's General Council Office (see Exhibit J). LMP was informed by the posting the price of the City Excess Credits was not required and would be imprudent when credit sales are competitively bid. If the City posted its price it is likely the competition would price their credits slightly less than the City's Credits' price. Additionally, due to the changed market conditions, the price of City Excess Credits was no longer fixed, making it impossible to establish a fixed price for City Excess Credits during future time frames. As indicated in response to Recommendation to Opportunity for Improvements, LMP has received notice that the City no longer desires to market the City Excess Credits so the issue is now moot.

2. *City Credits were delivered late.*

On January 13, 2004 Loblolly Mitigation Bank had produced 507.95 Credits; of this the City's portion was 350.43 Credits, leaving a balance of 29.57 Credits required to produce the 384 City Credits required by the Use Agreement. The Use Agreement specifically contemplates and permits, "LMP to produce additional City Credits in the next Year to make up the deficit in the prior Year" (see Exhibit G). LMP had agreed to provide the additional Credits if needed by the City prior to the due date of July 1, 2006. In January 2007, a release of Credits produced 336.99 Credits fully satisfying the requirement to provide 384 of City Credits.

3. *Structural change in the Bank.*

When Loblolly Mitigation Bank was permitted, the St. Johns River Water Management District (“ SJRWMD”) used the Ratio method of calculating mitigation bank credits and wetland impacts. When the State of Florida adopted the Uniform Mitigation Assessment Method (“UMAM”) to determine the amount of mitigation needed to offset adverse impacts to wetlands, LMP requested the SJRWMD provide the conversion rate of Ratio credits to UMAM credits which SJRWMD was unable to provide. As a consequence, LMP undertook the costly and laborious task to convert Loblolly to UMAM methodology at a significant cost to LMP and no cost to the City. As a result of LMP’s efforts the conversion rate granted to Loblolly Mitigation Bank was much more favorable than initially proposed by SJRWMD resulting in a very significant increase in the value of the City’s Credits/

4. *Increased Management Fee.*

Once Loblolly was converted from Ratio to UMAM, the Management Fee was adjusted by the same percentage. There was no increase in the total Management Fee (see Exhibit K).

5. *Application for Management Fee.*

See response to Recommendation to Finding 3.

6. *FDOT credit trade.*

See response to Finding 2.

7. *LMP sales while having no credits.*

See response to Finding 2.

The Use Agreement provides that 384 City Credits shall be provided to the City within 37 months from the effective date or by August 2006. The Use Agreement also specifically provides in Exhibit B that the "City may elect to allow [LMP] to produce additional City Credits in the next year to make up any deficiency in the prior year." (see Exhibit I) Accordingly, the Use Agreement contemplated that City Credits could be delivered after August 2006. Because the activities of Loblolly Mitigation Bank are continuously producing credits, prior administrations decided that City Credits not needed for current City projects should be sold as City Excess Credits and the proceeds used by the City, rather than have credits remain unused on the City's books. (see Exhibits D and E). This decision was reflected in the annual reports LMP submitted to the City each year and was reflected in the City’s financial records. LMP has, and will continue to, provide the City with the City Credits as needed by the City. As requested by the current administration, all future Credits produced for the City will be held as City Credits.

LMP activities remain in compliance with the Use Agreement and are in full compliance with the directives of prior administrations. Prior attempts by LMP to have the Use Agreement formally amended to resolve some of the ambiguities have been unsuccessful. During April of 2013, LMP presented a proposed amendment to the Use Agreement to the City General

Counsel's office (see Exhibit L). The City's General Council's Office concluded that a formal amendment to the Use Agreement was not desired and suggested LMP reduce the proposed contract amendment into a letter addressed to the City (see Exhibit K).

LMP prepared a proposed amendment to the Use Agreement and Gresham Stoneburner, its legal counsel, submitted it to Mr. Germany (see Exhibit C). Mr. Germany concluded that a formal amendment to the Use Agreement was not desired by the General Counsel's Office and suggested LMP reduce the proposed contract amendment into a letter addressed to the City.

*Prior discussion and agreements with prior City administrations have resolved the ambiguities in the Use Agreement in a fashion inconsistent with the solutions now being presented by the Council's Auditors. LMP remains in compliance with the Use Agreement and has conducted its affairs consistent with a contracting party acting in good faith allowing the City to implement technical non-controversial modifications to the Use Agreement permitting the City to maximize the value of its investment in Loblolly Mitigation Bank. LMP will satisfy the request of the current administration to set aside all future credits as City Credits until such time as the full amount of City Credits is set aside. **At the time of the completion of the Audit there are 152.46 UMAM City Credits remaining to be produced.***

Council Auditor Rebuttal to LMP Response to Finding 1

In response to bullet #1, while we can certainly understand the desire and business decision to remove the credit pricing from the annual report once there was competition from other mitigation banks, this does not preclude the fact that the current version of the Use Agreement required it to be included. The advice from the City's General Counsel's Office that LMP references was directly related to the pricing involved in preparing a sealed bid or proposal. This advice had nothing to do with the inclusion of pricing in the annual report as can be seen in LMP's referenced Exhibit J.

In response to bullet #2, the Council Auditor's Office was never provided any written evidence to indicate a variance from the Use Agreement was approved which allowed the City's credits to be delivered later than the time prescribed in the Use Agreement.

In response to bullet #4, although the theory behind and the calculation of the increased management fee appears logical, the current version of the Use Agreement did not allow for an increased fee.

We disagree with the statement that LMP activities remain in compliance with the Use Agreement as noted in the findings described above. We cannot comment about the directives of prior administrations or emails that were supposedly sent because no support of these directives or emails has been provided to our office. Most importantly, the interpretations of prior administrations and communications via annual reports or email do not constitute a legally binding agreement or amendment to the terms of the Use Agreement.

Additionally, we do not understand LMP's assertions that, "Prior attempts by LMP to have the Use Agreement formally amended to resolve some of the ambiguities have been unsuccessful." On June 18, 2013, LMP requested certain changes to the original Use Agreement via a written

letter addressed to the former Director of the City's Parks and Recreation Department as well as the City's Office of General Counsel – see LMP's Exhibit M. The City's Office of General Counsel responded back to LMP on August 6, 2013 (refer to Exhibit 1) to inform LMP that any changes to the Use Agreement would need to be formally approved by the City Council as contract amendments. Despite being notified of this, it does not appear that LMP took any further action to attempt to formally modify the terms of the Agreement.

Finding 2 *LMP Improperly Used City Credits*

During our testing we found that for 11 of the 177 (6.21%) credit sales that LMP participated in with the City, LMP did not have a sufficient number of credits available to cover the portion of the sale claimed by LMP. Two of the improperly claimed sales were Ratio credit sales totaling 1.37 credits and provided sales revenue of \$66,113 to LMP. The remaining nine improperly claimed sales were UMAM credit sales that consisted of 31.225 credits and provided LMP with \$2,057,011 in sales revenue. The total amount of \$2,123,124 for these 11 credit sale transactions should have been attributed to and remitted to the City due to the fact LMP, at the time, did not have these credits available for sale.

In addition to LMP sustaining a negative balance of credits (both Ratio and UMAM), LMP and the City engaged in an unauthorized trade of 45.435 City ratio credits for a comparable amount of LMP UMAM Credits (based on our testing $45.435^{\text{Ratio}} = \text{approximately } 25.830^{\text{UMAM}}$). Given the negative balance described above, it appears that LMP has never released these credits to the City for sale or use. This unauthorized trade allowed LMP to participate in a sale where the price per credit was \$20,414. This would place a value on those credits of \$927,510 ($45.435 \text{ credits} \times \$20,414/\text{credit}$).

In summary, our testing has indicated that LMP has incorrectly participated in or failed to deliver to the City a total of 46.805 ($1.37 + 45.435$) Ratio credits and 31.225 UMAM credits.

Recommendation to Finding 2

The City should seek compensation of \$2,123,124 for the improperly claimed credit sales. Upon payment to the City, LMP should reduce the City's credits available for sale and subsequently increase LMP's credit balance by the applicable amount per the UMAM conversion factor ($1.37^{\text{Ratio}} \div 1.759 + 31.225^{\text{UMAM}} = 32.004^{\text{UMAM}}$).

Additionally, the City should seek compensation from LMP for the unauthorized trade between the City and LMP in the form of monetary reimbursement (\$927,510) or credit replenishment.

It should be noted that all amounts remitted to the City may be subject to additional fees and withholdings by LMP in the form of not yet compensated management fees and a subsequent marketing fee (see Finding 6 for more explanation).

City Response to Finding 2

Agree Disagree Partially Agree

We cannot agree or disagree with this recommendation to Finding 2. This administration does not have adequate knowledge of the implementation of the Use Agreement to determine if the numbers are accurate. The administration is diligently studying and pursuing an adequate accounting of the credits and options which may include monetary reimbursement, or credit reimbursement. Based upon our full analysis of the available options, we intend to choose the option of greatest benefit to the City.

Loblolly Mitigation Preserve Response to Finding 2

Agree Disagree Partially Agree

The Use Agreement does not restrict LMP or any of its principals or affiliates from developing other mitigation banks. The City Auditor improperly assumes that the sale of LMP's portion of the credit sales were made by LMP. In fact, Nochaway Mitigation Bank, LLC, another mitigation bank, sold the 32.15 UMAM credits (see Exhibit M). The 31.225 UMAM Credits referenced above is the cumulative of Pritchard Road, Oak Bluff Lane and FDOT SR-23. LMP participated in Pritchard Road and Oak Bluff Lane for a total of 0.175 Credits and another mitigation bank to provide the balance of the Credits for the FDOT SR-23 project. At UMAM conversion LMP had 19.30 Credits (see TSR 4-031-84706-4 pages 10 and 11), less the 13.54 reallocated to the City for a prior FDOT sale resulting in a balance available of 5.76 Credits. The two projects that LMP participated in totaled 0.175 Credits that LMP participated.

In February 2012 LMP applied to modify the Loblolly Mitigation Bank's permit to convert the credits from the Ratio method to UMAM. In May 2012, SJRWMD issued a bid solicitation for mitigation credits for the Branan Frontage Roads and Lane Additions Project. Since SJRWMD had delayed the conversion of Loblolly Mitigation Bank's Ratio credits to UMAM credits, Loblolly Mitigation Bank was forced to submit a bid proposal to SJRWMD on or about June 12, 2012 using Ratio credits. LMP submitted its bid using Ratio Credits but reserved the right to use UMAM Credits if Loblolly's Mitigation Bank conversion to UMAM was completed in time. On June 14, 2012 SJRWMD issued a Notice of Intent to Award the Bid to LMP with a proposed closing date of July 25, 2012. LMP requested SJRWMD to accelerate the UMAM conversion prior to the closing on the Branan Frontage Roads and Lane Addition Project so that the contract between LMP and SJWMD could be converted from Ratio credits to UMAM credits. Unfortunately, SJRWMD refused to comply and LMP was forced to sign the contract on or about July 25, 2012. SJRWMD released the UMAM conversion permit two days later on July 27, 2012, coincidentally only hours after the check to purchase the Credits was issued. The permit stated that the portion of credits needed to satisfy the contract would remain as Ratio credits and not UMAM credits. During this period, the City participated in the process to attempt to have the SJRWMD reverse its position and the chances for success appeared very likely (see Exhibit N). The City agreed that any adjustment required to Loblolly's Mitigation Bank's ledger should not be made until this issue was resolved by the SJRWMD and the ledger was appropriately noted to reflect this agreement. Contemporaneously, the details of the agreement between the City and LMP were placed on the SJWMD's public ledger. In the event that the UMAM method was

permitted, LMP had sufficient UMAM credits available to fulfill the contract. After the negative outcome, appropriate adjustment was made to the ledger as agreed by the City and LMP to accurately reflect the outcome of Loblolly Mitigation Bank's unsuccessful appeal.

The Council Auditors assumed that the reimbursement for the FDOT sale was at a different conversion rate than what was actually used and required by the SJRWMD. The result is that LMP's conversion showed that 13.54 UMAM Credits needed to be transferred to the City while the conversion rate that Council Auditors used resulted in 25.83 UMAM Credits being required. The conversion rate used by LMP was based on the TSR Permit Numbers 4-031-84706-4 which was in effect at the time of the transaction. Subsequent to the transaction, the SJWMD modified its permit modifying future allocations. In the event the City desires the appropriate remedy for the unsuccessful appeal is that all the Credits should have been sold by the City.

Recently, LMP met with the current administration to discuss the appropriate resolution caused by the retroactive adjustments. During this discussion, it was revealed that the City had the need for future City Credits. In the event that seeks compensation for "improperly claimed credit sales" and LMP should reduce the City credits available for sale, the amount of available Credits for planned City projects would not be available as quickly as desired by the Mayor's office. Accordingly, the Council Auditor's recommendation would deprive the City of available City Credits for currently planned City projects. This remedy could unnecessarily delay City construction projects. Accordingly, LMP agreed that the future credits produced on behalf of the City will be set aside as City Credits as requested by the current administration.

Council Auditor Rebuttal to LMP Response to Finding 2

LMP makes the statement that "the City Auditor improperly assumes that the sale of LMP's portion of the credit sales were made by LMP." LMP also states that, "Nochaway Mitigation Bank, LLC, another mitigation bank, sold the 32.15 UMAM credits." The Council Auditor does operate under this assumption because the Use Agreement never anticipates that LMP affiliated banks would provide mitigation credits. Rather, Section 12(b) (ii) of the Use Agreement states that, "If LMP has no LMP Credits offered for sale, then the City receives the entire sales price for the City Excess Credits." Section 12(b) (iii) goes on to state, "After LMP has utilized all of the LMP Credits, LMP will continue to market the City Excess Credits. The proceeds from such sales shall be paid to the City less a marketing fee paid to LMP of six and one-half percent (6.5%) of the City Excess Credits' sales price (the "Marketing Fee"). The Marketing Fee is due and payable only upon the completion of the sale of the City Excess Credits and not otherwise." The Use Agreement clearly includes provisions related to a time period in which LMP would no longer have credits available for sale and does not contemplate outside parties to the contract being able to fulfill either party's obligations. LMP's assertion that it used an LMP affiliated bank would be a direct violation of the Use Agreement.

We also disagree with the statement that LMP had 19.30 UMAM credits at the time of conversion. The evidence and support reviewed by our office has proven that LMP sustained a negative balance of credits prior to conversion and had no credits to convert. This is confirmed by the fact that LMP needed credits to participate in the final Ratio credit sale prior to UMAM

conversion. Given the fact that LMP needed credits to participate in the final sale, it would be impossible for them to have any credits coming out of conversion. You cannot convert nothing to something. The SJRWMD Technical Staff Report (TSR) that LMP references does indeed indicate that LMP (owners of Phases 1-4 of the Loblolly Mitigation Bank) would have had credits coming out of the UMAM conversion. What the TSR does not consider and has been confirmed by SJRWMD staff is that they do not keep track of credit sales by Parcel (the manner in which LMP and City credits are tracked). The SJRWMD only indicates in the TSR that the credits that were converted were based on the potential earning ability of the bank upon its initial permit. The fact that the SJRWMD does not keep track of credits between LMP and the City is paramount to understanding that LMP had zero credits after UMAM conversion.

Given these facts, we also disagree with LMP's statement that 13.54 UMAM credits were reallocated to the City for the FDOT trade. LMP goes on to discuss the differing conversion factors; however, the cited TSR contradicts the conversion rate presented by LMP. The TSR and the applicable conversion rate support our calculation of credits owed to the City. This is an issue that will have to be addressed between LMP and the current Administration. Nevertheless, we do acknowledge that LMP's internal ledger does indicate a transfer of 13.54 credits to the City. The flaw in this internal ledger is that it fails to identify LMP's credit deficiency at the time. If LMP had zero credits to transfer, a transfer could simply not have taken place.

LMP makes the following statement:

In the event that seeks compensation for "improperly claimed credit sales" and LMP should reduce the City credits available for sale, the amount of available Credits for planned City projects would not be available as quickly as desired by the Mayor's office. Accordingly, the Council Auditor's recommendation would deprive the City of available City Credits for planned City projects.

The recommendation by LMP to reduce the City Credits available for sale is directly related to LMP compensating the City for the \$2,123,124 worth of credit sales that it should not have participated in. Currently, credit sales that LMP should not have participated in have been split 50/50 between the City and LMP. If LMP were to compensate the City correctly for these sales, the number of credits would need to be deducted from the City's available credits. If the Administration did not want to reduce the City's available credits, it should seek compensation in the form of credits from LMP at the final conversion rate of 1:1.759. Our recommendation is attempting to make the City whole for transactions that occurred that were not in accordance with the Use Agreement and for which the City did not receive its fair compensation.

Finding 3 *Inaccurate LMP Management Fee*

The management fee that LMP receives for City Excess Credit generation is not being accounted for in a way that is identified in the Use Agreement. Section 12 (a) of the Use Agreement states,

"As the regulatory agencies release the City Excess Credits and after LMP delivers the City Credits to the City, and subject to availability of funding (whether netted from the sale of City Excess Credits to third parties or otherwise by appropriation), the City agrees and will pay LMP the sum of \$8,100 per City Excess Credit when the

same are delivered (the “LMP Management Fee”). The Management Fee shall be calculated and payable no more frequently than once quarterly.”

This would indicate that the management fee should be paid by the City when City Excess Credits are delivered, or netted against the payment from LMP for the sale of City Excess Credits at the applicable management fee at the time of credit delivery, but no more than once quarterly. Based on available evidence, the City did not submit payment to LMP for City Excess Credits that were delivered. The initial release of City Excess Credits would have resulted in the City paying LMP \$1,202,143. Instead, LMP began netting the management fee for each credit transaction sale based on the date of the sale. This caused the City to pay a higher management fee over time due to the escalation in the management fee. The fee has also been deducted more than once quarterly on numerous occasions when more than one sales distribution took place in a quarter.

Based on LMP’s incorrect application of the management fee using the date of the sale rather than the date of delivery of credits, as well as two errors in the spreadsheet used to calculate the fee, we found that for 8 out of 13 ratio credit sales, LMP underpaid the City \$1,587. On the remaining five Ratio sales, LMP overpaid the City \$16,233. The end result is that the City was overpaid a net \$14,646 as it relates to management fees. This calculated amount is based on the assumption that City Credits could be sold, which is technically not permitted per the contract.

The City has paid LMP over the course of the Use Agreement a total management fee of \$6,603,416 based on the application described above. If the City were to have paid LMP its management fee based on the date of credit delivery, the cost would have been \$4,999,735 for the period of time included in this audit – \$1,603,681 less than the amount actually paid. This assumes that the City set aside the entire 384 City Credits for City use, of which, a management fee does not apply. However, this did not occur. Instead, the City and LMP agreed to allow the City to participate in credit sales with credits that were initially released as City Credits. The City would then be able to draw upon their credits at any time in the future and the available City Credit balance would be adjusted. Under this approach, the City’s participation in credit sales resulted in a management fee needing to be applied to the City’s portion of the credit sale. This is evidenced by recent LMP annual reports that show the remaining balances of City Credits to be used. However, as a result of the City’s participation in credit sales prior to the fulfillment of LMP Delivering 384 City Credits, the City received gross revenue totaling \$10,079,614. After applying the management fee to these credit sales, the City realized \$8,189,494 in net revenue.

Additionally, LMP is currently charging an increased (more than is currently allowed by the Use Agreement) management fee for UMAM credits. When the Bank underwent its 2012 structural change with the District, the Bank’s credit type was changed from Ratio to UMAM. Currently, UMAM credits are more desirable and thus are worth more (both in money and ecological value). Because of this, LMP has increased its management fee by the same factor used by the District to convert Ratio credits to UMAM credits, 1.759 to 1, respectively. Thus, the applicable management fee at the time of credit conversion of \$9,531 was increased to \$16,765. The increased management fee resulted in the City being charged \$442,257 more than was allowed for in the agreement. Although this increase seems reasonable based on the structural change in

the Bank, it was not allowed by the Use Agreement and no amendments to the agreement were ever made or approved by City Council.

Recommendation to Finding 3

The City should repay LMP the \$14,646 (or net it from any amounts determined to be owed) that it was overpaid as a result of the initial incorrect application of the management fee. The City and LMP should also amend the contract to allow for the higher management fee as a result of the Bank's UMAM conversion.

Concerning the \$1,603,681 excess amount paid by the City in management fees, the City and LMP should come to an agreement of whether LMP will provide the remaining unused City Credits to the City at no additional cost or if LMP will repay the City the excess \$1,603,681 in management fees taken.

Additionally, the City should seek to pay future management fees based on the date of credit release, and ensure that LMP nets the correct management fee from future distributions while ensuring that the fee is paid no more than once quarterly.

City Response to Finding 3

Agree Disagree Partially Agree

We cannot agree or disagree with this recommendation to Finding 3. As indicated in the previous response, the administration intends to more fully review all of the available options, even those beyond monetary reimbursement in an effort to maximize the benefit to the City. We anticipate, at this time, that new procedures and a new agreement between LMP and the City will need to be established and these future procedures and agreements will determine the required actions of both parties as it concerns such actions as the disbursement of management fees and other associated actions.

Loblolly Mitigation Preserve Response to Finding 3

Agree Disagree Partially Agree

The adjustment required for conversion from RATIO credits to UMAM credits should be made. LMP requested the adjustment on prior occasions and had several meetings with the City's General Counsel's office to explore a formal amendment. At the request of the City General Counsel's office, LMP presented the City with the letter dated June 18, 2013 (see Exhibit K).

The Council Auditor suggestion that excess Management Fees in the amount of \$1,603,681 has been paid to LMP fails to take into account that the City elected to recharacterize City Credits not needed for City its construction activities as City Excess Credits (see Exhibits D and E). These Excess City Credits were sold as instructed by the City and the City received the proceeds from the sale of the Credits; thus the Management Fee was earned. Additionally, the conversion of the Management Fee required to recognize that Loblolly

Mitigation Bank was selling UMAM Credits and not Ratio credits was a simple adjustment made with the City's full knowledge and consent and consistent with the parties' obligation of good faith and fair dealings (see Exhibit K). The assertion that the City was charged \$442,257 more than allowed in the Use Agreement is absurd.

The payment of the Management Fee is required to be paid by the City when the credits are "delivered." Unfortunately, there is no certainty as to when Credits are "delivered". It was agreed by the parties that "delivery of the credits" occurred, and the Management Fee was earned, as the Credits were sold and delivered to the purchaser of the City Excess Credits. If the City desires to modify the Use Agreement to require payment at a different time, LMP is agreeable to adjust the time the fee is earned and the City Excess Credits are considered delivered.

The Council Auditor's Report fails to take into account Florida Statute Section 95.11 (2) which provides that the time for an adjustment on a written contract is five years. This five year period begins to run from the time the cause of action accrued. Florida Statute Section 95.031.

Council Auditor Rebuttal to LMP Response to Finding 3

The Office of General Counsel responded to LMP's June 18, 2013 letter with a letter of its own on August 6, 2013 (see Exhibit 1) stating that to accommodate the proposed changes in the LMP letter the Use Agreement would need to be amended, which would ultimately require City Council approval.

The finding that excess management fees in the amount of \$1,603,681 have been paid to LMP was arrived at through an audit of the contract. We understand that City Credits were sold as City Excess Credits, of which the City received revenue attributable to such in a quicker timeframe than would have occurred if they had all been held as City Credits. However, if LMP is unable to produce the remaining 152.46 UMAM City Credits it identifies in its response to Finding 1, the City will ultimately have paid a management fee on the sale of City Credits. The recommendation that the City and LMP should come to an agreement of whether LMP will provide the remaining unused City Credits at no additional cost or if LMP will repay the City the excess management fees remains valid.

LMP also makes the statement that the parties agreed that "delivery of credits" occurred as credits were sold and delivered to the purchaser of City Excess Credits. Documentation supporting this claim has never been provided and is in contradiction to interpretations by the City's Office of General Counsel.

LMP raises an issue of a timeframe outlined in the Florida Statutes. The scope of this audit report began with the effective date of the Use Agreement (June 30, 2003) and covered all transactions through December 31, 2013. The objective, as stated previously, was to examine compliance with the contractual provisions by both parties.

Finding 4 *Compensating the City at a Different Price*

On two of the 190 City-involved Ratio credit sales, LMP compensated the City at a different price per credit than what was charged to the applicant. The two different instances were the result of these scenarios:

- Wrong Price – On one sale, LMP compensated the City at the new price per credit of \$45,000 for a credit that was sold at a previous price of \$42,500. This resulted in an overpayment to the City of \$763.
- Failure to Compensate – On one sale, LMP failed to compensate the City for additional ACOE credits over and above District credits sold resulting in an underpayment of \$28,000.

Combining these instances results in the City being undercompensated a net \$27,237.

Recommendation to Finding 4

The City should pursue the payment of the \$27,237 deficiency it is owed from LMP and require future sales documentation be submitted with payment to ensure that the City verifies that all sales are compensated accurately.

City Response to Finding 4

Agree Disagree Partially Agree

We cannot agree or disagree with this recommendation to Finding 4. As part of the more complete reconciliation and recompense between the City and LMP, this identified deficiency will be included as part of the reconciliation.

Loblolly Mitigation Preserve Response to Finding 4

Agree Disagree Partially Agree

*1 Wrong Price
LMP agrees that the City was overcompensated on this Sale.*

*2 Failure to Compensate
See response to Recommendation to Opportunity to Improvement 1.*

Council Auditor Rebuttal to LMP Response to Finding 4

LMP’s response to Recommendation to Opportunity for Improvement 1 and the Use Agreement do not specifically address the sale of ACOE credits; however, given the fact that ACOE credits were generated on the City’s property, it would stand to reason that they were/are City assets. For LMP to profit off the sale of a City asset with no compensation to the City seems inequitable. It should also be noted that a similar transaction occurred in March 2011 where LMP did compensate the City for the amount of ACOE credits over and above the District credits sold.

Finding 5 *ACOE Credit Sales*

On six of the 12 City-involved Army Corps of Engineers credit sales, LMP netted a management fee from its sales distribution to the City. The Use Agreement specifies that management fees will apply to City Excess Credits (using the lowest number permitted by either the District or the Army Corps of Engineers). The permits determined that there were fewer District credits available, and therefore the management fee should have been applied to District credits. Additionally, in the past, LMP has acknowledged that it should not have netted a management fee from a similar ACOE sale and actually refunded the management fee back to the City. The value of the management fees that LMP netted from ACOE credit sales which it has not reimbursed the City total \$26,957.

Recommendation to Finding 5

The City should pursue the repayment of the fees withheld by LMP on these ACOE credit sales and ensure that any ACOE credit sales that occurred outside of our audit time period are corrected as well.

City Response to Finding 5

Agree Disagree Partially Agree

We cannot agree or disagree with this recommendation to Finding 5. As indicated within the report and based upon a limited review of past actions as it concerns the credits controlled by the U.S. Army Corps of Engineers, the administration believes more specific procedures will be necessary for the City to realize this complete benefit. Upon limited review, the apparent abundance of these credits as opposed to the relatively limited SJRWMD credits may give the City a substantial long term benefit. In order to fully realize this potential, we believe a thorough study of the available credits and a better long term plan could be very beneficial.

Loblolly Mitigation Preserve Response to Finding 5

Agree Disagree Partially Agree

In the case of a sale of ACOE credits not associated with a SJRWMD credit sale, the City is not entitled to share in the proceeds under the terms of the Use Agreement. Nevertheless LMP sought to be a trusted and valued partner with the City and elected to allow the City to share in ACOE credit only sales. LMP considers that trust and value in question and will give this revenue source further consideration.

Council Auditor Rebuttal to LMP Response to Finding 5

We disagree with LMP’s claim that the City is not entitled to proceeds from the sale of ACOE credits. The credits in question were awarded to Loblolly Mitigation Bank for the preservation and cultivation of land, of which the City owns the majority. As stated in Council Auditor Rebuttal to Finding 4, ACOE credits generated on the City’s property are assets of the City. They do not belong to LMP to sell and profit from the sale of such. Taking LMP’s approach to the Use

Agreement, LMP is not entitled to share in the proceeds of ACOE sales under the terms of the Use Agreement as the sale of such is not specifically defined.

Finding 6 *Unequal Split of Credit Sales*

On six of the 142 City and LMP-involved Ratio credit sales from the Loblolly Mitigation Bank, LMP compensated the City for an amount not equivalent to 50% of the total credits sold on a sale that was split by LMP and the City. Section 12(b) (ii) of the Use Agreement states

“If LMP is marketing and selling any City Excess Credits pursuant to this Agreement, and in the event LMP is also marketing and selling any LMP Credits from LMP’s account, then the parties agree to equally share the sales proceeds as follows: LMP’s sales of such available City Excess Credits and LMP Credits shall be paid on a credit for credit basis as 50% paid to the City and 50% to LMP.”

Five of the six differences resulted in LMP giving the City credit for 0.005 credits more than what would have equated to 50% participation. The sixth difference was the inverse, whereby LMP received 0.005 credits more than the City. This was the result of LMP splitting credit sales out to the thousandths decimal place, but only tracking it internally to the hundredths. These credit differences have resulted in LMP overpaying the City a net amount of \$751.

Recommendation to Finding 6

The City should reimburse LMP (or net from any amounts determined to be owed) for the overcompensation of credits. The City should also require future sales documents be provided ensuring a 50% split occurs.

City Response to Finding 6

Agree Disagree Partially Agree

We cannot agree or disagree with this recommendation to Finding 6. As part of our redevelopment of procedures and agreement with LMP, the administration will be initiating a very thorough analysis and evaluation of options that will include potential monetary reimbursements between the parties but may also include actions and reconciliation activities in addition to or in lieu of straight monetary exchanges.

Loblolly Mitigation Preserve Response to Finding 6

Agree Disagree Partially Agree

LMP will gladly receive any monies owed by the City for overcompensation in sale of City Excess Credits. The reservations and allocations are public record on the SJRWMD website. The sale documents contain confidential information and are not required to be provided to the City under the Use Agreement. Private sales between LMB and customers are available for review by the

City Auditor but not available for public records request as they are LMP's property and are LMP's trade secrets.

Council Auditor Rebuttal to LMP Response to Finding 6

Based on discussions with the City's Office of General Counsel, it appears that while LMP is a private entity, its contract with the City could subject documents in possession of LMP to Florida's Public Records Act, Chapter 119 Florida Statutes. The City has delegated the operation and maintenance of the City's land to LMP and LMP sells wetland mitigation credits owned by the City. While the Office of General Counsel acknowledges that the Florida Public Records statutory provision does not provide clear criteria for determining when a private entity is acting on behalf of a public agency, and therefore when related documentation would be subject to public record disclosure, if LMP is considered to be acting on behalf of the City, then the sales contracts would be subject to public records disclosure. The sales contracts are the main documents needed to verify the true accuracy of the payments to the City.

Finding 7 *Overselling the Bank's Credits*

LMP operated the Bank in a way that could have jeopardized the Bank as a whole by selling more credits than were currently in the Bank's possession. LMP sold credits to customers in bulk sales for which they could draw upon at later dates for specific use. Had all of the customers that had purchased and reserved credits needed them at the same point in time, the Bank would not have been able to fulfill the need for 71.77 credits. For this to occur, allocation letters were not issued for specific developments until needed/requested by the developers.

There is no financial impact to this finding as the possibility of all purchasers requesting use of their credits at a point where the Bank could not provide credits did not occur.

Recommendation to Finding 7

LMP should avoid "overselling" the Bank's credits in the future. The City should also monitor the Bank's activity more closely to ensure its interest and investment is adequately protected.

City Response to Finding 7

Agree Disagree Partially Agree

This identified activity within the report was surprising and troubling. As indicated in previous responses, the administration will be establishing new procedures and expects to enter into a new agreement with LMP part of which will ensure that future actions as that identified within this finding are no longer allowed nor will they be without oversight and consequence.

Loblolly Mitigation Preserve Response to Finding 7

Agree Disagree Partially Agree

Agreed; this issue was recognized and remedied.

Finding 8 *Marketing Fee Not Being Applied*

Throughout the Operation of Loblolly Mitigation Bank, LMP has never taken a Marketing Fee as allowed by Section 12(b) (iii) of the Use Agreement which states

“After LMP has utilized all of the LMP Credits, LMP will continue to market the City Excess Credits. The proceeds from such sales shall be paid to the City less a marketing fee paid to LMP of six and one-half percent (6.5%) of the City Excess Credits’ sales price (the “Marketing Fee”). The Marketing Fee is due and payable only upon the completion of the sale of the City Excess Credits and not otherwise.

As mentioned in Finding 2, we have found that LMP’s participation in some credit sales was not warranted due to the fact LMP did not have sufficient credits available for sale. Because LMP did not have credits available for sale, LMP should have claimed a marketing fee rather than participating in the sale. With this understanding, LMP should have charged a Marketing Fee on 24 of the 202 (11.88%) City involved credit sales. The application of this marketing fee is estimated to be \$572,026 based on credit sale values at the time.

Recommendation to Finding 8

No further action should be taken until Finding 2 is resolved. Once resolved, LMP and the City should agree to the marketing fee amount owed LMP as a result of not having available credits.

City Response to Finding 8

Agree Disagree Partially Agree

This administration's review of available options, installment of new procedures, and the execution of a new agreement with LMP will resolve this issue.

Loblolly Mitigation Preserve Response to Finding 8

Agree Disagree Partially Agree

Following the commencement of the audit, LMP has charged a Marketing Fee for Sale of City only City Excess Credit as requested by the City’s Auditors.

Council Auditor Rebuttal to LMP Response to Finding 8

The Council Auditor’s Office, at no time, has requested that a Marketing Fee be charged. On the contrary, our recommendation to this finding clearly states that no further action should be taken until other findings are resolved. At several points during our audit, we communicated and questioned LMP if they had taken a marketing fee, and if not, why not, as part of our audit work. LMP took it upon themselves to invoice the City for a Marketing Fee they believed was owed.

Finding 9 *Required Insurance Not Provided*

LMP failed to provide the required insurance documents to the City’s Risk Manager as stipulated in the Use Agreement. Section 9(b) states “Prior to entering the Land, Certificates of Insurance approved by the City’s Risk Manager evidencing the maintenance of said insurance shall be furnished to the City.” The City’s Risk Management Division has no record of ever receiving the required certificates of insurance from LMP.

Recommendation to Finding 9

Prior to any future action or entrance onto the City’s land, LMP should provide the City the required Certificates of Insurance. The stated insurance requirements in the Use Agreement should be examined to ensure they agree with insurance limits and thresholds in the current environment due to the Use Agreement’s implementation over 11 years ago.

City Response to Finding 9

Agree Disagree Partially Agree

This administration, with the assistance of our Risk Management Department, will both ensure that adequate insurance is provided and that required Insurance Certificates are received.

Loblolly Mitigation Preserve Response to Finding 9

Agree Disagree Partially Agree

LMP has confirmed that full copies of its then current insurance policies were provided to the City’s Risk Management Department each year (see Exhibit O).

Council Auditor Rebuttal to LMP Response to Finding 9

As of March 14, 2016, the City’s Risk Management Division had not received the correct certificates of insurance required to be provided by LMP for any year throughout the life of the Use Agreement (see Exhibit 2 for summary).

Finding 10 *Inaccurate District Ledger Amounts*

During our testing, we examined all items represented on the District credit ledgers and all files delivered to us by LMP. Of these transactions from the Bank, we found two credit transactions that are not accurately reflected on the District’s credit ledger based on allocation documents.

- One is overstated by 0.01 credits as compared to the allocation letter and documentation submitted by LMP to the City of Jacksonville.
- The second was a previously purchased bulk sale that has been systematically reduced as available credits were utilized. The remaining reserved amount is overstated by 0.51 credits on the District’s ledger as a reservation.

When combining these two items, the District's credit ledger is misstated by 0.52 credits. These credits would be added to the ledger as available (not sold or reserved) for future sale and are attributable to the City's portion of the property.

Recommendation to Finding 10

The City and LMP should pursue a correction to the ledger for these differences and ensure that future reconciliations with the District account for all credit activity.

The City should periodically reconcile the activity within the Bank to ensure that it is accurately reflected on the District ledger and that the City receives its full value of participation in Loblolly Mitigation Bank.

City Response to Finding 10

Agree Disagree Partially Agree

This administration will be initiating a full reconciliation of the ledger and has the full support of the Office of General Counsel to ensure that all regulatory and statutory obligations are satisfied during the course of this reconciliation. As part of the new procedures and new agreement with LMP, independent reviews are expected to be a matter of standard practice in the future management of this City asset.

Loblolly Mitigation Preserve Response to Finding 10

Agree Disagree Partially Agree

LMP currently takes the decimal point to the thousandths to correct these rounding errors. Annually Loblolly reconciles it's ledger to the SJRWMD ledger at the request of the SJRWMD.

Opportunity for Improvement 1 *No Benefit from Deposits or Extension Payments*

LMP has structured its contracts to occasionally require customers to pay a deposit and/or extension payment to hold credits for sale depending on the market climate for mitigation credits. Applicants could be required to put down a 10% deposit to hold credits for six months. If after the six-month period, the applicant wanted to continue to hold the credits, LMP would require an additional 10% payment. These payments would be applied to the final sales price if the credit sale took place. If at any point in time, the hold period expired without the customer extending it, the deposits and any extension payments were forfeited. We do not believe that this is a violation of the contract, but rather a business decision for the management of a limited asset. However, the City as the majority land and credit owner of the Bank generally did not receive any form of compensation from forfeited deposits or extension payments.

LMP received proceeds from forfeited deposits and forfeited extension payments in amounts of \$116,498 and \$269,933, respectively. These forfeitures were the result of ten pending sales that

did not come to fruition. There is only one known extension payment for which the City received proceeds; however, it was on a credit sale for which the City supplied the entire credit amount.

Recommendation to Opportunity for Improvement 1

The City should pursue an amendment to the Use Agreement that would allow City Excess Credits that are held for potential future use to result in a form of compensation to the City.

City Response to Opportunity for Improvement 1

Agree Disagree Partially Agree

As described in many of the previous responses, we expect a future amendment to the Use Agreement, or perhaps even a completely new Use Agreement will be executed as part of our full reconciliation activities.

Loblolly Mitigation Preserve Response to Opportunity for Improvement 1

Agree Disagree Partially Agree

LMP provided proposed amendments to the City's General Counsel's office to clarify certain operational issues during April of 2013 (see Exhibit L). Unfortunately, LMP was unable to advance the amendment without the cooperation of the City. As a consequence, LMP provided a detailed letter to the City on June 18, 2013 which was received by the General Counsel's office before becoming finalized (see Exhibit K).

Under the terms of the Use Agreement, the City is compensated on the sale of City Excess Credits. Credit transfer fees were used by LMP to cover administrative expenses.

Council Auditor Rebuttal to LMP Response to Opportunity for Improvement 1

As stated in Council Auditor rebuttals to Findings 1 & 3, the Office of General Counsel responded to LMP's June 18, 2013 letter with a letter of its own on August 6, 2013 (see Exhibit 1) stating that to accommodate the proposed changes in the LMP letter, the Use Agreement would need to be amended, which would ultimately require City Council approval.

Opportunity for Improvement 2 *Conflict of Interest With Other LMP Owned/ Operated Banks in the Area *

LMP and LMP affiliates have both a financial interest in and the ability to control the operations of other mitigation banks that are in direct competition with Loblolly Mitigation Bank. During our testing, we found that on a few occasions these competing banks provided mitigation credits to projects that could have been or were partially serviced by Loblolly Mitigation Bank. As agent of the City, LMP should operate in the City's best interest by mitigating all projects within Loblolly's service area with Loblolly Mitigation Bank credits.

Recommendation to Opportunity for Improvement 2

LMP should be independent, both financially and operationally, from all mitigation banks in direct competition with Loblolly Mitigation Bank. If LMP fails to or refuses to become independent of Loblolly Mitigation Bank’s direct competitors, the City should pursue an amendment to the Use Agreement that would preclude LMP affiliated mitigation banks, other than Loblolly Mitigation Bank, from providing mitigation credits to projects within Loblolly’s service area given that Loblolly has the ability to service the project.

City Response to Opportunity for Improvement 2

Agree Disagree Partially Agree

The administration fully agrees with this assessment and will establish procedures and a new or amended Use Agreement that will preclude this potential for conflict of interest.

Loblolly Mitigation Preserve Response to Opportunity for Improvement 2

Agree Disagree Partially Agree

The Use Agreement does not restrict its Manager from being affiliated with other mitigation banks. In fact, the development of other mitigation banks has resulted in operational efficiencies which have inured to the benefit of the City. Under the Use Agreement, whenever LMP Credits are sold and City Excess Credits are a party to the sale, one-half of the credit sales are made using City Excess Credits and one-half by LMP. LMP has utilized this policy whenever any other LMP sponsored mitigation bank sells credits within Basin 4. The City’s executive branch has indicated that it no longer desires to sell either the City’s Excess Credits or the City Credits. Assuming this policy is adopted there is no conflict. In the event the City decides to sell City Excess Credits in the future, LMP will continue to honor its agreement that one-half of all sales will be made by the City. With LMP being able to use other LMP sponsored mitigation banks to provide their one-half of a sale, it benefits the City by not having to pay the Marketing Fee.

Council Auditor Rebuttal to LMP Response to Opportunity for Improvement 2

In the event the City decides to sell City Excess Credits in the future, the sale should be handled in a manner consistent with the Use Agreement as stated in the Council Auditor Rebuttal to Finding 2. As stated in the Council Auditor Rebuttal to Finding 2, the Use Agreement does not contemplate or allow for LMP sponsored banks to provide credits on behalf of LMP. In regards to the benefits of not charging a Marketing Fee, 100% of the individual sale less a 6.5% Marketing Fee will always be greater than 50% of the sale.

We appreciate the assistance and cooperation we received from Parks, Recreation and Community Services Department, the Office of General Counsel and from Loblolly Mitigation Preserve, LLC throughout the course of this audit.

Respectfully submitted,

Kirk A. Sherman, CPA
Council Auditor

Audit Performed By:

Kim Taylor, CPA
Phillip Peterson, CPA
Edward Linsky

Loblolly Mitigation Bank Audit

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Council Auditor Exhibits

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LMP Exhibits

The following exhibits have been provided LMP

Exhibit A - Loblolly Mitigation Bank facts and events sheet	Page 35
Exhibit B - City Ordinance 2004-212-E and attachments	Page 37
Exhibit C - City Ordinance 2005-311-E	Page 45
Exhibit D - Various correspondence from the Mayor's Office to LMP	Page 48
Exhibit E - 2004 & 2005 Annual Reports and various correspondence from the Mayor's Office to LMP	Page 51
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Exhibit G - LMP sales remittance example	Page 61
Exhibit H - Various correspondence between the Parks and Recreation Department and the Council Auditor's Office	Page 63
Exhibit I - Delivery schedule of City Credits (Exhibit B of the Use Agreement)	Page 80
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Exhibit K - Correspondence from LMP to the City (including first agreement renewal)	Page 85
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Exhibit M - Correspondence from LMP to the Parks and Recreation Department and the Office of General Counsel	Page 91
Exhibit N - Correspondence from the Mayor's Office to the St. Johns River Water Management District	Page 95
Exhibit O - Correspondence from Acentria Insurance to the City, LMP insurance documents and correspondence from LMP to the Risk Management Division	Page 97

NOTE: The Exhibits received from LMP were not in alphabetical order. They have been rearranged to prevent any confusion on behalf of the reader.

OFFICE OF GENERAL COUNSEL
CITY OF JACKSONVILLE

CINDY A. LAQUIDARA
GENERAL COUNSEL

DERREL Q. CHATMON
CHIEF DEPUTY GENERAL COUNSEL



CITY HALL, ST. JAMES BUILDING
117 WEST DUVAL STREET, SUITE 480
JACKSONVILLE, FLORIDA 32202

JODY L. BROOKS
WILLIAM B. BURKETT
DAVID J. D'AGATA
CRAIG D. FEISER
LORIE L. FRENCH
JASON R. GABRIEL
SEAN B. GRANAT
KATY A. HARRIS
LAWSIKIA J. HODGES
J. TIMOTHY HORKAN
MARY W. JARRETT
PAIGE HOBBS JOHNSTON
RITA M. MAIRS
JAMES R. MCCAIN, JR.

CAROL MIRANDO
WENDY L. MUMMAW
GAYLE PETRIE
JON R. PHILLIPS
STEPHEN J. POWELL
JULIANA ROWLAND
JOHN C. SAWYER, JR.
CHERRY A. SHAW
MARGARET M. SIDMAN
JASON R. TEAL
ADINA TEODORESCU
MICHAEL B. WEDNER
GABY YOUNG

August 6, 2013

By US Mail and Email (ernest@flmitigation.com)

Ernest R. Hale, III
Loblolly Mitigation Preserve, LLC
3168 U.S. Highway 17 S., Suite E
Fleming Island, FL 32003

Re: Correspondence Dated June 18, 2013 Regarding Use Agreement Between Loblolly Mitigation Preserve, LLC and the City of Jacksonville, Florida

Dear Mr. Hale:

This is in response to your letter dated June 18, 2013 addressed to Kelley Boree and John F. Germany, Jr. regarding the Use Agreement Between Loblolly Mitigation Preserve, LLC and the City of Jacksonville, Florida ("Use Agreement"). I have had the opportunity to review the language within your correspondence and compare it to the currently existing Use Agreement. The letter contains changes to the terms and conditions to the existing Use Agreement. The Use Agreement will need to be amended to accommodate the changes proposed in this letter.

All amendments to the Use Agreement will require City Council approval, therefore in addition to the items listed in the referenced letter, any and all other proposed changes to Use Agreement should be included in this process. Please contact Kelley Boree to start the contract amendment process at your earliest convenience.

Sincerely,


Jody L. Brooks
Assistant General Counsel

JLB:

cc: Kelley Boree by Email (KBoree@coj.net)

Peterson, Phillip

From: Willis, Ann
Sent: Thursday, January 21, 2016 12:26 PM
To: Peterson, Phillip
Cc: Linsky, Edward; Duckworth, Twane; RiskReview
Subject: Loblolly Mitigation Preserve, LLC - Contractor Provided Insurance Documentation

Mr. Peterson,

Per our conversation last week, in November of 2013 your office contacted Risk Management requesting a certificate of insurance for the contractor in question. Our office did an extensive search of our office and advised that we did not have a certificate for that name.

In June of 2014 Risk Management was requested to search again using an old name and a new name for the contractor. We searched again and reported that there were no certificates in either name that was provided.

Your office then provided us with a certificate which was review against the contract and our office expressed to both the contractor and their insurance agent, the deficiencies of the certificate provided. We requested that corrections be made an resubmitted but a corrected certificate of insurance has never been received by the Office of Risk Management. The certificate we reviewed shows that coverage would have expired on 6/1/15, no renewal certificate was received by this office.

I have reviewed the certificate you provided on 1/15/16 and have found the following deficiencies:

1. Certificate submitted provides no Workers Compensation coverage. If LMP is not required to purchase Workers Compensation insurance under Florida Statute 440, they are to submit on LMP's letterhead a statement certifying this and have the statement signed by an officer of the organization or the authorized representative.
2. Waiver of Subrogation in favor of the City of Jacksonville is missing from the General Liability and Automobile Liability.
3. No coverage has been provided for All-Risk Property Insurance for any and all buildings, improvements, betterments, equipment, materials and personal property. City of Jacksonville is to be named as Loss Payee on this coverage.
4. All policies are to be endorsed to provide the City of Jacksonville with a 30 Day Notice of Cancellation.

Please obtain revised/additional certificates of insurance that cure the above listed deficiencies

Ann Willis, AINS, CRIS
Property and Casualty Compliance Administrator
Risk Management Division
Department of Finance
City of Jacksonville
117 W Duval Street, Suite 335
Jacksonville, FL 32202
(904) 630-7891 (o)
(904)630-2100 (f)

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the original message and any copies of it from your computer system. Improper disclosure of the information in this communication can result in fines and penalties under Federal, State and Local Law.

From: Peterson, Phillip
Sent: Friday, January 15, 2016 11:44 AM
To: Duckworth, Twane
Cc: Willis, Ann; Linsky, Edward
Subject: Contractor Provided Insurance Documentation

Good morning Twane,

We are currently in the process of conducting an audit of a contractor with whom the City does business. Their contract call for them to provide certain types and amounts of insurance. During the course of the audit, we checked with your Division to see if the correct insurance had been provided. At that time, we were told by Ceci Ford that Risk had no record of insurance from this contractor. The auditee (contractor) is now saying that they have been providing the correct insurance policies to Risk Management each year. Could you please check your files to see if Loblolly Mitigation Preserve, LLC has provided the necessary information? I have attached (1) the applicable portion of their contract for you to compare any information against and (2) a copy of their current policy (per them) . Also, this contract was authorized by ordinance 2003-488-E. Please let me know if you need any additional information.

Phillip Peterson, C.P.A.
Council Auditor's Office
City of Jacksonville, FL
Office 904.630.1625
Direct 904.630.1212 x5601

Pursuant to Section 119.0713(2), Florida Statutes, this email is NOT a public record until the audit is completed and the audit report becomes final. Our audit report is final when it is presented to City Council. Therefore, this material is confidential and exempt from disclosure pursuant to the Public Records Law until that time.

EXHIBIT A

CITY OF JACKSONVILLE, FLORIDA

LOBLOLLY FRESH WATER WETLANDS MITIGATION BANK

The Loblolly Mitigation Bank, located east of Highway 301 and north of County Road 228, is a cornerstone of the preservation corridor around Jacksonville. The City of Jacksonville partnered with Loblolly Mitigation Preserve, LLC to purchase and restore approximately 7,000 acres of planted pine lands in southwest Duval County.

The mitigation bank is managed by Florida Mitigation Providers, LLC, a partner in Loblolly Mitigation Preserve, LLC and a commercial wetland mitigation banking firm headquartered in Jacksonville, Florida.

ORDINANCE 2003-488-E

- Authorized the City's purchase of the Project know as East Fiftone approx. 4,878 acres of which 4,375 to be restored as wetlands and 503 acres would be utilized as a park.
- Authorized the Use Agreement with Loblolly Mitigation Preserve, LLC (the Banker).
- Reserved 384 credits for City participating projects.
- Authorized the Sale of City's Excess Credits.
- Mandates the repayment of the City's participating projects that purchased the property. (Approx. 17.5 million) **This is complete.**
- Mandates any remaining funds be appropriated by City Council for Parks.

ORDINANCE 2005-311-E

- Created the Loblolly Wetlands Mitigation Trust Fund. The revenue from the sale of excess credits (after project repayments) is subject to City Council appropriation.

CITY'S BANK VALUATION ESTIMATES

Land Value -	\$10 million
Set Aside Credits -	\$15.4 million
Revenue Generation to date -	\$24.1 million
Remaining Excess Credits for sale -	<u>\$14 million</u>
TOTAL FAIR MARKET VALUE	\$63.5 million

The SJWMD has issued a permit for Loblolly for the conversion of credits to the Uniform Mitigation Assessment Method. At this time the Banker is working with the District to finalize the credit ledger conversions. Upon completion the annual report will be issued.

PERMIT CHALLENGE FOR HIGHLANDS RANCH MITIGATION BANK (HRMB)

The permit is being challenged by the Florida Wildlife Federation due to the degradation of wetland offsets. Neither Loblolly nor the City is party to the challenge. This is an administrative hearing to review the facts to determine the final number of credits to be issued.

In 2003 Loblolly began as a commercial operation in Basin 4. The only competing bank in Basin 4 owned by Loblolly Mitigation Preserve is Nochaway. The City receives 50% of credit sales and Nochaway and Loblolly Mitigation Preserve share in the other 50%. Tupelo is sold out of Basin Scredits. HRMB was aware of all existing competition prior to implementing its business model.

The hearing date of November 26, 2012 was requested by the Highlands Ranch Mitigation Bank and not the Florida Wildlife Federation. It is not a lawsuit.

EXHIBIT B



ATTACHMENT

1 Introduced by the Council President at the request of the
 2 Mayor:

ORDINANCE 2004-212-E

3
 4
 5
 6 AN ORDINANCE APPROVING USE OF CITY CREDITS FOR
 7 MITIGATION FOR WETLANDS IMPACTS WITH
 8 JACKSONVILLE TRANSPORTATION AUTHORITY ("JTA")
 9 NOTWITHSTANDING ORDINANCE 2003-488-E;
 10 AUTHORIZING THE MAYOR AND CORPORATION
 11 SECRETARY TO EXECUTE AN INTERLOCAL AGREEMENT,
 12 TOGETHER WITH ALL AMENDMENTS THERETO, WITH
 13 JTA, FOR USE OF TIGER HOLE SWAMP AND THE
 14 LOBLOLLY MITIGATION BANK FOR MITIGATION FOR
 15 WETLANDS IMPACTS; PROVIDING AN EFFECTIVE DATE.

16
 17 WHEREAS, Ordinance 2003-488-E authorized use of 384 credits,
 18 out of the Loblolly Mitigation Bank, for wetlands mitigation; and

19 WHEREAS, The City wants to use 53.12 of those mitigation
 20 credits to exchange with Jacksonville Transportation Authority
 21 ("JTA") for a conservation easement over the Tiger Hole Swamp; and

22 WHEREAS, 41.12 of those credits will be on a credit-for-credit
 23 exchange for the said conservation easement and the remaining 12
 24 credits will be made available for sale to JTA over twenty (20)
 25 years for an amount of \$18,150 per credit to be paid by JTA to the
 26 City, when the credits are needed; now therefore

27 BE IT ORDAINED, by the Council of the City of Jacksonville:

28 Section 1. The proposed exchange of mitigation credits by
 29 and between the City and the JTA on a credit-for-credit basis for a

1 conservation easement over Tiger Hole Swamp together with selling
2 JTA an additional 12 mitigation credits, from the Loblolly
3 Mitigation Bank, is approved, notwithstanding any contrary
4 provisions of Ordinance 2003-488-E.

5 Section 2. The Mayor and Corporation Secretary are
6 authorized to execute an interlocal agreement, together with all
7 amendments thereto, with the JTA, in substantially the form
8 contained in Exhibit 1, attached hereto (the "Agreement"). Said
9 Agreement is for the use of Tiger Hole Swamp and the Loblolly
10 Mitigation Bank for mitigation for wetland impacts.

11 Section 3. Effective Date. This ordinance shall become
12 effective upon signature by the Mayor or upon becoming effective
13 without the Mayor's signature.

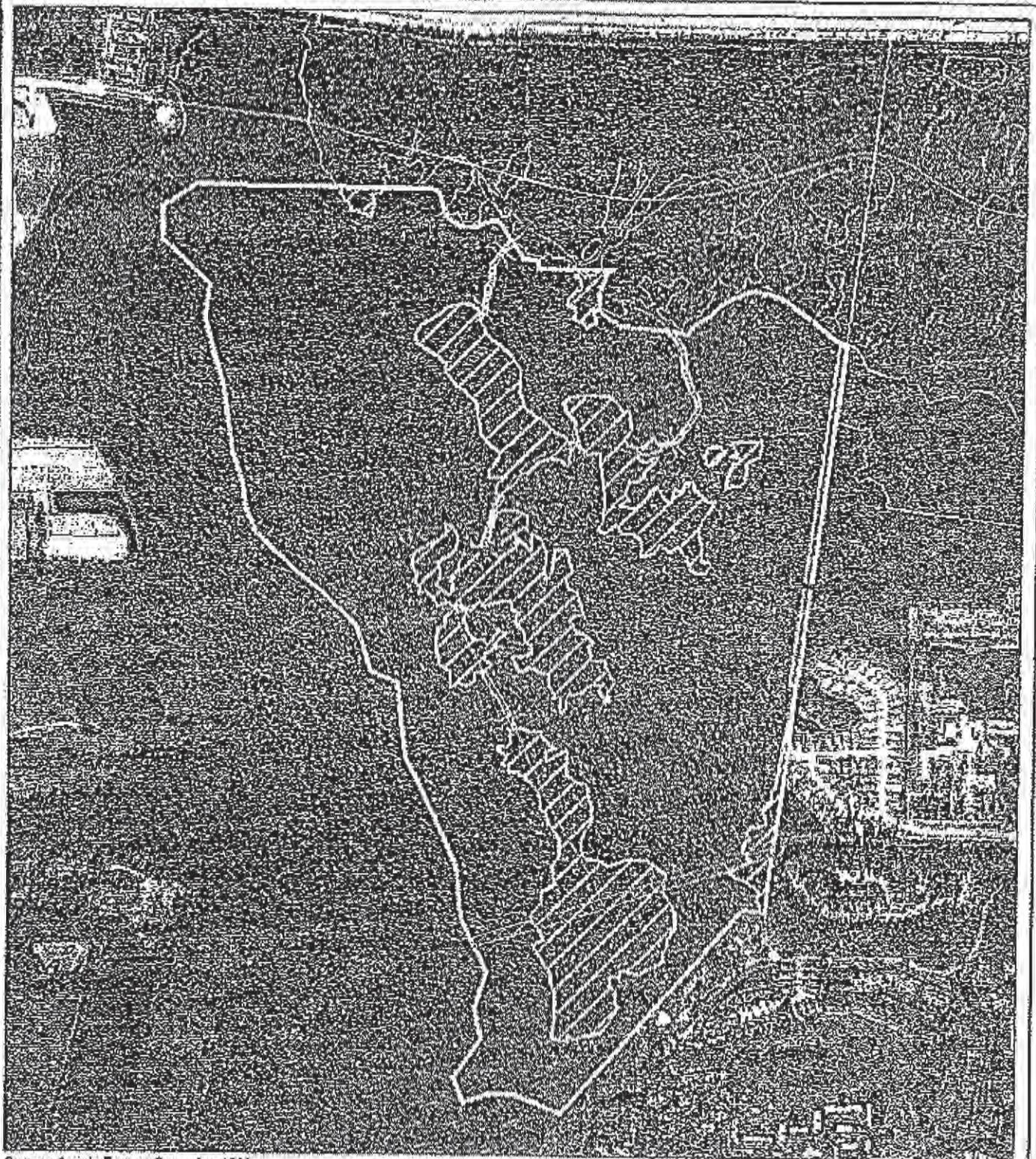
14
15 Form Approved:

16
17 /s/ Margaret M. Sidman

18 Office of General Counsel

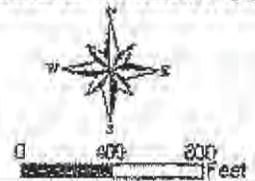
19 Legislation Prepared By: Neill W. McArthur, Jr.

20 G:\shared\LEGIS.CC\McARTHUR\ORDINANCE.ES\JTA Interlocal Agreement for Mitigation.doc



Source: Aerials Express December 2002

Cross Section Sites Approximate Locations of Culverts Restoration Area #1: 474.51 ac Restoration Area #2: 1,122 ac	USA Eminent Domain Property Proposed Upland Preservation: 1,153 ac Proposed Wetland Preservation: 1,222.17 ac
---	---



ENVIRONMENTAL SERVICES, INC.

Off-Site Mitigation for Gate Parkway Extension West

Project No. EJ01176

Date August 18, 2003

Figure No. 2

EXHIBIT "A"

**AGREEMENT BETWEEN THE CITY OF JACKSONVILLE AND THE
JACKSONVILLE TRANSPORTATION AUTHORITY CONCERNING THE
USE OF TIGER HOLE SWAMP AND THE LOBLOLLY MITIGATION
BANK AS MITIGATION FOR WETLAND IMPACTS**

THIS AGREEMENT is entered into this _____ day of _____, 2004, by and between the CITY OF JACKSONVILLE (CITY), a municipal corporation existing in Duval County, Florida and the JACKSONVILLE TRANSPORTATION AUTHORITY (JTA), a body corporate and politic and an agency of the State of Florida.

WITNESSETH

WHEREAS, the CITY is interested in acquiring mitigation sites in association with the "Better Jacksonville Plan" (BJP) and other CITY projects which will provide for impacts to wetland and surface water resources (resources) which are regulated by the U.S. Army Corps of Engineers (CORPS) and the Saint Johns River Water Management District (DISTRICT) pursuant to Section 404(a) of the Clean Water Act and Part IV of Chapter 373, Florida Statutes (F.S.); and

WHEREAS, for purposes of this agreement, the Jacksonville Preservation Program shall refer to the Preservation Plan adopted by Jacksonville City Council Resolution 1999-98-A; and

WHEREAS, for purposes of this agreement, the Oversight Committee shall refer to the committee established by City of Jacksonville Mayoral Executive Order 99-2; Subject: Mayor's Oversight Commission for The Preservation Project; and

WHEREAS, the CITY is responsible for providing mitigation for all wetland impacts for each project within the BJP and other CITY projects; and

WHEREAS, the JTA is responsible for providing mitigation for wetland impacts for its projects; and

WHEREAS, the CITY is acquiring a property known as East Fiftone which will be permitted as the Loblolly Mitigation Bank which will provide the CITY with mitigation credits for Drainage Basin 4 (The Upper St. Johns River Basin); and

WHEREAS, the JTA owns a parcel of land south of J. Turner Butler Boulevard between Belfort Road and Southside Boulevard, a portion of which (such portion, the "Exchange Parcel") is more particularly described on Exhibit A hereto; and

WHEREAS, the CITY is interested in placing a conservation easement on the Exchange Parcel to preserve that undeveloped land; and

WHEREAS, certain land preservation and other activities to be included in the Jacksonville Preservation Program may also satisfy federal and state mitigation requirements for wetland impacts associated with BJP and other CITY improvements and may further complement the long term resource value of CITY projects; and

WHEREAS, the JTA expects to have mitigation requirements for unavoidable wetland impacts as a result of the widening of J. Turner Butler Boulevard and the construction of A.C. Skinner Parkway, among its other projects now or hereafter identified;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the CITY and the JTA hereby agree as follows:

1. **Authority.** The parties are authorized to enter into this Agreement by Section 163.01, Florida Statutes. Additionally the CITY is authorized to enter into contracts under its municipal home rule powers; and to enter into this Agreement pursuant to Ordinance 2004-212-E; and JTA is authorized to enter into contracts pursuant to Section 349.04(10)(h), Florida Statutes.
2. **Term and Termination.** The term of this Agreement shall commence on the day and year first above written and shall continue in full force and effect until the earlier to occur of (i) the date on which all of the credits available to the JTA for purchase and in consideration of the easement to be placed on the Exchange Parcel have been used or expired, or (ii) the twentieth anniversary of the date hereof, subject in each case to earlier termination as provided herein.
3. **Mitigation Exchange.** In exchange for ~~41~~ 12 credits allowed by the CORPS and the DISTRICT for the placement of a conservation easement on the Exchange Parcel, the CITY will provide the same number of credits out of the Loblolly Mitigation Bank at no charge to the JTA immediately upon the Loblolly Mitigation Bank becoming permitted by the CORPS and the DISTRICT. In addition, the CITY will provide up to 12 further credits to the JTA for its projects out of the Loblolly Mitigation Bank as requested by the JTA from time to time prior to the termination hereof to the extent that the Loblolly Mitigation Bank has remaining credits that have not been actually used for other projects at the time requested by the JTA, each at the CITY Rate of \$18,150 per credit (the Additional Credits).
4. **Costs and Expenses.** All costs and expenses of the transactions contemplated herein, including the permitting of the Loblolly Mitigation Bank, the determination of credits for the Exchange Parcel, survey of the Exchange Parcel, and negotiation for credits from the Loblolly Mitigation Bank, but excluding the price of any Additional Credits purchased by the JTA, shall be paid by the CITY.
5. **Public Access.** The parties will allow public access to all documents and materials relating to this Agreement in accordance with the requirements of the Florida Public Record Law, as codified in Chapter 119, Florida Statutes. Should either party claim an exemption from the mandatory disclosure requirements of that law, such party will be responsible for justifying such claimed exemption as may be required by law.
6. **Notice.** If written notice is required under this Agreement, such notice shall be by certified United States Mail, return receipt requested or by hand delivery with receipt. The recipients of such notice for each of the parties, and their addresses shall be as follows:

For the CITY: Elizabeth Kohler
Office of the Mayor
117 West Duval Street
Jacksonville, Florida 32202

For the JTA: Chief Engineer
Jacksonville Transportation Authority
100 North Myrtle Avenue
Jacksonville, Florida 32202

7. **Nonwaiver.** Failure of either party to insist upon strict performance of any of the provisions herein, either party's failure or delay in exercising any rights or remedies provided herein, or any purported oral modification or revision of this Agreement, by an employee or agent of either party, shall not release either party from its obligations under this Agreement; shall not be deemed as a waiver of any rights of either party to insist upon strict performance hereof or of either party's rights or remedies under this Agreement or by law; and shall not operate as a waiver of any of the provisions of this Agreement.

8. **Section Headings.** The section headings used in this Agreement are for convenience or reference only. Such section headings will, in no way be construed as interpretations of the text of this Agreement.

9. **Construction.** Both parties acknowledge that they have had meaningful input into the terms and conditions contained in this Agreement. Therefore, doubtful or ambiguous provisions, contained herein, if any, shall not be construed against the party who physically prepared this Agreement.

10. **Amendments.** This agreement may be amended only by written instrument executed by the authorized representative of each of the parties.

11. **Entire Agreement.** This Agreement represents the entire agreement by and between the parties with respect to mitigation for wetland impacts. No statement, understanding, writing, agreement, course of conduct or course of action by either of the parties or their authorized representatives that is not contained in this Agreement shall be binding.

12. **Recording.** The CITY shall record this Agreement in the official records of Duval County, as is required under Section 163.01(11), Florida Statutes.

[Remainder of page left blank intentionally; next page is the signature page]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed effective as of the date first set forth above.

ATTEST:

CITY OF JACKSONVILLE

By: _____
Neill W. McArthur, Jr.

By: _____
John Peyton, Mayor

ATTEST:

JACKSONVILLE TRANSPORTATION
AUTHORITY

By: _____
Signature

Type/Print Name

By: _____
Signature

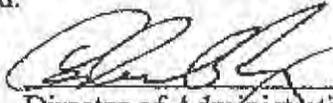
Type/Print Name

Approved as to form for JTA:

Title

General Counsel

In accordance with the Ordinance Code of the City of Jacksonville, I do hereby certify that there is an unexpended, unencumbered and unimpounded balance in the appropriation sufficient to cover the foregoing agreement; and that provision has been made for the payment of monies provided therein to be paid.



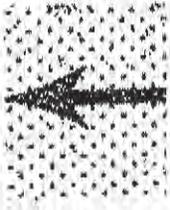
Director of Administration and Finance
5815-21

Form Approved for the City of Jacksonville:



Office of General Counsel





G:\Gov't Operations\NEILLM\Agreements\JTA Loholly Interlocal Agreement\Final.doc

G:\Gov't Operations\NEILLM\Agreements\JTA Loholly Interlocal Agreement\Final.doc

EXHIBIT C

1 Florida, dated June 30, 2003, hereafter known as the "Use
 2 Agreement," and as authorized by Ordinance 2003-488-E.
 3 Disbursements shall be in accordance with Ordinance 2003-488-E and
 4 the Use Agreement, which include, but are not limited to, the
 5 restoration of project accounts, management fees, CPI adjustments,
 6 and marketing fees. All sums placed into the Fund (which shall
 7 include all interest earned or accrued thereon) are hereby
 8 appropriated and shall not lapse but instead shall carry over to
 9 the next fiscal year to be used for the purposes described herein.
 10 The Director of the Department of Administration and Finance, or
 11 his/her designee, is authorized and directed to make disbursements
 12 from the Fund upon written requisition of the Administration and
 13 Finance Department designee, subject to the availability of funds
 14 in the Fund. Pursuant to Ordinance 2003-488-E, after disbursement
 15 of the funds for the reasons hereinabove authorized, the Director
 16 of the Department of Administration and Finance, or his/her
 17 designee, shall transfer any remaining funds to a revenue account
 18 for the purposes of capital improvements and land acquisition for
 19 conservation and park uses, and subsequent expenditure of these
 20 funds shall require City Council appropriation.

21 **Section 2. Effective Date.** This ordinance shall
 22 become effective upon signature by the Mayor or upon becoming
 23 effective without the Mayor's signature.

24
 25 Form Approved:

26
 27 /s/ Margaret M. Sidman_____

28 Office of General Counsel

29 Legislation Prepared By: Karen M. Chastain

EXHIBIT D

Mayor's Office
Preservation Project Jacksonville



September 9, 2004

MEMORANDUM

TO: Mr. Ernest Hale
Loblolly Wetland Mitigation Bank
14704 Stacey Road
Jacksonville, FL 32250

FROM: Ms. Elizabeth Kohler
Administrator, Preservation Project Jacksonville

SUBJECT: Loblolly Mitigation Bank

A handwritten signature in black ink, appearing to be "EK", written over the "FROM:" line of the memorandum.

In accordance with our 30 June 2003 Use Agreement, the City wishes to declare 20 City Excess Credits available for sale to the general public at this time.

Thank you in advance for your assistance in this regard.

EK,ek

xc: Anna Bradley, Accounting and Finance
England-Thirns & Miller, Inc. Attn: Tom Fallin



220 E. BAY STREET, ROOM 807 • JACKSONVILLE, FLORIDA 32202
PHONE: 904 - 630-1351 • FAX: 904 - 630-2905 • www.coj.net
Recipient of the 2001 Governor's Sterling Award

Mayor's Office
Preservation Project Jacksonville



March 11, 2004

MEMORANDUM

TO: Mr. Ernest Hale
Loblolly Wetland Mitigation Bank
14704 Stacey Road
Jacksonville, FL 32250

FROM: Ms. Elizabeth Kohler
Administrator, Preservation Project Jacksonville

SUBJECT: Loblolly Mitigation Bank

In accordance with our 30 June 2003 Use Agreement, the City does not wish to release any City Excess Credits for sale to the general public at this time. Based on further research and study, we will determine when to release the credits for sale.

Thank you in advance for your assistance in this regard.

EK;ek

cc: Anna Bradley, Accounting and Finance
England-Thims & Miller, Inc. Attn: Tom Fallin



CITY HALL AT ST. JAMES • 117 WEST DUVAL STREET, SUITE 400
JACKSONVILLE, FLORIDA 32202
PHONE: 904-630-1351 • FAX: 904-630-2905 • www.coj.net
Recipient of the 2001 Governor's Sterling Award

EXHIBIT E

LOBLOLLY MITIGATION BANK ANNUAL REPORT TO THE CITY OF JACKSONVILLE September 28th, 2004

The City of Jacksonville (City) closed on the Loblolly Mitigation Bank (LMB) December 3rd, 2003. The total number of mitigation credits potentially available to the City per the mitigation bank permits is 1,401.7 St. Johns River Water Management District (SJRWMD) credits and 1,765.83 US Army Corps of Engineers (USACOE) credits. Per the Use Agreement between the City and Loblolly Mitigation Preserve, LLC (LMP), in Year 1 LMP will have available for use by the City 150, in year 2 LMP will have an additional 150 mitigation credits for use by the City. Upon the placement of a conservation easement over the LMB property a total of 350 mitigation credits were released for use by the City. This equates to 50 more credits than required cumulatively until December 2005. Due to the fact that there are 50 more credits produced at this time than required, there are no plans for implementing the mitigation activities other than the normal timbering that is being performed on an ongoing basis per the timber agreement.

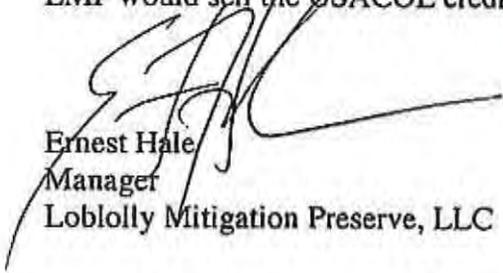
To date there have been 32.75 SJRWMD credits and 31.81 USACOE credits allocated from the Cities credits for use by various projects. These credits were allocated as follows:

<u>Project</u>	<u>SJRWMD Credits</u>	<u>USACOE Credits</u>
Gate Parkway West (Swap with JTA for Tiger Swamp Property)		
JTA, JTB Widening 12/14/03	0	2.86
USACOE #200306682 (IP-JJS) JTA, A.C. Skinner Parkway 12/04/03	28.95	28.95 <i>17.96</i>
SJRWMD # 4-031-18157-6 USACOE # 200302297(IP-JJS)		
Spring Park 1/7/04	1.35	0
SJRWMD #4-031-84706-2		
Camp Milton 5/5/04	0.66	0
SJRWMD #40-031-90570-1		

Orange Picker Road 5/16/04 SJRWMD #4-031-21357-2	1.79	0
TOTAL TO DATE	32.75	31.81
TOTAL CURRENTLY AVAILABLE	317.68	382.81
TOTAL POTENTIALLY AVAILABLE	1,368.95	1,734.02

From December 3rd to September 8th, 2003 the City had not declared any excess credits for sale. On September 9th, 2003 the City declared 20 excess credits for sale to the general public. Since that time LMB has written one reservation letter for 3.3 credits to Wal Mart Super Center 3309-00 at a price of \$40,000 per credit. Of this sale 1.65 credits will be sold from LMP's portion of the mitigation bank and 1.65 credits will be sold from the Cities portion of the bank.

At this time the price for mitigation credits from LMB is \$40,000 per credit and LMP has the ability to discount the price of a credit up to 15% from the posted price. It has been the practice of LMP to reduce the price of a credit to \$38,000 per credit with a purchase of 10 credits or more. It is LMP's suggestion that this pricing schedule be maintained for now and revisited at the end of the calendar year 2004. To date LMP has sold from it's portion of LMB 24.17 SJRWMD credits and 18.01 USACOE credits with the average price per credit being \$38,546 per SJRWMD credit. When a credit is purchased it entitles the purchaser to 1 SJRWMD credit and up to 1 USACOE credit. Since there are more USACOE credits allocated to LMB than SJRWMD credits and there is usually a lower number of USACOE credits required for impacts, it has been the practice of LMP to sell USACOE credits alone for 50% of the price of a SJRWMD credit. For example, if an applicant only needed 1 USACOE credit but didn't need any SJRWMD credits then LMP would sell the USACOE credit for \$20,000.


Ernest Hale
Manager
Loblolly Mitigation Preserve, LLC

Mayor's Office
Preservation Project Jacksonville



September 9, 2004

MEMORANDUM

TO: Mr. Ernest Hale
Loblolly Wetland Mitigation Bank
14704 Stacey Road
Jacksonville, FL 32250

FROM: Ms. Elizabeth Kohler
Administrator, Preservation Project Jacksonville

SUBJECT: Loblolly Mitigation Bank

A handwritten signature in black ink, appearing to read "EK", is written over the "FROM:" line of the memorandum.

In accordance with our 30 June 2003 Use Agreement, the City wishes to declare 20 City Excess Credits available for sale to the general public at this time.

Thank you in advance for your assistance in this regard.

EK;ek

xc: Anna Bradley, Accounting and Finance
England-Thims & Miller, Inc. Attn: Tom Fallin



220 E. BAY STREET, ROOM 807 • JACKSONVILLE, FLORIDA 32202
PHONE: 904 - 630-1361 • FAX: 904 - 630-2905 • www.coj.net
Recipient of the 2001 Governor's Sterling Award

Mayor's Office
Preservation Project Jacksonville



March 11, 2004

MEMORANDUM

TO: Mr. Ernest Hale
Loblolly Wetland Mitigation Bank
14704 Stacey Road
Jacksonville, FL 32250

FROM: Ms. Elizabeth Kohler
Administrator, Preservation Project Jacksonville

SUBJECT: Loblolly Mitigation Bank

In accordance with our 30 June 2003 Use Agreement, the City does not wish to release any City Excess Credits for sale to the general public at this time. Based on further research and study, we will determine when to release the credits for sale.

Thank you in advance for your assistance in this regard.

EK;ek

xc: Anna Bradley, Accounting and Finance
England-Thims & Miller, Inc. Attn: Tom Fallin



CITY HALL AT ST. JAMES • 117 WEST DUVAL STREET, SUITE 400
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LOBLOLLY MITIGATION BANK ANNUAL REPORT TO THE CITY OF JACKSONVILLE September 30th, 2005

The City of Jacksonville (City) closed on the Loblolly Mitigation Bank (LMB) December 3rd, 2003. The total number of mitigation credits potentially available to the City per the mitigation bank permits is 1,401.7 St. Johns River Water Management District (SJRWMD) credits and 1,765.83 US Army Corps of Engineers (USACOE) credits. Per the Use Agreement between the City and Loblolly Mitigation Preserve, LLC (LMP), in Year 1 LMP will have available for use by the City 150, in year 2 LMP will have an additional 150 mitigation credits for use by the City and in Year 3 LMP will have an additional 84 mitigation credits for use by the City. Upon the placement of a conservation easement over the LMB property a total of 350 mitigation credits were released for use by the City. This equates to 50 more credits than required cumulatively until December 2005. With the additional 34 credits due in Year 3 we are currently evaluating which Phases of construction to implement in order to produce additional credits for the City. The first steps in implementing a phase are to remove the pine trees and replant with hardwood species. We anticipate implementing these steps on one or more phases of construction late 2005 early 2006. There may be additional pine removal due to the normal timbering that is being performed on an ongoing basis per the timber agreement.

The table below summarizes the Cities credit position for Fiscal year 2005:

<u>Project</u>	<u>SJRWMD Credits</u>	<u>USACOE Credits</u>
BIP	11.70	2.63
Outside Sales	35.72	30.04
Total Used 2005	47.42	32.67
Total to Date	80.17	43.46

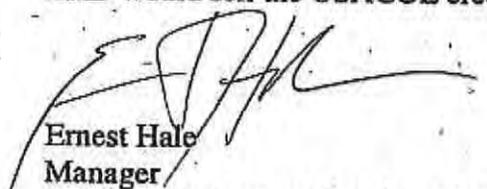
4345 Southpoint Blvd., Suite 100 • Jacksonville, FL 32216 • office 904.821.4322 • fax 904.224.1101

www.flmitigation.com

Total Currently Available	270.26	371.16
Total Reservations	146.68	133.83
Total Currently Available less Reservations	123.58	237.33
Total Potentially Available	1,321.53	1,722.37

At this time the City has declared excess credits and is sharing in all credit sales on a 50/50 basis with Loblolly Mitigation Preserve, LLC.

Currently the price for mitigation credits from LMB is \$45,000 per credit and LMP has the ability to discount the price of a credit up to 15% from the posted price. It has been the practice of LMP to reduce the price of a credit to \$38,000 per credit with a purchase of 10 credits or more. It is LMP's suggestion that this pricing schedule be maintained for now and revisited at the end of the calendar year 2005. When a credit is purchased it entitles the purchaser to 1 SJRWMD credit and up to 1 USACOE credit. Since there are more USACOE credits allocated to LMB than SJRWMD credits and there is usually a lower number of USACOE credits required for impacts, it has been the practice of LMP to sell USACOE credits alone for 50% of the price of a SJRWMD credit. For example, if an applicant only needed 1 USACOE credit but didn't need any SJRWMD credits then LMP would sell the USACOE credit for \$22,500.



Ernest Hale
Manager
Loblolly Mitigation Preserve, LLC

EXHIBIT F

1 Introduced by the Council President at the request of the Mayor:
2
3

4 **ORDINANCE 2005-311-E**

5 AN ORDINANCE CONCERNING CHAPTER 110, PART 3
6 (THE CITY TREASURY, SPECIAL ACCOUNTS AND
7 FUNDS); CREATING SECTION 110.399.12 (LOBLOLLY
8 WETLANDS MITIGATION SPECIAL REVENUE FUND),
9 ORDINANCE CODE, FOR THE PURPOSE OF RECEIVING
10 AND DISBURSING FUNDS FROM THE SALE OF EXCESS
11 MITIGATION CREDITS PURSUANT TO THAT CERTAIN
12 USE AGREEMENT BETWEEN LOBLOLLY MITIGATION
13 PRESERVE, LLC, AND THE CITY OF JACKSONVILLE,
14 FLORIDA, AND ORDINANCE 2003-488-E; PROVIDING
15 AN EFFECTIVE DATE.
16

17 **BE IT ORDAINED** by the Council of the City of Jacksonville:

18 **Section 1.** There shall be created a new Section
19 110.399.12 to read as follows:

20 **CHAPTER 110 CITY TREASURY**

21 **PART 3. SPECIAL ACCOUNTS AND FUNDS**

22 * * *

23 **Sec. 110.399.12. Loblolly Wetlands Mitigation Special Revenue**
24 **Fund.**

25 There is created within the General Trust and Agency Fund a
26 trust fund account to be known as the *Loblolly Wetlands Mitigation*
27 *Special Revenue Fund*, hereafter called the *Fund*. The City shall
28 receive and disburse funds from the sale of Excess Mitigation
29 Credits as defined and set forth in the Use Agreement between
30 Loblolly Mitigation Preserve, LLC and the City of Jacksonville,

1 Florida, dated June 30, 2003, hereafter known as the "Use
 2 Agreement," and as authorized by Ordinance 2003-488-E.
 3 Disbursements shall be in accordance with Ordinance 2003-488-E and
 4 the Use Agreement, which include, but are not limited to, the
 5 restoration of project accounts, management fees, CPI adjustments,
 6 and marketing fees. All sums placed into the Fund (which shall
 7 include all interest earned or accrued thereon) are hereby
 8 appropriated and shall not lapse but instead shall carry over to
 9 the next fiscal year to be used for the purposes described herein.
 10 The Director of the Department of Administration and Finance, or
 11 his/her designee, is authorized and directed to make disbursements
 12 from the Fund upon written requisition of the Administration and
 13 Finance Department designee, subject to the availability of funds
 14 in the Fund. Pursuant to Ordinance 2003-488-E, after disbursement
 15 of the funds for the reasons hereinabove authorized, the Director
 16 of the Department of Administration and Finance, or his/her
 17 designee, shall transfer any remaining funds to a revenue account
 18 for the purposes of capital improvements and land acquisition for
 19 conservation and park uses, and subsequent expenditure of these
 20 funds shall require City Council appropriation.

21 **Section 2. Effective Date.** This ordinance shall
 22 become effective upon signature by the Mayor or upon becoming
 23 effective without the Mayor's signature.

24
 25 Form Approved:

26
 27 /s/ Margaret M. Sidman_____

28 Office of General Counsel

29 Legislation Prepared By: Karen M. Chastain

30 7/7/2005 G:\shared\LEGIS.CC\2005\ord\02.18 AF Loblolly Trust Fund.02.24.doc

EXHIBIT G

CITY DISTRIBUTION

10/28/2010

Sources of Funds
9070 Bay Cove Lane

0.570 Credits @	\$40,000	\$22,800
Credits @	\$40,000	\$0
Credits @	\$40,000	\$0
Credits @	\$40,000	\$0
Credits @	\$55,000	\$0

Total Sources

\$22,800

Uses of Funds
Management Fee
9070 Bay Cove Lane

0.570 Credits @	\$9,015	\$5,138
Credits @	\$8,792	\$0

Total Use of Funds

\$5,138

Total Distribution to City

\$17,662

Total Distributed

\$17,662

EXHIBIT H

From: Bradley, Anna
Sent: Tuesday, July 01, 2008 4:41 PM
To: Peterson, Phillip
Subject: RE: Loblolly

Follow Up Flag: Follow up
Flag Status: Flagged

I'll ask for an updated spreadsheet through the end of June and look to see what checks we've received since March. I also calculated the CPI and the new management fee is \$8,821. Is that what you get?

Anna

From: Peterson, Phillip
Sent: Tuesday, July 01, 2008 4:22 PM
To: Bradley, Anna
Subject: RE: Loblolly

I need the distribution received in March/April. I believe that is the only one I don't have. I can come and get it if it would be easier. Just let me know when you are back in the office.

Thanks

From: Bradley, Anna
Sent: Tuesday, July 01, 2008 4:21 PM
To: Peterson, Phillip
Subject: RE: Loblolly

Phillip,

I'm working from the Armory now. Would it be possible for you to let me know the last documents that you received and what you're looking for? Or could you come by and look through the binder and files?

Anna

From: Peterson, Phillip
Sent: Tuesday, July 01, 2008 4:06 PM
To: Bradley, Anna
Subject: Loblolly

Anna,

Could you provide the latest documentation related to Loblolly?

Phillip Peterson

Council Auditor's Office

City of Jacksonville, FL

Ph: (904) 630-1212 x5601

From: Bradley, Anna
Sent: Friday, January 06, 2006 3:24 PM
To: Peterson, Phillip
Subject: Loblolly Info
Attachments: 2005 Dec Loblolly Credit Ledger.xls

Follow Up Flag: Follow up
Flag Status: Flagged

Phillip,
Here is the spreadsheet. I sent the deposit information to you inter-office.
Anna

From: Peterson, Phillip
Sent: Tuesday, July 01, 2008 4:22 PM
To: Bradley, Anna
Subject: RE: Loblolly

Follow Up Flag: Follow up
Flag Status: Flagged

I need the distribution received in March/April. I believe that is the only one I don't have. I can come and get it if it would be easier. Just let me know when you are back in the office.

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Anna,

Could you provide the latest documentation related to Loblolly?

Phillip Peterson

Council Auditor's Office

City of Jacksonville, FL

Ph: (904) 630-1212 x5601

From: Bradley, Anna
Sent: Thursday, February 07, 2008 11:30 AM
To: Peterson, Phillip
Subject: Loblolly
Attachments: FY 2007 YE revised LMP Ledger -COJ.xls

Follow Up Flag: Follow up
Flag Status: Flagged

Phillip,
The signed year end report has been sent inter-office. Please let me know if you have any questions.
Anna

From: Bradley, Anna
Sent: Thursday, February 07, 2008 11:30 AM
To: Peterson, Phillip
Subject: Loblolly
Attachments: FY 2007 YE revised LMP Ledger -COJ.xls

Follow Up Flag: Follow up
Flag Status: Flagged

Phillip,
The signed year end report has been sent inter-office. Please let me know if you have any questions.
Anna

From: Bradley, Anna
Sent: Thursday, November 29, 2007 8:56 AM
To: Peterson, Phillip
Subject: Lobiolly

Follow Up Flag: Follow up
Flag Status: Flagged

Phillip,

Sorry for the delay. This year end has been a struggle. I've received the annual report, but have to get my information back from General Counsel to do my part.

I'll have everything to you by the end of next week.

Thanks,

Anna

From: Bradley, Anna
Sent: Wednesday, July 11, 2007 9:01 AM
To: Peterson, Phillip
Subject: RE: Loblolly Update

Follow Up Flag: Follow up
Flag Status: Flagged

I think you're right. Thanks.

From: Peterson, Phillip
Sent: Wednesday, July 11, 2007 8:56 AM
To: Bradley, Anna
Subject: RE: Loblolly Update

Anna,

I believe that you have used the wrong numbers for the CPI calculation. I think that you used the U.S. City Average rather than the South Urban numbers. My calculation gives us a CPI adjustment of \$8,563.86 which is still lower than 3% adjustment. Let me know what you think.

Thanks,

Phillip

From: Bradley, Anna
Sent: Friday, July 06, 2007 3:19 PM
To: 'Ernest Hale'
Cc: 'Laura Stonacek'; Peterson, Phillip
Subject: Loblolly Update

Ernest,

At today's meeting, the City determined it can sell 50 credits at this time. In addition, the CPI calculation was computed as follows:

$205.352 \times 8343 / 199.8 = 8574.83$ which is lower than $8343 \times 1.03 = 8593.29$.

The management fee with the CPI adjustment is **\$8,575**.

Best regards,

Anna

From: Bradley, Anna
Sent: Monday, July 02, 2007 12:57 PM
To: Peterson, Phillip
Subject: Credit Ledger
Attachments: April 2007 Loblolly Credit Ledger-ab (3).xls

Follow Up Flag: Follow up
Flag Status: Flagged

From: Peterson, Phillip
Sent: Friday, June 22, 2007 12:01 PM
To: Bradley, Anna
Subject: RE: Loblolly

Follow Up Flag: Follow up
Flag Status: Flagged

No report will be issued unless there is something catastrophically wrong. We just try to keep track of it on our end and I have fallen behind. I am trying to catch up and then I will be transferring it to another auditor.

From: Bradley, Anna
Sent: Friday, June 22, 2007 11:48 AM
To: Peterson, Phillip
Subject: RE: Loblolly

No report that we are in compliance or something from your review?

From: Peterson, Phillip
Sent: Friday, June 22, 2007 11:31 AM
To: Bradley, Anna
Subject: RE: Loblolly

What kind of feedback do you want? If there appears to be something wrong, you will.

From: Bradley, Anna
Sent: Friday, June 22, 2007 11:15 AM
To: Peterson, Phillip
Subject: RE: Loblolly

Phillip,

I'm trying to catch up since I was on vacation. I have to update the spreadsheet and I'll forward it to you next week. Am I going to receive any feedback from you regarding the information you've received?

Anna

From: Peterson, Phillip
Sent: Wednesday, June 20, 2007 4:26 PM
To: Bradley, Anna
Subject: Loblolly

Anna,

We have not received any of the check copies and breakdown of credits sold for any of the 06/07 fiscal year. Could you please forward them to our office along with your updated spreadsheet for credits?

Thanks,

Phillip Peterson

Council Auditor's Office

City of Jacksonville, FL

Ph: (904) 630-1212 x5601

From: Bradley, Anna
Sent: Friday, February 02, 2007 10:40 AM
To: Peterson, Phillip
Subject: RE: Loblolly

Follow Up Flag: Follow up
Flag Status: Flagged

New contracts will be negotiated at \$52,500.

From: Peterson, Phillip
Sent: Friday, February 02, 2007 10:38 AM
To: Bradley, Anna
Subject: Loblolly

Anna,
Is a mitigation credit still selling for \$50,000 or has the price been readjusted?
Thanks,

Phillip Peterson
Council Auditor's Office
City of Jacksonville, FL
Ph: (904) 630-1212 x5601

From: Peterson, Phillip
Sent: Wednesday, December 20, 2006 12:45 PM
To: Bradley, Anna
Subject: RE: Loblolly

Follow Up Flag: Follow up
Flag Status: Flagged

Will be looking at it tomorrow without a doubt. I will let you know.

From: Bradley, Anna
Sent: Wednesday, December 20, 2006 12:45 PM
To: Peterson, Phillip
Subject: RE: Loblolly

Thanks,

I left the year end report in your office. Any questions?

Anna

From: Peterson, Phillip
Sent: Wednesday, December 20, 2006 12:44 PM
To: Bradley, Anna
Subject: Loblolly

Anna,

Sorry it took so long, but I have calculated the CPI adjustment to be \$8,343. Therefore, I do agree with your calculation.

Thanks,

Phillip Peterson

Council Auditor's Office

City of Jacksonville, FL

Ph: (904) 630-1212 x5601

From: Peterson, Phillip
Sent: Wednesday, December 20, 2006 12:44 PM
To: Bradley, Anna
Subject: Loblolly

Follow Up Flag: Follow up
Flag Status: Flagged

Anna,

Sorry it took so long, but I have calculated the CPI adjustment to be \$8,343. Therefore, I do agree with your calculation.

Thanks,

Phillip Peterson

Council Auditor's Office

City of Jacksonville, FL

Ph: (904) 630-1212 x5601

From: Bradley, Anna
Sent: Wednesday, August 30, 2006 8:45 AM
To: Peterson, Phillip
Subject: RE: Loblolly

Follow Up Flag: Follow up
Flag Status: Flagged

Phillip,
I'm in training this week. I'll get with you thursday of next week. I got \$8,343 for the management fee starting June 30th. Did you get the same number?

Anna

From: Peterson, Phillip
Sent: Wednesday, August 30, 2006 8:22 AM
To: Bradley, Anna
Subject: Loblolly

Anna,
I know you are busy, but we still need that stuff regarding Loblolly.
Thanks,
Phillip

From: Peterson, Phillip
Sent: Thursday, July 06, 2006 8:10 AM
To: Bradley, Anna
Cc: Paez, Barbara; Billy, Kyle
Subject: Loblolly
Attachments: TEXT.htm

Follow Up Flag: Follow up
Flag Status: Flagged

Anna,

We have not received any information on Loblolly since the January sales. I was informed by Ernest's email that the credits now sell for \$50,000. Could you send to our office all related sales information since January, the letter changing the price to \$50,000, and your updated spreadsheet of all credits sold?

Thanks,
Phillip

EXHIBIT I

SCHEDULE OF CREDITS

The following schedule sets forth the number of City Credits LMP shall deliver to the City for each year of this Agreement:

Year 1: (due on or before 13 months after the Effective Date)	150 credits
Year 2: (due on or before 25 months after the Effective Date)	150 credits
Year 3: (due on or before 37 months after the Effective Date)	84 credits
TOTAL:	384 credits

Notwithstanding the foregoing schedule, in the event LMP provides additional City's Credits sooner than set forth above, then such early delivery of additional City's Credits shall be offset and shall reduce on a credit-for-credit basis LMP's obligation to provide the City's Credits in the next Year. And notwithstanding the foregoing schedule, in the event LMP provides fewer City's Credits in a Year as then as set forth above, then such delay in delivery of the City's Credits may, in the sole and absolute discretion of the City, be a default of this Agreement in which case the City may exercise any and all remedies permitted in this Agreement or at law, equity or otherwise, OR the City may elect to allow LMP to produce additional City's Credits in the next Year to make up the deficit in the prior Year. In any event, LMP may cover any deficit by providing to the City an amount of LMP Credits from the LMP Property as necessary to cure the deficit for that Agreement Year (and if LMP returns to the above-scheduled delivery of City Credits from the Land, then LMP shall receive a return of the LMP Credits previously provided that cured the prior deficit). And notwithstanding the foregoing schedule, in the event jurisdictional and regulatory requirements change relating to the Permits such that the City's Credits expire within a time certain, the City may require LMP to delay and extend the delivery of the City's Credits set forth in the above schedule upon the City's written notice to LMP to extend the City's Credits delivery to the City.

And further notwithstanding the foregoing, the City Excess Credits shall be handled in the manner set forth in paragraphs 12 and 13 of the Agreement.

EXHIBIT J

Bradley, Anna

From: Nelson, Kristina
Sent: Thursday, October 18, 2012 12:36 PM
To: Bradley, Anna
Subject: Loblolly Mitigation Bids

Anna-

If you are preparing a sealed bid or proposal then that information would be exempt from a public records request until such time that there is a decision is made or 30 days after the opening, whichever is earlier. I have pasted the relevant section of statute below for your reference.

Fla Statute § 119.071(1)(b):

Sealed bids, proposals, or replies received by an agency pursuant to a competitive solicitation are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever is earlier.

Please let me know if you have any further questions. Thanks.

Kristina

Kristina Garcia Nelson
Assistant General Counsel
Office of General Counsel
117 West Duval Street, Suite 480
Jacksonville, FL 32202
Direct: 630.1736
Fax: 630.1731

** Please note that under Florida's very broad public records law, e-mail communications to and from City officials are subject to public disclosure. **

Responses to Council Member Bishop's Questionnaire

The credit price for sealed bids is set the day of the bid. The Banker has set the recommended price and the City has concurred in the past. The Department Director and the Contract Administrator will review the upcoming valuation which is exempt from public records requests.

Fla Statute § 119.071(1)(b):

Sealed bids, proposals, or replies received by an agency pursuant to a competitive solicitation are exempt from s. 119.071 and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever is earlier.

EXHIBIT K

RENEWAL OF USE AGREEMENT BETWEEN
 LOBLOLLY MITIGATION PRESERVE, LLC
 AND THE CITY OF JACKSONVILLE, FLORIDA

The City of Jacksonville (the "City") and Loblolly Mitigation Preserve, LLC ("LMP") entered into that certain Use Agreement dated June 30, 2003 (the "Use Agreement").

Section 3 of the Use Agreement provides that LMP is granted an option to renew and extend the Use Agreement for successive five year Renewal Terms.

NOW, THEREFORE, the City and LMP agree as follows:

1. Recitals. The recitals, set forth above are true and correct and are incorporated herein by this reference.
2. Defined Terms: Capitalized terms used herein and not defined herein shall have the meaning set forth in the Use Agreement.
3. Renewal. LMP has renewed the Use Agreement for an additional five year term commencing July 1, 2013 and ending on June 30, 2018 on the terms and conditions set forth in the Use Agreement.
4. City Excess Credits. The Management Fee was initially computed under the WRAP method by the District in awarding City Credits. Subsequently, the District converted credits to the UMAM method. For each sale of UMAM City Excess Credits, LMP shall receive its LMP Management Fee adjusted to reflect the conversion of the City Credits to the UMAM Method. The amount of the LMP Management Fee for sale of UMAM City Excess Credits shall be equal to:

$$\$8,100.00 \times \text{Conversion Rate} = \text{LMP Management Fee Per City Excess Credit Sold}$$

The "Conversion Rate" shall be computed as follows and shall be adjusted to reflect the District's final determination of the UMAM conversion:

$$\frac{\text{The number of City Credits under the WRAP Method at the time of issuance of the Permit from the District.}^*}{\text{The number of City Credits that would have been issued under the UMAM Method at the time of the issuance of the Permit.}}$$

For example, if at the time of the issuance of the Permit the City had 1399.2 WRAP City Credits and the District computed the amount of City Credits that would have been issued under the UMAM Method to be 798.45 UMAM City Credits, the Conversion Rate would be 1.7590043337 or $1,399.2 \div 798.45 = 1.7590043337$.

As a consequence upon the sale of one (1) Excess City Credit computed using UMAM, the LMP Management Fee would be as follows:

$$\$8,100.00 \times 1 \text{ UMAM City Credit Sold} \times 1.7590043337 = \$14,247.94.$$

*The number was adjusted to take into account the reduction in available City Credits due to the Cypress Pipeline adjustment made by the District.

The \$8,100.00 LMP Management Fee shall be adjusted from the date of the Use Agreement as provided in the Use Agreement and as described in Exhibit D to the Use Agreement. Utilizing the 2012 LMP Management Fee adjusted as provided in Exhibit D the calculation of the LMP Management Fee for the sale of UMAM City Credits during 2012 would be $\$9,531.00 \times 1 \times 1.7590043337 = \$16,765.07$.

5. Notices. Section 1B of the Use Agreement is modified to read as follows:

All Notices, requests, demands, and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been given if hand delivered, sent via overnight delivery (with a receipt system), or mailed certified mail return receipt requested (all postage prepaid):

If to LMP: Ernest E. Hale III
Loblolly Mitigation Preserve, LLC
3168 US Highway 17 South, Suite E
Fleming Island, FL 32003

With a copy to: Gresham R. Stoneburner
Balch & Bingham, LLP
841 Prudential Drive, Suite 1400
Jacksonville, FL 32207

If to City: City of Jacksonville
Attn: Chief Operating Officer
117 West Duval Street, Suite 400
Jacksonville, FL 32202

With a copy to: City of Jacksonville
Office of General Counsel
Attn: Government Operations
117 West Duval Street, Suite 480
Jacksonville, FL 32202

A party may change the addresses for notices by providing notice to the other party as set forth herein.

In addition to any other notice requirements set forth in this Agreement, LMP shall provide to the City immediately upon LMP's receipt, any and all notices LMP receives related to the Permits or use of the Land for the Bank.

6. Ratification. Except as provided herein, the Use Agreement remains in full force and effect.
7. Counterparts. Renewal may be executed in one or more counterparts, each of which will be deemed an original, but all such counterparts will together constitute but one and the same instrument.

The remainder of this page intentionally left blank with signatures to follow.

IN WITNESS WHEREOF, the Parties hereunto set their hands on the date set forth below and this Agreement shall be effective the last date both of the Parties signs this Agreement

LOBLOLLY MITIGATION PRESERVE, LLC

Print Name: _____

By: Florida Mitigation Providers, LLC a
Florida limited liability company, its
Manager

Print Name: _____

By: Cheyenne Environmental, LLC,
a Florida limited liability
company, its Manager

By: _____
Ernest E. Hale, III, its
Manager

Date: _____

ATTEST:

Corporation Secretary

[Corporate Seal]

CITY OF JACKSONVILLE

By: _____
Alvin Brown, Mayor

Date: _____

FORM APPROVED:

By: _____
Office General Counsel

[Signature page to the renewal of Use Agreement between Loblolly Mitigation Preserve, LLC and the City of Jacksonville Florida]

EXHIBIT L

MITIGATION CREDIT ALLOCATION
FOR
NOCHAWAY MITIGATION BANK
SJRWMD Permit # 4-019-92266-1

May 31, 2013

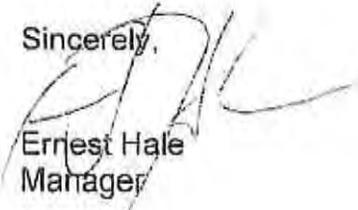
Mr. Jim Knight
FDOT
1109 S. Marion Avenue
Mail Station 2007
Lake City, FL 32025

Re: Bid Number: ITB-DOT-12/13-2041-DS
SJRWMD Permit #
USACOE Permit #

This letter is to acknowledge that 32.15 SJRWMD UMAM forested fresh water (palustrine) mitigation bank credits have been allocated (*sold*) to Florida Department of Transportation, for use to offset wetland impacts at Purchase of Mitigation Credits to Offset Wetland Impacts for SR-23 and other projects in SJRWMD Regulatory Basin 4. By action of this sale, the sponsor (the owners of the Nochaway Mitigation Bank) for the Nochaway Mitigation Bank has accepted the responsibility for providing the compensatory mitigation to the purchaser. The above credit transfer is reflected in the credit ledger for Nochaway Mitigation Bank.

Please call if you have any questions.

Sincerely,



Ernest Hale
Manager

EXHIBIT M

LOBLOLLY MITIGATION PRESERVE, LLC
3168 U.S. Highway 17 S., Suite E
Fleming Island, FL 32003

June 18, 2013

Via Certified Mail - Return
Receipt No. 7009 2820 0003 6148 9612
Kelley Boree, CPRP
Director
Department of Parks and Recreation
214 N. Hogan Street, Suite 3102
Jacksonville, Florida 32202

Via Certified Mail - Return
Receipt No. 7009 2820 0003 6148 9629
John F. Germany, Jr., Esquire
Board Certified Specialist
Deputy General Counsel
Office of General Counsel, City of Jacksonville
117 West Duval Street, Suite 480
Jacksonville, Florida 32202

Re: Use Agreement between Loblolly Mitigation Preserve, LLC and the City of Jacksonville

Dear Ms. Boree and Mr. Germany:

The City of Jacksonville (the "City") and Loblolly Mitigation Preserve, LLC ("LMP") entered into that certain Use Agreement dated June 30, 2003 (the "Use Agreement"). Section 3 of the Use Agreement provides that LMP is granted an option to renew and extend the Use Agreement for successive five year Renewal Terms. Earlier LMP exercised its right to renew the Use Agreement. For convenience purposes, capitalized terms used in the letter and not defined herein shall have the meaning set forth in the Use Agreement.

LMP renewed the Use Agreement for an additional five year term commencing July 1, 2013 and ending on June 30, 2018. Recently the credits were converted by the St. Johns Water Management District from the Ratio Method to the UMAM Method. As a result of this conversion, the LMP Management Fee now is \$16,765.07 for each credit sold.¹

¹ The Management Fee was initially computed under the RATIO method by the District in awarding City Credits. Subsequently, the District converted credits to the UMAM method. For each sale of UMAM City Excess Credits, LMP shall receive its LMP Management Fee adjusted to reflect the conversion of the City Credits to the UMAM Method. The amount of the LMP Management Fee for sale of UMAM City Excess Credits shall be equal to:

$$\$8,100.00 \times \text{Conversion Rate} = \text{LMP Management Fee Per City Excess Credit Sold.}$$

The "Conversion Rate" shall be computed as follows and shall be adjusted to reflect the District's final determination of the UMAM conversion:

The number of City Credits under the RATIO Method at the time of issuance of the Permit from the District.⁶

÷

The number of City Credits that would have been issued under the UMAM Method at the time of the issuance of the Permit.

For example, if at the time of the issuance of the Permit the City had 1399.2 WRAP City Credits and the District computed the amount of City Credits that would have been issued under the UMAM Method to be 798.45 UMAM City Credits, the Conversion Rate would be 1.7590043337 or $1,399.2 \div 798.45 = 1.759004337$.

In order to avoid the possibility of a conflict, if City Excess Credits are available for sale, LMP shall first market and sell the available City Excess Credits and LMP Credits and not the credits owned by an LMP affiliate. For purposes of subsection 12 (b)(ii) of the Use Agreement, following the sale of the LMP Credits, all future sales of credits by LMP's affiliates shall be coordinated as set forth above as if the LMP's affiliate's credits are treated as LMP Credits. As used in Section 12 of the Use Agreement, a LMP affiliate shall include any entity where LMP or its management possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of another entity selling competing credits, whether through ownership of voting securities, by contract or otherwise. Nothing herein shall prohibit LMP affiliates from selling credits outside the territory served by LMP and/or LMP participating in assisting in such sales.

Mr. Hale serves as agent for Tupelo Mitigation Bank, L.L.C.; Town Branch, LLC; Star 4 Mitigation, LLC; and Lower St. Johns Mitigation Bank. Each of these mitigation banks has credits available for sale in basin 4 as well as other mitigation basins. For each of these mitigation banks, the value of their credits when sold to offset wetland impacts in other basins is substantially higher than the value of the credits if sold for use in basin 4. None of the credits from Tupelo Mitigation Bank, L.L.C.; Town Branch, LLC; Star 4 Mitigation, LLC; and Lower St. Johns Mitigation Bank have been marketed or sold in basin 4 while Mr. Hale has served as agent for such mitigation banks. In the event that market conditions should change and one or more of these mitigation banks should decide to market credits in basin 4 during a period the City has City Excess Credits available for sale, Mr. Hale will resign as agent for such mitigation bank or banks.

LMP shall continue to establish the price for the LMP Credits and the City Excess Credits. For any proposed sale of City Excess Credits, the City can elect not to participate in such sale and the sale shall then be exclusively from LMP Credits. In the event that if the City elected not to participate in a sale of City Excess Credits LMP would not have sufficient LMP Credits to fulfill such proposed sale, LMP shall consult with the City in advance in determining the price of the City Excess Credits.

As a consequence upon the sale of one (1) Excess City Credit computed using UMAM, the LMP Management Fee would be as follows:

$$\$8,100.00 \times 1 \text{ UMAM City Credit Sold} \times 1.759004337 = \$14,247.94.$$

*The number was adjusted to take into account the reduction in available City Credits due to the Cypress Pipeline adjustment made by the District.

The \$8,100.00 LMP Management Fee shall be adjusted from the date of the Use Agreement as provided in the Use Agreement and as described in Exhibit D to the Use Agreement. Utilizing the 2012 LMP Management Fee adjusted as provided in Exhibit D the calculation of the LMP Management Fee for the sale of UMAM City Credits during 2012 would be $\$9,531.00 \times 1 \times 1.759004337 = \$16,765.07$.

Kelley Borce, CPRP
John F. Germany, Jr., Esquire
June 18, 2013
Page 3

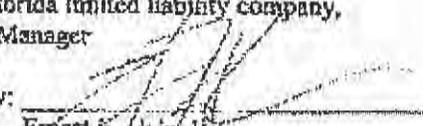
Please let me know if you require additional clarification.

Sincerely,

LOBLOLLY MITIGATION PRESERVE, LLC

By: Florida Mitigation Providers, L.L.C.
a Florida limited liability company,
Its Manager

By: Cheyenne Environmental, LLC,
a Florida limited liability company,
Its Manager

By: 
Ernest E. Hols, III
Its Manager and Authorized
Representative

EEHIII:rb

EXHIBIT N



OFFICE OF MAYOR ALVIN BROWN

ST JAMES BUILDING
117 WEST DUVAL STREET, SUITE 400
JACKSONVILLE, FLORIDA 32202

PH: (904) 630-1776
FAX: (904) 630-2391
www.coj.net

June 10, 2013

Mr. Lad Daniels
Governing Board Chairman
St. Johns River Water Management District

Re: Loblolly Mitigation Preserve, LLC
Application No. 4-031-84706-6
SJRWMD Governing Board Consideration of Letter Modification Request

Dear Mr. Daniels:

At your June 2013 meeting, the St. Johns River Water Management District (the District) Governing Board is scheduled to consider District staff's recommended denial of Loblolly Mitigation Preserve, LLC's (LMP) requested application to modify its existing mitigation bank Environmental Resource Permit. As a part-owner of this mitigation bank, the City urges you and the other members of the Governing Board to overturn staff's recommendation and vote to approve LMP's requested modification.

In its modification request, LMP seeks to convert a portion of its non-UMAM credits to their UMAM equivalent in the credit ledgers associated with the mitigation bank. LMP's requested permit modification is consistent with the statutory and regulatory requirements relating to conversion of non-UMAM credits to UMAM credits, and is consistent with the public interest, as it will free up more mitigation credits for use in the basin for future projects, without reducing existing or future environmental protection associated with the mitigation bank. In addition, since a portion of the proceeds for the future sale of the newly designated UMAM credits will be shared with the City, approval of the requested modification will provide funding for important public projects that will provide a direct benefit to our citizens.

Given the merits of LMP's request and the public benefit that will be provided if the request is approved, the City requests that you vote in favor of the requested modification. Thank you in advance for your consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "Alvin Brown".

City of Jacksonville

cc: SJRWMD Governing Board Members

EXHIBIT O



January 4, 2016

City of Jacksonville
214 North Hogan Street
Jacksonville, FL 32202

RE: Lololly Mitigation
701 Market St. Ste 111
Saint Augustine, FL 32095-8803

To whom it may concern,
Lololly Mitigation has had continued coverage through our agency from 2011- to current, with Auto-Owners Insurance Co, showing City of Jacksonville as additional insured on policy. Your office should have received copies of certificates, listing City of Jacksonville as additional insured. I have attached a copy of certificate for current term.

Sincerely,

Lisa Tremblay
Account Manager

Email: lisa.tremblay@acentria.com

Direct Phone Number: 813-324-2455

Acentria.com



CERTIFICATE OF LIABILITY INSURANCE

LOBLMT-01 LTREMBLA1
 DATE (MM/DD/YYYY)
 1/26/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Acentria, Inc - Brandon Office 305 Elizabeth St Brandon, FL 33611	CONTACT NAME: PHONE (MC, NO, EXT): (813) 669-0021 FAX (813) 654-7656 E-MAIL: ADDRESS:
	INSURER(S) AFFORDING COVERAGE INSURER A: AUTO OWNERS INSURANCE CO. NAIC # 18988 INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:
INSURED Loblolly Mitigation Preserve, 701 Market St. Ste 111 Saint Augustine, FL 32095-8803	

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR INSS WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GENL AGGREGATE LIMIT APPLIES FTR: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER: AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> SCHEDULED <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> AUTOS <input type="checkbox"/> RENTED AUTOS <input type="checkbox"/> NON-OWNED AUTOS UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$ WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y <input checked="" type="checkbox"/> N/A If yes, describe under DESCRIPTION OF OPERATIONS below		20819871	06/01/2015	06/01/2016	EACH OCCURRENCE	\$ 1,000,00
						DAMAGE TO RENTED PREMISES (Per occurrence)	\$ 300,00
						MED EGP (Any one person)	\$ 10,00
						PERSONAL & ADV INJURY	\$ 1,000,00
						GENERAL AGGREGATE	\$ 2,000,00
						PRODUCTS - COMP/OP AGG	\$ 2,000,00
						HIRED NON OWNED	\$ 1,000,00
						COMBINED SINGLE LIMIT (Per accident)	\$
						BODILY INJURY (Per person)	\$
						BODILY INJURY (Per accident)	\$
						PROPERTY DAMAGE (Per accident)	\$
						EACH OCCURRENCE	\$
						AGGREGATE	\$
						PER STATUTE	OTH-ER
						E.L. EACH ACCIDENT	\$
						E.L. DISEASE - EA EMPLOYEE	\$
						E.L. DISEASE - POLICY LIMIT	\$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES [ACORD 101, Additional Remarks Schedule, may be attached if more space is required]
 City of Jacksonville is named additional insured, per written contract, waiver of subrogation in favor of the City of Jacksonville, per General Liability.
 30 day notice of cancellation, 10-day non-payment.

CERTIFICATE HOLDER City of Jacksonville 214 North Hogan Street Jacksonville, FL 32202	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
---	--

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LOBLOLLY MITIGATION PRESERVE, LLC

3168 U.S. Highway 17 S., Suite E
Fleming Island, FL 32003

January 26, 2016

Re: Use Agreement between Loblolly Mitigation Preserve, LLC and the City of Jacksonville

Dear Ms. Willis:

Ann Willis, AINS, CRIS
Property and Casualty Compliance Administrator
Risk Management Division
Department of Finance
City of Jacksonville
117 W Duval Street, Suite 335
Jacksonville, Florida 32202

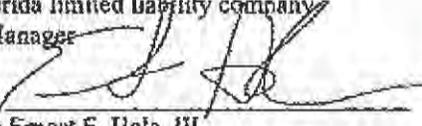
The City of Jacksonville and Loblolly Mitigation Preserve, LLC ("LMP") entered into that certain Use Agreement dated June 30, 2003 (the "Use Agreement"). Section 09 of the Use Agreement requires that LMP either obtains workman compensation coverage or certify that it is not required. This letter confirms that LMP is not required to purchase Workers Compensation insurance under Florida Statute 440.

Sincerely,

LOBLOLLY MITIGATION PRESERVE, LLC

By: Florida Mitigation Providers, L.L.C.
a Florida limited liability company,
Its Manager

By: Cheyenne Environmental, LLC,
a Florida limited liability company,
Its Manager

By: 
Ernest E. Hale, III,
Its Manager and Authorized
Representative