



TOWN OF LOXAHATCHEE GROVES
LOXAHATCHEE GROVES WATER CONTROL DISTRICT
JOINT WORKSHOP
AGENDA

TUESDAY, May 19, 2015

6:00 p.m.

**JOINT WORKSHOP
TOWN OF LOXAHATCHEE GROVES /
LOXAHATCHEE GROVES WATER CONTROL DISTRICT,
TUESDAY, MAY 19, 2015
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Joint Meeting
Town of Loxahatchee Groves
Loxahatchee Groves Water Control District
Tuesday, May 19, 2015 - 6:00 p.m.
Loxahatchee Groves Water Control District, 101 West "D" Road

Town Council and Staff

Mayor David Browning (Seat 4)	Town Manager William F. Underwood, II
Vice Mayor Ronald D. Jarriel (Seat 1)	Town Clerk Janet K. Whipple
Councilman Tom Goltzené (Seat 5)	Town Planning Consultant Jim Fleischmann
Councilman Ryan Liang (Seat 3)	Town Attorney Michael D. Cirullo, Jr.
Councilman Jim Rockett (Seat 2)	

The Loxahatchee Groves Water Control District Board of Supervisors, Steve Yohe, District Administrator

PUBLIC NOTICE/AGENDA

Tentative
Subject to Revision

1. OPENING

- a. Call to Order & Roll Call
- b. Pledge of Allegiance & Invocation – Mayor Browning
- c. Approval of Agenda

2. OLD BUSINESS

- a. Discussion of Interlocal Agreement (ILA) between the Town of Loxahatchee Groves and the Loxahatchee Groves Water Control District, concerning Recreational Trails.

**JOINT WORKSHOP
TOWN OF LOXAHATCHEE GROVES /
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3. CLOSING COMMENTS

- a. Public
- b. Town Attorney
- c. Board Members

4. ADJOURNMENT

Comment Cards: Anyone from the public wishing to address the Town Council must complete a Comment Card before speaking. This must be filled out completely with your full name and address and given to the Town Clerk. During the meeting, before public comments, you may only address the item on the agenda in which is being discussed at the time of your comment. During public comments, you may address any item you desire. Please remember that there is a three (3) minute time limit on all public comment. Any person who decides to appeal any decision of the Council with respect to any matter considered at this meeting will need a record of the proceedings and for such purpose, may need to ensure that a verbatim record of the proceedings is made which included testimony and evidence upon which the appeal is to be based. Persons with disabilities requiring accommodations in order to participate should contact the Town Clerk's Office (561-793-2418), at least 48 hours in advance to request such accommodation.

**TOWN OF LOXAHATCHEE GROVES
LOXAHATCHEE GROVES WATER CONTROL DISTRICT**

**INTERLOCAL AGREEMENT
TOWN PUBLIC RECREATIONAL TRAILS IN DISTRICT EASEMENTS**

THIS INTERLOCAL AGREEMENT made and entered into this ____ day of _____, 2015, by and between the **TOWN OF LOXAHATCHEE GROVES**, a municipal corporation of the State of Florida, the mailing address of which is 155 F Road, Loxahatchee Groves, FL 33470, by and through its Town Council (hereafter referred to as “Town” or “Permittee”), and **LOXAHATCHEE GROVES WATER CONTROL DISTRICT**, an independent special District of the State of Florida, the mailing address of which is 101 West “D” Road, Loxahatchee, Florida 33470 by and through its Board of Supervisors (hereafter referred to as “District”). Collectively, Town and District may be referred to herein as the “Parties”.

RECITALS:

WHEREAS, District is an independent special district of the State of Florida, the powers and responsibilities of which are defined in Chapters 189 and 298, Florida Statutes, and in Chapters 99-425, 2004-410, 2011-257, 2012-261, 2014-246 and 2014-247, Laws of Florida (collectively, the District’s “Authorizing Legislation”); and

WHEREAS, Town is a municipal corporation of the State of Florida, with municipal home rule powers and responsibilities consistent with the Florida Constitution, State Law and the Town Charter, including the provision of public recreation facilities and trails; and

WHEREAS, District is authorized by Section 298.22(12), Florida Statutes, to “construct, manage or authorize construction and management of resource-based recreational facilities that may include greenways, trails, and associated facilities”; and

WHEREAS, Chapter 2014-247, Laws of Florida (hereafter, the “Special Act”), amended District’s Authorizing Legislation to provide that land adjacent to canals within the District actually used, maintained, or repaired continuously and uninterruptedly for district-related purposes for seven years is deemed to be dedicated to and vested in District as a maintenance easement in favor of District (collectively, the “Easements”), which Easements also lie within the jurisdictional limits of Town; and

WHEREAS, pursuant to the Special Act, the filing of a map (“Easement Map”) in the office of the Clerk of Circuit Court of Palm Beach County, Florida (“Clerk of Court”), showing the location of such Easements shall be prima facie evidence of District’s easement rights; and

WHEREAS, the Special Act further authorizes District to issue permits (the “Permits”) to Town for Town to construct and maintain public recreational trails (including, without limitation, equestrian trails) within the Easements deemed dedicated to District by the Special Act (hereafter, “Trails”),

which Permits are deemed by the Special Act to satisfy any and all current or future state grant requirements for property control by Town; and,

WHEREAS, pursuant to the Special Act, Town desires to use the Easements for Trails and District is authorized to issue Permits to Town for such purpose; and

WHEREAS, the parties have agreed that, in order to perfect District's Easement rights and to expedite issuance of Permits to Town, it is their common interest and in the interest of their residents and landowners to cooperate in preparation and recording of the Easement Maps authorized by the Special Act in the manner provided herein; and

WHEREAS, Town and District are authorized to enter into this Agreement pursuant to Section 163.01, Florida Statutes, which permits local government units to make the most efficient use of their shared powers by enabling them to cooperate with other government entities on a basis of mutual advantage.

NOW, THEREFORE, in accordance with Chapter 163, Part I, Florida Statutes, as amended, but specifically subject to the provisions of Section 163.01(9) and (11), Florida Statutes, Town and District for and in consideration of the mutual benefits and promises as set forth herein do hereby enter into this Agreement and represent, covenant, and agree with each other as follows:

SECTION 1. RECITALS. The parties hereby acknowledge and agree that the above recitals are true and correct to the best of their knowledge and belief and are incorporated herein by this reference.

SECTION 2. PURPOSE AND ACKNOWLEDGEMENTS; ADOPTION OF ORDINANCES.

2.1 The purpose of this Agreement is to facilitate, including the funding of, the surveying, mapping and recording of the Easements, issuance of Permits to Town and establishment by Town of Trails within the Easements deemed dedicated to the District by the Special Act, which Trails are identified herein in concept in the attached **Exhibit "A"**.

2.2 Town acknowledges and stipulates that: (a) its use of the Easements pursuant to the Permit is subordinate to the rights and interest of District as provided in District's Authorizing Legislation; (b) District's Easement rights are as stated in the Special Act; (c) issuance of the Permit by District shall not be construed as a representation by District that District has sole authority with respect to the affected real property; and (d) District has no authority to approve or permit the construction of Trails outside the boundaries of the Easements shown on the recorded Easement Maps.

2.3 Nothing in this Agreement shall require Town to construct improvements ("Works") for Trails in Easements; however, if Trails are initiated, Town will at a minimum install fencing adjacent to canal maintenance easements along the Letter Roads to the extent necessary to insure the safety of riders, animals and residents ~~consistent with the requirements of Town's Comprehensive Plan~~.

2.4 Town will adopt ordinances or policies governing appropriate use of Trails and shall be solely responsible for their enforcement. Use of Trails by motor vehicles of any sort (except District maintenance equipment) shall be prohibited. Use of Trails for passive public recreation purposes, including, without limitation, equestrian, bicycle, or pedestrian, shall be permitted.

SECTION 3. PREPARATION AND FILING OF EASEMENT MAPS; REIMBURSEMENT OF EXPENSES; PERMIT ISSUANCE; ACCESS TO AND USE OF EASEMENTS.

3.1 District shall prepare and file Easement Maps in accordance with the Special Act.

3.1.1 Reimbursement of District. Town shall pay District an amount not to exceed **ONE HUNDRED FIVE THOUSAND EIGHT HUNDRED THIRTY-SEVEN AND NO/100 DOLLARS (\$105,837.00)** for District to retain the services of a professional surveyor and mapper to prepare and file the Easement Maps.

3.1.2 Filing of Easement Maps. As they are completed, Easement Maps shall be promptly filed with the Clerk of Court.

3.1.3 Status Reports; Copies of Survey Instruments. District shall provide Town with a weekly status report on the progress of the preparation and filing of the Easement Maps, and, upon filing, shall provide Town with record copies of the surveys and Easement Maps in both electronic and paper formats according to agreed specifications.

3.1.4 Reimbursement of District. Town shall reimburse District the actual costs of completing the Easement Maps and the filing of same within the public records as they are completed and filed. Upon the completion and filing of each Easement Map, the District shall provide an invoice and all evidentiary material supporting the cost associated with evidencing recording of the Easement Maps to the Town, which will pay the invoice within thirty (30) calendar days of receipt.

3.2 Permit Issuance. In accordance with District's Authorizing Legislation, District shall issue to Town a Permit for use of the Easements as Trails. The Permit shall be subject to the terms and conditions and substantially in the form attached hereto as **Exhibit "B"** (the "Permit"), which Permit and terms and conditions are incorporated into this Agreement as if set forth in this place.

3.2.1 Approval of this Agreement by Town shall be considered Town's application for a District Permit to Connect to its Works, fees for which shall be waived.

3.2.2 In accordance with Chapter 2014-247, Laws of Florida and Section 298.28, F.S., District shall, upon application, issue to Town a permit to connect to the works of the District (as further defined in Section 4.5.1.B, below) for the purpose of constructing, maintaining and using Trails within the Easements

3.3 Access to and Use of Easements. Town shall have access to Easements for the construction, maintenance and public use of Trails upon approval of plans by the District Engineer

and filing of Easement Maps with the Clerk of Circuit Court. Approval of plans and filing of Easement Maps may occur in phases.

SECTION 4. MAINTENANCE OF EASEMENTS AND TRAILS; EMERGENCIES; RESPONSIBILITY FOR COSTS OF REPAIR.

4.1 **Definitions.** For purposes of this Agreement, the following terms shall have the meanings indicated:

“Standard Maintenance” shall mean the level and nature of services customarily and routinely provided by District to maintain District Works (as defined in Paragraph 4.5.1 below) within Easements. Standard Maintenance of grass and ground cover shall mean mowing to approximately six (6) inches. With regard to trimming or clearing of brush, trees and vegetative overgrowth in or adjacent to the Easement, Standard Maintenance shall mean trimming such brush, trees or vegetative overgrowth to the extent required to allow free and unobstructed movement of District’s canal and easement maintenance equipment. Standard Maintenance may also include routine dredging of canals, deposit of dredged material on canal embankments, grading and stabilization of embankments, and other activities related to canal maintenance.

“Enhanced Maintenance” shall mean the level and nature of services provided by Town to maintain its Works (as defined in Paragraph 4.5.1, below) within Easements or any request to District to provide maintenance services in excess of Standard Maintenance.

4.2 **District Easement Maintenance.**

4.2.1 District shall be exclusively responsible for providing Standard Maintenance of the Easements, but shall have no responsibility to construct, assess for or expend funds to provide Enhanced Maintenance of Town Trails.

4.2.2 District shall endeavor to coordinate and schedule its Standard Maintenance activities to minimize interference with public use of Trails. To that end, District shall provide Town with at least fifteen (15) calendar day advance written notice of planned Standard Maintenance activity that may reasonably be expected to affect public use of Trails. District and Town will cooperate as necessary to address the temporary effects of District Standard Maintenance activity on public use of Trails.

4.2.3 District shall use reasonable measures to minimize damage to and interruption of public use of Trails. Upon completion of Standard Maintenance of Easements, District shall, if necessary and at its sole expense, promptly return the Trail to its condition existing as of the commencement of such maintenance activity.

4.3 **Town Trail Construction and Maintenance.**

4.3.1 As Town improves Easement(s) for Trail purposes, Town shall be exclusively responsible for the cost of installing and maintaining its Works and any Enhanced Maintenance within Easements.

4.3.2 Town shall endeavor to coordinate and schedule its Trail construction and maintenance activities to minimize interference with District's Easement maintenance. To that end, Town shall provide District at last fifteen (15) calendar days advance notice of Trail construction or Trail maintenance activities that may reasonably be expected to affect District maintenance activity. District and Town will cooperate as necessary to address the temporary effects of Town construction and maintenance activity on District operations.

4.3.3 Town may arrange with District to provide Trail construction or Enhanced Maintenance services for an agreed compensation or rely on its own contractor(s).

4.4 **Emergencies.**

4.4.1 For purpose of this paragraph, "Emergency" shall mean an immediate or imminent threat to the health, safety and welfare of the public should a repair not be immediately undertaken. "Works" shall be as defined in Paragraph 4.5.1, below.

4.4.2 Unless otherwise provided herein, in the event either party's Works are damaged in the course of an Emergency situation, each party shall be responsible for Repair of its own Works.

4.4.3 In the event an Emergency arises, each party may proceed to take such actions it deems necessary to protect its Works and the public, taking reasonable precautions to minimize damage to the other's Works. The Town Manager or the District Administrator, as appropriate, shall promptly notify the other of the situation, and promptly initiate repairs following the end of the emergency.

4.4.4 If a Trail must be closed while Emergency actions are undertaken, an effort shall be made to provide reasonably safe alternate access or routing for public use to the extent funds are available and such alternative access is physically possible and reasonable under the circumstances.

4.4.5 The parties agree to cooperate to obtain reimbursement for Emergency actions from FEMA or other governmental entity.

4.5 **Responsibility for Costs of Repair or Replacement.**

4.5.1 For purpose of this Agreement, "Works" shall mean:

A. With regard to Town Trails, any improvement installed or constructed by the Town within an Easement for Trail purposes.

B. With regard to District Easements, any improvement of the District located within an Easement.

4.5.2 If Works are damaged under non-Emergency circumstances, responsibility for their repair or replacement (hereafter, "Repair") shall be apportioned as follows:

A. Damage to District Works: If damage to District Works is attributable to use of the Trail by the public or by Town's employees, contractors or agents, Town shall be responsible for the cost of Repair. Prior to initiating Repair, District shall provide Town with written notice of the damage and an estimate of the cost of Repair. Town shall have fifteen (15) calendar days to accept the estimate and authorize Repair by District, dispute such, or engage its employees, contractors or agents to complete the Repair without cost to and under District's direction. Repairs initiated by Town shall first be approved by District in writing. If Town disputes the estimate, District shall not initiate Repair until the dispute is resolved, which period shall not exceed ninety calendar (90) days. If Town accepts District's estimate and authorizes Repair by and reimbursement of District, District may commence and shall promptly complete the Repair. Upon completion, the parties will inspect and confirm satisfactory completion in writing. If required, Town shall reimburse District within 30 days of receipt of District's invoice.

B. Damage to Town Works: If damage to Town Works is attributable to actions by District's employees, contractors or agents, District shall be responsible for the cost of Repair. Prior to initiating Repair, Town shall provide District with written notice of the damage and an estimate of the cost of Repair. District shall have fifteen (15) calendar days to accept the estimate and authorize Repair by Town, dispute such, or engage its employees, contractors or agents to complete the Repair without cost to and under Town's direction. Repairs initiated by District shall first be approved by Town in writing. If District disputes the estimate, Town shall not initiate Repair until the dispute is resolved, which period shall not exceed ninety calendar (90) days. If District accepts Town's estimate and authorizes Repair by and reimbursement of Town, Town may commence and shall promptly complete the Repair. Upon completion, the parties will inspect and confirm satisfactory completion in writing. If required, District shall reimburse Town within 30 days of receipt of Town's invoice.

SECTION 5. LIABILITY. The parties shall not be deemed to assume any liability for the negligent or wrongful acts or omissions of the other party, or its officers, employees, contractors, servants or agents. Nothing contained herein shall be construed as a waiver by either party of the liability limits established in Section 768.28 Florida Statutes.

SECTION 6. INDEMNIFICATION; LIABILITY INSURANCE.

A. In the event a claim or lawsuit is brought against District, its officers, employees, servants, or agents, related to an alleged act or omission by Town, for which Town was responsible under this Agreement, or is brought against Town, its officers, employees, servants, or agents, related to an alleged act or omission by District for which District was responsible under this Agreement, each agrees, without waiver of the limitations on liability provided in Section 768.28, Florida Statutes and to the extent permitted by law, to indemnify and hold harmless the other, its officers, employees, servants or agents from and against said claims, losses, demands, damages, liabilities or causes of action of whatsoever kind or nature that the party, its officers, employees, servants or agents may or could sustain as a result of the alleged act or omission of the other party.

B. Each party agrees to maintain sufficient professional, general liability and worker's compensation coverage, unless self-insured, regarding its respective liability throughout the term of this Agreement. This Agreement does not provide third parties with any remedy, claim, liability,

reimbursement, cause of action, or other right or privilege, except the provisions hereof involving indemnification or limitation of liability of District and Town.

C. If District engages contractors to maintain or to perform Repairs in an Easement or if Town engages contractors to construct, maintain or repair a Trail or improvements therein, such contractors shall at all times maintain insurance coverage in accordance with the attached **Exhibit "C"**, entitled "Minimum Insurance Coverage". District shall be named as an Additional Named Insured on any insurance policies maintained by Town's contractors, and a current Certificate of Insurance reflecting such coverage shall be provided to District prior to commencement of Town activities. Town shall be named as an Additional Named Insured on any insurance policies maintained by District's contractors, and a current Certificate of Insurance reflecting such coverage shall be provided to Town prior to commencement of District activities affecting Trails.

D. In the event a claim is made or a lawsuit is brought pursuant to this Section, Town and District agree to cooperate in any investigation of the underlying facts and circumstances.

SECTION 7. NOTICES. Any and all written notices required or permitted to be given hereunder shall be deemed received upon hand delivery or facsimile transmission or three (3) days if same are deposited in U.S. Mail and sent via certified mail, return receipt requested.

All notices to **TOWN** shall be sent to:

Town of Loxahatchee Groves
155 F Road
Loxahatchee Groves, FL 33470
Designated Representative: Town Manager
Phone: 561-793-2418
Fax: 561-793-2420

All notices to **DISTRICT** shall be sent to:

Loxahatchee Groves Water Control District
101 West "D" Road
P.O. Box 407
Loxahatchee, Florida 33470,
Designated Representative: District Administrator
Phone: (561) 793-0884
Fax: (561) 795-6157

SECTION 8. AMENDMENTS. Except as expressly permitted herein to the contrary, no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality as this Agreement by both parties.

SECTION 9. VENUE AND ELECTION OF REMEDIES. This Agreement shall be construed and governed by the laws of the State of Florida. Any and all legal action arising out of or necessary

to enforce this Agreement shall be held in the 15th Judicial Circuit in and for Palm Beach County, Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereinafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power or remedy hereunder shall preclude any other or further exercise thereof.

SECTION 10. ATTORNEY'S FEES. If either Party hereto is required to bring a court action to enforce the provisions of this Agreement, the non-prevailing party in such action shall be responsible for all reasonable expenses, including, but not limited to, attorney's fees and litigation expenses.

SECTION 11. WAIVER OF JURY TRIAL. The parties hereby waive any rights either of them may have to a jury trial in any litigation arising out of or related to this Agreement and agree that they shall not elect a trial by jury. The parties hereto have separately, knowingly and voluntarily given this waiver of right to trial by jury with the benefit of competent legal counsel.

SECTION 12. DISCRIMINATION. District and Town agree that no person shall on the grounds of race, color, sex, national origin, disability, religion, ancestry, marital status or sexual orientation be excluded from the benefits of or be subjected to any form of discrimination under any activity carried out by the performance of this Agreement.

SECTION 13. CONSTRUCTION. The parties acknowledge that each has shared equally in the drafting and preparation of this Agreement and, accordingly, no Court or Administrative Hearing Officer construing this Agreement shall construe it more strictly against one party than the other and every covenant, term and provision of this Agreement shall be construed simply according to its fair meaning. The terms and provisions of this Permit shall be construed and interpreted according to the laws of the State of Florida.

SECTION 14. SEVERABILITY. In the event any section, paragraph, sentence, clause or provision hereof is held invalid by a court of competent jurisdiction, such holding shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect unless the invalid finding is as to payment or construction obligations of a party in which event the Agreement shall be thereupon terminated.

SECTION 15. ENTIRE UNDERSTANDING. This Agreement represents the entire understanding between the parties and supersedes all other negotiations, representations or agreements, written or oral, relating to the matters which are the subject of this Agreement.

SECTION 16. HEADINGS. The headings contained in this Agreement are for convenience of reference only and shall not limit or otherwise effect in any way the meaning or interpretation of this Agreement.

SECTION 17. COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

SECTION 18. ASSIGNMENT. No assignment by a party hereto of any rights under or interests in this Interlocal Agreement shall be binding on another party hereto without the written consent of the party sought to be bound.

SECTION 19. FORCE MAJEURE.

A. "Force Majeure Event" shall mean the occurrence of: (a) An act of war (whether declared or not), hostilities, invasion, act of foreign enemies, terrorism or civil disorder; (b) Specific incidents of exceptionally adverse weather conditions; (c) Tempest, earthquake or any other natural disaster of overwhelming proportions; or (d) other unforeseeable circumstances beyond the control of the Parties against which it would have been unreasonable for the affected party to take precautions and which the affected party cannot avoid even by using its best efforts, which in each case directly causes either party to be unable to comply with all or a material part of its obligations under this Agreement;

B. Neither Party shall be in breach of its obligations under this Agreement (other than payment obligations) or incur any liability to the other Party for any losses or damages of any nature whatsoever incurred or suffered by that other (otherwise than under any express indemnity in this Agreement) if and to the extent that it is prevented from carrying out those obligations by, or such losses or damages are caused by, a Force Majeure Event except to the extent that the relevant breach of its obligations would have occurred, or the relevant losses or damages would have arisen, even if the Force Majeure Event had not occurred (in which case this Section shall not apply to that extent).

SECTION 20. SUCCESSORS AND ASSIGNS. The rights and obligations contained herein shall be binding upon Town, District and their successors and assigns, provided, however, that the rights and obligations of Town shall not be separated from, and shall run with, the property described in the attached **Exhibit "A"**.

SECTION 21. EFFECTIVE DATE. This Agreement shall be effective as of the last date that it is signed by the parties hereto, and filed with the Clerk of Circuit Court.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Executed by **TOWN** this _____ day of _____, 2015

ATTEST:

TOWN OF LOXAHATCHEE GROVES, FLORIDA, a Florida
Municipal Corporation

Janet Whipple
Town Clerk

By: _____
David Browning

Its: Mayor

[TOWN SEAL]

Executed by **DISTRICT** this _____ day of _____, 2015

ATTEST:

LOXAHATCHEE GROVES WATER CONTROL DISTRICT, an
independent special district of the State of Florida

John Ryan
Secretary

By: _____
David DeMarois

Its: Chair

[DISTRICT SEAL]

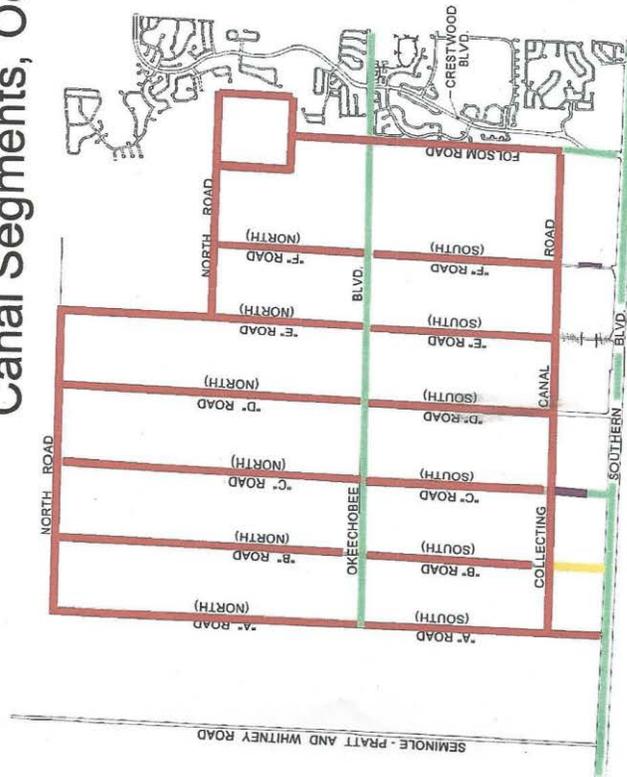
EXHIBIT "A"

TOWN TRAILS WITHIN DISTRICT MAINTENANCE EASEMENTS
(CONCEPTUAL LOCATION)

Preliminary Trail Map will be supplemented with the completed Easement Maps once the Easement Maps are complete.

ERDMAN
ANTHONY

Canal Segments, October, 2014



Road/ Segment	North of Okeechobee	South of Okeechobee	South of Collecting Canal	TOTALS (Miles)
A Road	2	1.25	0.4	3.65
B Road	2	1.25	-	3.25
C Road	2	1.25	-	3.25
D Road	2	1.25	-	3.25
E Road	2	1.25	-	3.25
F Road	1	1.25	-	2.25
G Square - West	0.5	-	-	0.5
G Square - East	0.5	-	-	0.5
25th Street North	0.5	-	-	0.5
Folsom Road	0.5	1.4	-	1.9
North Road (N)	2	-	-	2
North Road (S)	1.5	-	-	1.5
Collecting Canal	-	3.25	-	3.25
TOTALS (Miles)	16.5	12.15	0.4	29.05

EXHIBIT "B"
FORM OF DISTRICT PERMIT

PREPARED BY:

Mary M. Viator, Esquire
Caldwell Pacetti Edwards Schoech & Viator, LLP
One Clearlake Centre, Suite 600
250 South Australian Avenue
West Palm Beach, Florida 33401

RETURN TO:

Loxahatchee Groves Water Control District
Post Office Box 407
Loxahatchee, Florida 33470

[Space above this line for recording data.]

**LOXAHATCHEE GROVES WATER CONTROL DISTRICT
PERPETUAL USE PERMIT NO. 2015-_____**

THIS PERPETUAL USE PERMIT (the "Permit"), is granted this _____ day of _____, 2015, by **LOXAHATCHEE GROVES WATER CONTROL DISTRICT** (hereafter referred to as "District"), whose mailing address is 101 West "D" Road, P. O. Box 407, Loxahatchee, Florida 33470-0407, to **TOWN OF LOXAHATCHEE GROVES, FLORIDA**, a Florida municipal corporation (hereafter referred to as "Permittee" or "Town"), whose mailing address is 155 F Road, Loxahatchee Groves, FL 33470, as a **NON-EXCLUSIVE PERMIT TO USE, CONSTRUCT AND MAINTAIN CERTAIN PUBLIC RECREATION TRAILS WITHIN THE DISTRICT EASEMENTS IDENTIFIED IN THE ATTACHED EXHIBIT "A"** (the "Easements"), subject to the following Conditions

CONDITIONS:

1 Permittee understands and agrees that the use of the Easements pursuant to this Permit is subordinate to the rights and interest of District as provided in District's Authorizing Legislation. Further, Permittee hereby stipulates that Permittee is not relying upon any representations by District whatsoever regarding District's Easements other than as stated in Ch. 2014-247, Laws of Florida. This Permit shall not be construed as a representation that District has sole authority with respect to the affected real property.

2 District expressly reserves the right to maintain its Works (as defined in the Interlocal Agreement described in Condition 9, below, and incorporated herein) located within the Easements; to make improvements thereto; add additional Works; maintain, construct or alter any Works, facilities, devices or improvements on the property which aid in, or are necessary to, District responsibilities and operations; and the right to enter upon the affected lands at all times for such

purposes without unreasonably affecting Permittee's Trails, Permittee's Works therein, or public use thereof.

3. Permittee agrees that it will not use the Easements in any manner which materially or unreasonably interferes with their use by District or causes a hazardous condition to exist.

4. District assumes no responsibility for the ownership, operation and/or maintenance of the Town Works (as defined in the Interlocal Agreement described in Condition 9, below, and incorporated herein), other than to the extent incidental to regularly scheduled District maintenance of its rights-of-way.

5. Permittee's repair and maintenance responsibilities are as set forth in Section 4 of the Interlocal Agreement referenced in Condition 9, below, and incorporated herein.

6. The rights and obligations contained herein shall be binding upon Permittee, the District and their successors and assigns, provided, however, that the rights and obligations of the Permittee shall not be separated from, and shall run with, the property described in the attached **Exhibit "A"**. The parties agree that a copy of this Permit may be recorded in the Public Records of Palm Beach County, Florida.

7. Issuance of this Permit shall not constitute a waiver or approval of any permit from other governmental agencies or entities which may be required by law.

8. Trail Construction Coordination, Schedule & Process.

A.. Town shall provide District Engineer with copies of plans and specifications in detail and format sufficient to identify the location and nature of Works to be installed, including, but not limited to, base material(s) and composition, fencing, gates, signage, and other ancillary, incidental or accessory improvements. District Engineer shall have thirty (30) calendar days from receipt within which to review the plans (the "Comment Period"). If any concerns are identified, District Engineer shall so advise Town Staff in writing and the parties shall promptly meet to resolve them. If issues cannot be resolved within thirty (30) days after the conclusion of the Comment Period, District and Town Staffs will seek direction from their respective Governing Bodies. If Town receives no written concerns within the Comment Period, the plans and specifications will be deemed approved by District as submitted. Approvals shall not be unreasonably withheld.

B, Town may commence construction of Trails upon District approval of Town's plans and specifications; provided that construction may not commence before filing of Easement Maps. If Easement Maps are filed in phases, Town's construction of Works and public use of Trails shall correspond and be limited to the area identified therein.

C. Town's Works shall be constructed in accordance with the approved plans and specifications. Deviations from the approved plans shall be coordinated with and approved by the District Engineer. Significant deviations from approved plans, as determined by the District Engineer, may require submittal of revised plans in the manner provided in Section 8.A, above.

D. Notification shall be given to the District Administrator at least forty-eight (48) hours prior to commencement of construction. The District Engineer shall establish points of construction that require inspection, if any. When the construction activity is deemed completed, a final inspection shall be held by the District Engineer in the presence of an authorized representative of Permittee.

E. Town may, in its discretion, submit plans for construction of Works for Trails to District in phases. No additional Permits will be required for phases, but each proposed design and plan phase shall be approved through the process outlined in this Section 8.

F. Upon Completion of each phase, a Final Release from the District Administrator and the District Engineer for the constructed Works will be delivered to Town.

G. The District Engineer is deemed the final authority as to the quality and quantity of work required to satisfy the terms and conditions of this Permit.

H. Upon issuance of a Final Release, Permittee shall deliver to the District office one (1) complete set of "record drawings" in electronic and/or other format required by the District Engineer and District Administrator.

9. The terms and conditions of that certain "Interlocal Agreement" by and between District and Town dated _____, 2015 (hereafter, the "ILA") are hereby incorporated into this Permit by this reference. In case of a conflict between the express terms and conditions of the ILA and of this Permit, the terms of the ILA shall prevail.

10. PERMITTEE CONTACT INFORMATION

PERMITTEE

Name

Business Phone

Address

Other

ATTORNEY

Name

Business Phone

Address

Other

ENGINEER

Name

Business Phone

Address

Other

AGENT/OTHER REPRESENTATIVE

Name

Business Phone

Address

Other

11. Addenda, This Permit may be supplemented by Addenda reflecting phasing of filing of Easement Maps or construction of Works.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

PERMIT ISSUED THIS _____ DAY OF _____, 2015 BY ORDER OF THE BOARD OF SUPERVISORS OF LOXAHATCHEE GROVES WATER CONTROL DISTRICT

WITNESSES

DISTRICT:

LOXAHATCHEE GROVES WATER CONTROL DISTRICT,
an Independent Special District of the State of Florida

(1) _____
Print Name: _____

By: _____
DAVID DEMAROIS
Title: CHAIR

(2) _____
Print Name: _____

[DISTRICT SEAL]

STATE OF FLORIDA)
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged and subscribed before me this _____ day of _____ 2015, by DAVID DEMAROIS, as CHAIR of LOXAHATCHEE GROVES WATER CONTROL DISTRICT, an independent special district of the State of Florida, on behalf of said District. He is _____ personally known to me or has produced _____ [type of identification] as identification and did take an oath.

(NOTARY SEAL)

LYNNETTE R. BALLARD
Notary Public, State of Florida
My Commission Expires:

PERMITTEE ACKNOWLEDGEMENT AND ACCEPTANCE

ON BEHALF OF PERMITTEE, I ACKNOWLEDGE RECEIPT OF AND UNDERSTAND AND ACCEPT THE CONDITIONS OF THIS PERMIT:

WITNESSES:

PERMITTEE:

TOWN OF LOXAHATCHEE GROVES, FLORIDA, a
Florida municipal corporation

(1) _____

By: _____

Print Name: _____

Name printed: _____
Title Mayor

(2) _____

Print Name: _____

[TOWN SEAL]

STATE OF FLORIDA)
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged and scribed before me this _____ day of _____, 2015, by _____, as Mayor of **TOWN OF LOXAHATCHEE GROVES, FLORIDA**, a Florida municipal corporation, on behalf of said Municipal Corporation. He/she is _____ personally known to me or has produced _____ [type of identification] as identification and did take an oath.

Print Name: _____
Notary Public, State of Florida
My Commission Expires:

(NOTARY SEAL)

[PERMIT] EXHIBIT "A"

PUBLIC RECREATION TRAILS IN DISTRICT EASEMENTS

[INSERT EASEMENT MAP(S) HERE]

EXHIBIT "C"
MINIMUM INSURANCE REQUIREMENTS¹

Below is shown the MINIMUM acceptable insurance to be carried under this Agreement:

I. Commercial General Liability:

(A) Bodily Injury Limit:

\$1,000,000	Each Occurrence
\$1,000,000	Annual Aggregate

Property Damage Limit:

\$1,000,000	Each Occurrence
\$1,000,000	Annual Aggregate

(B) or a Combined Single Limit of Bodily Injury and Property Damage :

\$1,000,000	Each Occurrence
\$1,000,000	Annual Aggregate

(C) The Commercial General Liability shall include Contractual Liability.

II. Automobile Liability (Any Auto)

(A) Bodily Injury:

\$ 500,000	Each Person
\$1,000,000	Each Occurrence

(B) Property Damage:

\$ 500,000	Each Occurrence
or a combined single limit of \$1,000,000	

III. Workers Compensation

(A) State: Statutory

(B) Applicable Federal (e.g. Longshoreman's and Harbor Workers' Compensation, Maritime, Jones Act, etc.): Statutory

(C) Employer's Liability: \$ 500,000

IV. Umbrella Excess Liability Insurance:

(A) \$1,000,000	Each Occurrence
\$1,000,000	Annual Aggregate

(B) The aforementioned umbrella coverage shall be no more restrictive than coverage required for the underlying policies.

V. Contractual Liability Insurance: The Contractual Liability Insurance required shall provide coverage for not less than the following amounts.

1. Bodily Injury: Each Occurrence
\$1,000,000

2. Property Damage: Each Occurrence
\$1,000,000 Annual Aggregate
\$1,000,000

VI. Builder's Risk: This coverage will be provided by all contractors involved in the construction of a new building or improvement, alteration or revision of an existing structure. Builder's Risk coverage shall be "All Risk" with limits equal to one hundred percent (100%) of the completed value of the structure(s), building(s) or addition(s).

VII. Notice of Cancellation:

The insurance afforded above may not be terminated or reduced unless thirty (30) days prior written notice of such termination or reduction is mailed to District (unless terminated for non-payment in which event ten (10) days' notice is required).

VIII. [Deleted]

IX. Insurance Certificate:

Loxahatchee Groves Water Control District shall be listed as an additional insured for the above Commercial, Automobile and Umbrella Liability insurance coverage and a certificate of insurance reflecting same shall be delivered to Loxahatchee Groves Water Control District, which certificate of insurance shall be maintained on a continuing basis throughout the Term of this Agreement.

X. Policy Endorsement:

Loxahatchee Groves Water Control District shall be a named as Additional Insured with a CG 2026 Additional Insured-Designated Person or Organization Endorsement to the Commercial General Liability Insurance Policy. The Additional Insured Endorsement shall read "Loxahatchee Groves Water Control District, an Independent Special District of the State of Florida, its Officers, Employees and Agents". Insured shall provide the Additional Insured Endorsements coverage on a primary basis. A copy of the Policy Endorsement(s) shall be provided to District.

XI. Acceptable Insurers

At a minimum, Insurers shall have an A. M. Best Rating of A:VII.

XII. Special Risks or Circumstances for Supplemental Services

- (A) District reserves the right to modify these requirements, including limits, for Supplemental Services or Work, based on the nature of the risk, prior experience, insurer, coverage or other special circumstances involved in a project. If modifications in insurance coverage are required, such modifications will be defined in a written Supplemental Work Authorization.
- (B) The umbrella coverage shall be Following-Form being no more restrictive than coverage required for the underlying policies.

Note 1: *These requirements shall apply to Town, Town's Contractor and any Sub-Contractors. District shall provide similar assurances to Town from District's contractors to the extent required by the Agreement.*

**FILED WITH THE CLERK OF CIRCUIT COURT
IN AND FOR PALM BEACH COUNTY, FLORIDA
THIS _____ DAY OF _____, 2015.**

**FOR: SHARON R. BOCK,
CLERK AND COMPTROLLER
PALM BEACH COUNTY, FLORIDA**

BY: _____

ASSISTANT CLERK

[CLERK'S SEAL]