

RESOLUTION NO. 2017- 260

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS, CONDITIONS, AND REQUIREMENTS OF A RECIPROCAL EASEMENT AGREEMENT AND RESCISSION OF EASEMENT BETWEEN ST. JOHNS COUNTY, FLORIDA (COUNTY) AND THE HASTINGS DRAINAGE DISTRICT (DISTRICT) REGARDING DRAINAGE AND MAINTENANCE OF A CERTAIN PORTION OF CANAL 4; AUTHORIZING THE CHAIR OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA TO EXECUTE THE RECIPROCAL EASEMENT AGREEMENT AND RESCISSION OF EASEMENT ON BEHALF OF THE COUNTY; AND INSTRUCTING THE CLERK OF THE CIRCUIT COURT TO FILE THE INTERLOCAL AGREEMENT IN THE PUBLIC RECORDS OF ST. JOHNS COUNTY.

WHEREAS, the District is the owner of certain real property located in St. Johns County, Florida ("District Property"), and the County is the owner of certain other real property located in St. Johns County, Florida adjacent to the District Property ("County Property"); and

WHEREAS, the District and the County entered into an Easement Agreement dated April 3, 2013, filed April 5, 2013 and recorded in Official Records Book 3711, Page 305, of the public records of St. Johns County, Florida ("2013 Easement") over the District Property; and

WHEREAS, certain of the purposes for the 2013 Easement, namely the construction, installation, operation, maintenance, or replacement of water control structures or other improvements on the District Property by the County, no longer obtain; and

WHEREAS, the District and the County agree it will be more efficient for the County to physically maintain certain aspects of the District Property relating to debris, vegetation, mowing, and tree limbs; and

WHEREAS, a recent survey showed that a portion of a drainage canal utilized by the District, commonly known as "Canal 4," may lie outside of the District Property and onto the County Property; and

WHEREAS, it is the desire of the District and the County to rescind and replace the 2013 Easement and instead enter into a Reciprocal Easement Agreement and Rescission of Easement, attached hereto as Exhibit "A," for ingress and egress

that recognizes the results of the recent survey and the potential presence of a portion of Canal 4 on the County Property, allows the District to drain surface waters within that portion of Canal 4 on the County Property, and provides for the physical maintenance of certain aspects of the District Property by the County; and

WHEREAS, entering into the Reciprocal Easement Agreement and Rescission of Easement serves the interests of the District and the County and resolves uncertainties in the best interest of the public and for a public benefit.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AS FOLLOWS:

Section 1. The above Recitals are incorporated by reference into the body of this Resolution and such Recitals are adopted as findings of fact.

Section 2. The Board of County Commissioners of St. Johns County, Florida hereby approves the terms, provisions, and conditions of the Reciprocal Easement Agreement and Rescission of Easement between St. Johns County, Florida and the Hastings Drainage District, and authorizes the Chair of the Board of County Commissioners to execute the Reciprocal Easement Agreement and Rescission of Easement on behalf of the County, in substantially the same form and format as attached.

Section 3. To the extent that there are typographical and/or administrative errors and/or omissions that do not change the tone, tenor, or content of this Resolution, then this Resolution may be revised without subsequent approval of the Board of County Commissioners.

Section 4. The Clerk of Courts of St. Johns County is instructed to file the Reciprocal Easement Agreement and Rescission of Easement in the public records of St. Johns County.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, State of Florida, this 1st day of August, 2017.

**BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA**

By: _____
James K. Johns, Chair

ATTEST: Hunter S. Conrad, Clerk

By: Pam Hatterman
Deputy Clerk

RENDITION DATE 8/3/17

St. Johns County
500 San Sebastian View
St. Augustine, Florida 32084

**RECIPROCAL EASEMENT AGREEMENT AND
RESCISSION OF EASEMENT**

THIS RECIPROCAL EASEMENT AGREEMENT AND RESCISSION OF EASEMENT ("Agreement") is made this ___ day of _____, 2017, between the **HASTINGS DRAINAGE DISTRICT**, a Chapter 298, Florida Statutes drainage district, having a mailing address of Post Office Box 561, Hastings, Florida 32145 (hereinafter referred to as "HDD") and **ST. JOHNS COUNTY, FLORIDA**, a political subdivision of the State of Florida, having a mailing address of 500 San Sebastian View, St. Augustine, Florida 32084 (hereinafter referred to as "SJC").

WITNESSETH:

WHEREAS, HDD is the owner of certain real property located in St. Johns County, Florida, a portion of which is more particularly described on attached Exhibit "A", incorporated by reference and made a part hereof (hereinafter referred to as "the HDD Property"), SJC is the owner of certain real property located in St. Johns County, Florida, a portion of which is more particularly described on attached Exhibit "B", incorporated by reference and made a part hereof (hereinafter referred to as "the SJC Property"), and both properties are illustrated in the sketch of depiction on attached Exhibit "C", incorporated by reference and made a part hereof; and

WHEREAS, HDD and SJC entered into an Easement Agreement dated April 3, 2013, filed April 5, 2013 and recorded in Official Records Book 3711, Page 305, of the public records of St. Johns County, Florida (hereinafter referred to as "2013 Easement") over the HDD property; and

WHEREAS, certain of the purposes for the 2013 Easement, namely the construction, installation, operation, maintenance, or replacement of water control structures or other improvements on the HDD Property by SJC, no longer obtain; and

WHEREAS, HDD and SJC agree it will be more efficient for SJC to physically maintain certain aspects of the HDD Property relating to debris, vegetation, mowing, and tree limbs; and

WHEREAS, a recent survey showed that a portion of a drainage canal utilized by HDD, commonly known as "Canal 4," may lie outside of the HDD Property and onto the SJC Property; and

WHEREAS, it is the desire of HDD and SJC to rescind and replace the 2013 Easement and instead enter into a Reciprocal Easement Agreement for ingress and egress that recognizes the results of the recent survey and the potential presence of a portion of Canal 4 on the SJC

Property, allows HDD to drain surface waters within that portion of Canal 4 on the SJC Property, and provides for the physical maintenance of certain aspects of the HDD Property by SJC; and

WHEREAS, entering into this Agreement serves the interests of HDD and SJC and resolves uncertainties in the best interest of the public and for a public benefit.

NOW THEREFORE, for and in consideration of the mutual covenants, terms, conditions and restrictions contained herein, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, HDD and SJC, agree as follows:

1. **Recitals**. The above Recitals are true and correct and incorporated herein as part of this Agreement for all purposes.

2. **Purpose**. The purpose of this Agreement is to rescind and replace the 2013 Easement and instead enter into a Reciprocal Easement Agreement whereby HDD and SJC grant each other ingress and egress easement over and pertaining to the HDD Property and the SJC Property, respectively, SJC grants to HDD rights to use the SJC property for purposes related to drainage, and SJC provides for the physical maintenance of certain aspects of the HDD Property.

3. **Rescission of the 2013 Easement**. The Easement Agreement between HDD and SJC, dated April 3, 2013, filed and recorded on April 5, 2013 in Official Records Book 3711, Page 305, of the public records of St. Johns County, Florida, is hereby rescinded and replaced with the grants of easement set forth herein.

4. **Grant of Easement on the HDD Property**. HDD grants and conveys to SJC a perpetual ingress and egress easement on, along, over, through, across, or under the HDD Property, with the following rights, responsibilities, privileges, and authority:

a. The right and responsibility to maintain free of garbage and debris the HDD Property and to remove any buildup of debris, leaf litter, or other obstructions to the flow of water in the portion of Canal 4;

b. The right and responsibility to inspect and remove exotic and invasive vegetation from Canal 4;

c. The right and responsibility to perform routine mowing of the tops of the north and south banks of Canal 4 during the growing season from April to December, including mowing and "weed-eating" around the canal inflow onto the HDD Property at the east side of County Road 13;

d. The right and responsibility to inspect the berm of Canal 4 for fallen trees or branches after significant storm events and to clear any fallen tree or branches from the berm, including at the easternmost end of Canal 4;

e. The right to install, repair, replace, operate, and maintain a pipe or other drainage or water control structure on, along, over, through, across, or under the HDD Property

at approximately the location depicted in the sketch of depiction attached as Exhibit "C" hereto, and to use the pipe or other drainage or water control structure to drain or otherwise convey water along, over, through, across, or under the HDD Property;

f. The right to enter upon the HDD Property for the purpose set forth in this Agreement.

5. **Reservation of Grant on the HDD Property.** Notwithstanding Section 4 above, HDD expressly reserves, without limitation, the following rights, responsibilities, privileges, and authority with respect to the HDD Property:

a. The right to preserve and protect the drainage conveyance value of the HDD Property;

b. The right to prevent any activity on or use of the HDD Property that is inconsistent with the purpose of this Agreement;

c. The right to enter upon and inspect the HDD Property in a reasonable manner and at reasonable times and to perform necessary emergency repairs or maintenance of Canal 4 in the event SJC cannot timely perform such repair or maintenance after having been provided such reasonable notice as the circumstances of the emergency may allow;

d. The right to proceed at law or in equity to enforce the provisions of this Agreement and the covenants set forth herein;

e. The right to use the HDD Property for all purposes which do not interfere with the rights granted herein; and

f. The right to grant additional easements upon, over and within the HDD Property which do not interfere with the rights granted herein.

6. **Grant of Easement on the SJC Property.** SJC grants and conveys to HDD a perpetual ingress and egress easement with the right, privilege, and authority to HDD to drain surface waters either above or below the surface of the ground, together with the right to install and maintain drainage structures, on, along, over, through, across, or under the SJC Property. SJC expressly reserves the right to construct or install a gate limiting or restricting access to the SJC Property, but shall provide HDD with a key, combination, or code to any lock for the gate. SJC expressly reserves and retains all other rights with respect to the SJC Property.

7. **Assignment.** This Agreement may be assigned, in whole or in part, by either party only upon the written consent of the other, which consent shall not be unreasonably withheld.

8. **Recordation.** SJC shall record this instrument in a timely fashion in the official records of St. Johns County, Florida. SJC shall pay all recording costs and taxes necessary to record this Agreement in the public records. SJC will hold HDD harmless for any recording costs

or taxes necessary to record this Agreement in the public records.

9. **Successors.** The covenants, terms, conditions and restrictions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors and assigns.

10. **Indemnification/Liability/Insurance.** To the extent allowed by Florida law, SJC indemnifies and holds HDD, its respective agents, assigns, invitees, guests and employees, harmless from any and all liability, injuries, death or damages, including attorneys' fees, resulting from, arising out of or related to the use of the HDD Property and easement by SJC and its respective agents, assigns, invitees, guests and employees.

SJC is self-insured for liability coverage through its self-insurance program. SJC's self-insurance program operates in accordance with Section 768.28 of the Florida Statutes, and provides applicable statutory limitations for liability coverage without waiver of sovereign immunity.

To the extent allowed by Florida law, HDD indemnifies and holds SJC, its respective agents, assigns, invitees, guests and employees, harmless from any and all liability, injuries, death or damages, including attorney's fees, resulting from, arising out of or related to the use of the SJC Property and easement by HDD and its respective agents, assigns, invitees, guests and employees.

11. **Dispute Resolution.** In the event of any dispute arising out of this Agreement, the parties shall abide by the provisions of Chapter 164, Florida Statutes, titled *Governmental Disputes*.

12. **Attorneys' Fees.** In connection with any litigation arising out of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs at all levels of the proceedings in addition to any other relief granted.

13. **No Third Party Beneficiaries.** This easement is granted only for the benefit of the parties hereto, and their respective successors and assigns.

14. **Waiver.** No waiver of any portion of the provisions hereof shall be effective unless it is in writing and signed by the party against whom the waiver is asserted. Any such written waiver shall be applicable only to the specific instance to which it relates and shall not be deemed to be a continuing waiver or waiver of any future matter.

15. **Obligation to Comply with all Laws and Regulations.** The parties shall comply with all applicable governmental or quasi-governmental laws, ordinances, rules, and regulations of every kind pertaining to their respective interests in the HDD Property, the SJC Property, and the easements or to the use thereof, including without limitation, any applicable law, ordinance, rule, or regulation. The parties shall not commit or suffer any waste in the HDD Property or the SJC Property, or violate or breach any law, rule, regulation, or ordinance to which their interest in the HDD Property, the SJC Property, and the easements established herein is subject.

16. **Entire Agreement.** No prior or present agreements or representations shall be binding upon the parties unless included in this Agreement. No modification or termination of the Agreement shall be valid or binding upon the parties unless it is in writing and executed by the party or parties to be bound thereby.

17. **Severability.** Should any one or more of the provisions of this Agreement be determined to be illegal or unenforceable as to one or more of the parties, all other provisions, nevertheless, shall remain effective and binding on the parties hereto.

18. **Section Headings.** Section headings in this Agreement are intended for convenience only and shall not be taken into consideration in any construction or interpretation of this Agreement or any of its provisions.

19. **Governing Law.** This Agreement shall be governed by the laws of the State of Florida.

20. **Venue.** The parties agree that any suit, action, or other legal proceeding arising out of this Agreement shall be brought in a court of competent jurisdiction in St. Johns County, Florida. The parties waive any right to require that a suit, action or proceeding arising out of this Agreement be brought in any other jurisdiction or venue.

21. **Reimbursement.** SJC shall reimburse the HDD, in an amount not to exceed \$5,000.00, for all legal fees and costs incurred by the HDD in the review and preparation of this Agreement, said payment to be paid by SJC to the HDD at or prior to the execution of this Agreement. The HDD shall not be responsible for any costs or expenses whatsoever connected with the preparation and recordation of this Agreement, or SJC's use of the Property or the exercise of its rights pursuant to this Agreement.

22. **Effective Date.** This Agreement shall be effective on the date of the last signature of the parties hereto.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the HDD and SJC have set their hands and seals on the day and year first above written.

Signed, sealed and delivered in the presence of:

HASTINGS DRAINAGE DISTRICT, a Florida Chapter 298, Florida Statutes drainage district

[Signature]
Witness: CARLETON JOHNS
(Name Printed or Typed)

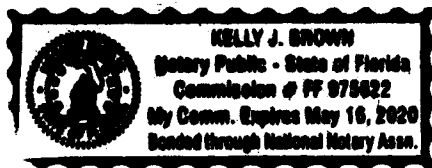
By: JOHNNY C. COUNTS Chairman
Print Name: Johnny C. Counts Chairman
Title: Chairman

[Signature]
Witness: Allison K. Coleman
(Name Printed or Typed)

STATE OF FLORIDA
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me this 8th day of June, 2017, by Johnny C. Counts as Chairman of Hastings Drainage District, a Florida Chapter 298, Florida Statutes drainage district, on behalf of the District. Who is personally known to me or has produced _____ as identification.

Kelly J. Brown
Notary Public
My Commission expires: 5/16/2020



ST. JOHNS COUNTY, FLORIDA, a political
subdivision of the State of Florida

Witness: _____
(Name Printed or Typed)

By: _____
Its Chair

Witness: _____
(Name Printed or Typed)

STATE OF FLORIDA
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by _____ as Chair of the Board of County Commissioners of St. Johns County, Florida, on behalf of the County. Who is personally known to me or has produced _____ as identification.

Notary Public
My Commission expires: _____

Exhibit "A"

"HDD Property"

A strip of land thirty (30) feet in width along the North line of Lot Ten (10) of Section 28, Township 9 South, Range 28 East, St. Johns County, Florida lying Easterly of County Road No. 13 as now established as an eighty (80) foot right of way.

Together with a strip of land thirty (30) feet in width along the North line of Lot Eight (8) of Section 27, Township 9 South, Range 28 East, St. Johns County, Florida.

Exhibit "B"

"SJC Property"

A PARCEL OF LAND LYING IN THE HANNAH SMITH GRANT, SECTION 37, TOWNSHIP 9 SOUTH, RANGE 28 EAST, ST. JOHNS COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FOR A POINT OF REFERENCE COMMENCE AT THE SOUTHEAST CORNER OF THE HANNAH SMITH GRANT, SECTION 37; THENCE NORTH 85°42'21" WEST, ALONG THE NORTH LINE OF THOSE LANDS DESCRIBED IN DEED BOOK 44, PAGE 139 OF THE PUBLIC RECORDS OF SAID COUNTY AND ALONG THE NORTH LINE OF LOT 8, SECTION 27, TOWNSHIP 9 SOUTH, RANGE 28 EAST OF SAID COUNTY, A DISTANCE OF 359.40 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE NORTH 85°42'21" WEST, ALONG THE NORTH LINE OF SAID LANDS AND ALONG THE NORTH LINE OF SAID LOT 8 AND ALONG THE NORTH LINE OF LOT 10, SECTION 28, TOWNSHIP 9 SOUTH, RANGE 28 EAST, A DISTANCE OF 2176.06 FEET TO THE NORTHEASTERLY RIGHT OF WAY LINE OF COUNTY ROAD NO. 13 S (AN 80 FOOT RIGHT OF WAY); THENCE NORTH 44°09'46" WEST, ALONG SAID NORTHEASTERLY RIGHT OF WAY LINE, A DISTANCE OF 21.67 FEET; THENCE ALONG THE SOUTHERLY RIGHT OF WAY LINE OF HUB BAILEY ROAD AS DESCRIBED IN OFFICIAL RECORDS 1829, PAGE 844 FOR THE NEXT THREE COURSES; SOUTH 84°42'53" EAST A DISTANCE OF 400.46 FEET; SOUTH 89°39'29" EAST A DISTANCE OF 121.37 FEET; AND NORTH 35°38'35" EAST A DISTANCE OF 16.62 FEET; THENCE SOUTH 85°42'21" EAST, DEPARTING FROM SAID HUB BAILEY ROAD, A DISTANCE OF 1659.82 FEET; THENCE SOUTH 00°09'17" EAST, ALONG THE EASTERLY LINE OF THOSE LANDS AS DESCRIBED IN OFFICIAL RECORDS 3303, PAGE 627 OF SAID PUBLIC RECORDS, A DISTANCE OF 30.09 FEET TO THE POINT OF BEGINNING.

CONTAINING 55,692 SQUARE FEET MORE OR LESS.

Exhibit "C"
Sketch of Depiction

