

AGREEMENT
between
BROWARD COUNTY
and
CITY OF FORT LAUDERDALE
for
MITIGATION AT MILLS POND PARK

4-30-11
m-21
11-22-11

AGREEMENT

between

BROWARD COUNTY

and

CITY OF FORT LAUDERDALE

for

MITIGATION AT MILLS POND PARK

This is an Agreement, made and entered into by and between BROWARD COUNTY, a political subdivision of the state of Florida ("COUNTY") and the CITY OF FORT LAUDERDALE, a Florida municipality ("CITY") for wetland mitigation to be performed at Mills Pond Park, as described below.

WHEREAS, CITY is proposing to impact 3.46 acres of forested wetlands on Lots 8, 9, 10 and 11 of Fort Lauderdale Industrial Airpark - Section 2 Plat, recorded at Plat Book 63, Page 8, in the City of Fort Lauderdale, Broward County (the "PROPERTY"); and

WHEREAS, COUNTY owns a portion of certain land ("COUNTY's PROPERTY") that is a part of public lands known as Mills Pond Park and consists of approximately 63 acres of forested land, a depiction of which is included in Exhibit "A," an aerial photo delineating the portions of Mills Pond Park owned by COUNTY and CITY, attached hereto and incorporated herein; and

WHEREAS, CITY must comply with Environmental Resource Permit Number 06-05307-P ("PERMIT"), issued by the Broward County Environmental Protection and Growth Management Department ("EPGMD") under delegation and authorization by the South Florida Water Management District ("SFWMD"), as well as with Environmental Resource License Number DF03-1116, hereinafter referred to as the ("LICENSE"), issued by the EPGMD; and

WHEREAS, CITY must undertake certain mitigation work for the construction work referenced herein and is proposing to perform such mitigation on COUNTY's PROPERTY ("PROJECT"), said PROJECT is more fully described in composite Exhibit "B," attached hereto and incorporated herein; and

WHEREAS, the PERMIT and the LICENSE require that certain mitigation work be undertaken and be performed on COUNTY's PROPERTY in accordance with the mitigation plan described in the PROJECT; and

WHEREAS, approximately 11.8 acres of total mitigation work required of CITY pursuant to the PERMIT and the LICENSE will be done on COUNTY's PROPERTY; and

WHEREAS, COUNTY agrees that the mitigation work required of CITY on COUNTY's PROPERTY will benefit the public significantly and, as such, is in COUNTY's best interest; NOW, THEREFORE,

In consideration of the mutual terms, conditions, promises, and covenants as herein set forth, COUNTY and CITY agree as follows:

1. That the above recitals are true and correct and made a part hereof as if set forth in full hereunder.
2. COUNTY agrees to issue any necessary permits and licenses required to allow CITY to access COUNTY's PROPERTY to undertake the required mitigation work for the PROJECT and for a period of time pursuant to the Project Schedule ("PROJECT SCHEDULE"), attached hereto and incorporated herein as Exhibit "C".
3. CITY, including its consultants and contractors necessary to complete the PROJECT, shall have the right to enter into and upon COUNTY's PROPERTY to the extent necessary to fulfill its functions and obligations under this Agreement, the PERMIT, and the LICENSE. However, prior to commencing the mitigation work, CITY shall consult with EPGMD regarding proper access and egress routes through COUNTY's PROPERTY. The staff of the SFWMD shall also have the right to enter COUNTY's PROPERTY and CITY's PROPERTY to inspect for compliance with the PERMIT.
4. COUNTY hereby authorizes and approves the mitigation work for the PROJECT to be undertaken by CITY on COUNTY's PROPERTY as set forth above and in the PERMIT and the LICENSE. CITY shall complete the mitigation work for the PROJECT, as described in this Agreement, the PERMIT, and the LICENSE referenced herein, prior to or concurrent with impacts occurring off-site. In the event any regulatory agencies with jurisdiction over the PROJECT determine that CITY is not complying with the terms and conditions for completion of the PROJECT set forth in the Agreement, PERMIT, and LICENSE, COUNTY may require that CITY undertake a corrective action plan established by COUNTY. Failure of CITY to satisfactorily comply with the corrective plan, as determined by COUNTY, will be deemed an event of default enabling COUNTY to seek recovery under the Performance Bond or other financial assurance provided as a condition of the PERMIT and LICENSE for this PROJECT, in addition to other remedies available to COUNTY by law.

5. CITY shall obtain and pay for all necessary permits and licenses from COUNTY and any other regulatory agencies, if any, for the mitigation work, and COUNTY agrees to cooperate concerning the same.
6. It is expressly understood and agreed to by the parties that the rights herein conveyed by this Agreement are permissive rights only and shall not operate to create or vest any additional property rights in COUNTY or CITY.
7. CITY covenants and agrees to do all things necessary and required by this Agreement and the mitigation work contemplated in the PERMIT and in the LICENSE. CITY will assign a Project Manager to oversee the mitigation project at all times.
8. CITY shall be responsible for ensuring that all work performed on COUNTY's PROPERTY shall substantially conform to the requirements of the PERMIT and the LICENSE and the PROJECT description submitted by CITY and approved by EPGMD. CITY agrees to perform the services within the time frames established in the PROJECT SCHEDULE. The Contract Administrators identified in paragraph 14 shall have the right to mutually agree to changes to the PROJECT SCHEDULE.
9. CITY, through its consultants, shall cause the PROJECT and mitigation work described in the PERMIT and the LICENSE to have the least impact on the functions of Mills Pond Park, and shall schedule the mitigation activities in a manner so as not to unreasonably interfere with the use of Mills Pond Park.
10. CITY, at its expense, shall provide to COUNTY's individual designated in paragraph 14 of this Agreement before and after color aerial photographs of those portions of Mills Pond Park to be mitigated. The before photograph must be submitted prior to the initiation of the permitted work and the after photograph must be submitted within thirty (30) calendar days after the completion of the PROJECT. The photographs must be 8" x 10", taken at an altitude of not more than 250', and must encompass the entire PROJECT area.
11. Any fill material excavated in conjunction with the described mitigation work is the exclusive property of COUNTY and is not to be removed from the PROJECT site. The disposition and/or storage of such fill material shall be to a location identified by the COUNTY.
12. CITY, by and through its Contractor hired to perform the mitigation for the PROJECT, agrees not to injure or kill non-nuisance or native vegetation. CITY will assure replacement of non-target trees and other plants that are injured or lost due to CITY's PROJECT work or its Contractor's negligence or carelessness. Replacement shall be based on the most current and accepted industry

standards available with regard to plants injured or killed and consistent with COUNTY's environmental ordinances and policies.

13. Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or sent by commercial express carrier with acknowledgement of delivery, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

FOR COUNTY:

Director
Broward County Planning and Environmental Regulation Division
1 North University Drive, Suite 201
Plantation, Florida 33324

With a copy to:

Broward County Office of the County Attorney
Broward County Governmental Center
115 S. Andrews Avenue, Room 423
Fort Lauderdale, Florida 33301

FOR CITY:

Phil Thornburg
Director of Parks and Recreation
1350 West Broward Boulevard
Fort Lauderdale, FL 33312

Clara Bennett
Fort Lauderdale Executive Airport Manager
6000 NW 21st Avenue
Fort Lauderdale, FL 33309

With a copy to:

City Attorney's Office
City of Fort Lauderdale
100 N. Andrews Avenue
Fort Lauderdale, FL 33301

14. COUNTY and CITY are hereby required to each designate an individual or individuals as Contract Administrators with whom CITY's consultants/contractors

can coordinate all activities and approvals required by this Agreement. Unless otherwise notified in writing, the individuals shall be as follows:

FOR COUNTY:

Donald Burgess, Land Preservation Administrator
Natural Resources Planning & Management Division
115 South Andrews Avenue, Suite 329H
Fort Lauderdale, Florida 33301

FOR CITY:

Phil Thornburg
Director of Parks and Recreation
1350 West Broward Boulevard
Fort Lauderdale, FL 33312

Clara Bennett
Fort Lauderdale Executive Airport Manager
6000 NW 21st Avenue
Fort Lauderdale, FL 33309

15. The parties to this Agreement are "state agencies or subdivisions" as defined in Section 768.28(2), F.S. (2011). Each party agrees to be fully responsible for acts and omissions of its agents and employees to the extent permitted by law. Nothing in this Agreement is intended to serve as a waiver of sovereign immunity by any party to which sovereign immunity may be applicable. Nothing in this Agreement shall be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract. These provisions shall survive the expiration or earlier termination of this Agreement.
16. COUNTY and CITY agree that the terms of this paragraph apply to any failure by CITY to adhere to the PROJECT SCHEDULE.
 - 16.1. In the event that CITY fails to perform the work under this Agreement within the time frames established in the PROJECT SCHEDULE set forth in Exhibit "C" herein, COUNTY's Contract Administrator shall provide written notice requiring the satisfactory correction of that failure, as determined by COUNTY, within a reasonable time frame established by COUNTY for that failure. COUNTY's Contract Administrator may, at his or her discretion, grant one (1) extension to the initial time frame established for corrective action. Thereafter, any additional extensions may only be granted by COUNTY's Contract Administrator, in his or her discretion, upon a showing by CITY of a substantial hardship in not being able to complete the particular task within the established time frame.

- 16.2. Notwithstanding the above, COUNTY and CITY agree that any failure by CITY to adhere to the PROJECT SCHEDULE due to delays in governmental permitting that are not the fault of CITY and force majeure matters, including inclement weather, will be resolved by the Contract Administrators by amending the PROJECT SCHEDULE to grant CITY a reasonable additional amount of time to perform the work. If the Contract Administrators cannot agree on a reasonable amount of time under the circumstances presented, the decision of the COUNTY's Contract Administrator shall be final. In the event a failure occurs under this subparagraph, CITY will not be subject to the payment of liquidated damages for the time required to resolve the failure.
- 16.3. CITY acknowledges and agrees to pay COUNTY the sum of One Hundred Dollars (\$100.00) for each calendar day after the applicable time for performance established in the PROJECT SCHEDULE, plus any time extensions granted by COUNTY, until completion of the work. These amounts are not penalties but are liquidated damages to COUNTY for its inability to proceed with, and have the Project completed in a timely manner pursuant to the agreed upon PROJECT SCHEDULE. Liquidated damages are hereby fixed and agreed upon by the parties, recognizing the impossibility of precisely ascertaining the amount of damages that will be sustained by COUNTY as a consequence of such delay, and both parties desiring to obviate any question or dispute concerning the amount of said damages and the cost and effect of the failure of CITY to complete the work within the applicable time for performance set forth in the PROJECT SCHEDULE. This provision shall not affect the rights and obligations of either party as set forth in paragraph 15.
- 16.4. Notwithstanding COUNTY's right to liquidated damages, if CITY fails to remedy the failure, to the satisfaction of COUNTY, within the time frame established by COUNTY for said failure, and any extensions granted at COUNTY's sole option, this will be deemed an event of default enabling COUNTY to (i) seek recovery under the Performance Bond or other financial assurance provided for this PROJECT, in addition to other remedies available to COUNTY by law or (ii) elect, in its discretion, to have such failure remedied by COUNTY and any monies expended by COUNTY shall be the sole obligation of CITY who shall promptly reimburse COUNTY for all costs and expenses incurred to remedy the failure of CITY.
17. CITY agrees that it will deliver, or cause to be delivered, to COUNTY one or more financial assurances for the PROJECT in a form acceptable to COUNTY's Office of the County Attorney as per the LICENSE and PERMIT conditions, as may be amended.

18. CITY agrees to use reasonable care and due diligence in assisting COUNTY in maintaining the area(s) affected by the required mitigation work for the PROJECT, and in protecting the public and natural resources in the area(s) affected by the performance of the PROJECT in Mills Pond Park during the mitigation work.
19. CITY, by and through its Contractor(s) hired to perform the mitigation work for the PROJECT, agrees that herbicides selected shall be approved by EPGMD in order to ensure that exotic/nuisance species are eradicated and desirable native or planted species are not affected, and that the herbicide will be effective on targeted species and comply with all applicable regulations and in accordance with the current manufacturer's label.
20. CITY agrees to monitor and maintain the mitigation work for the PROJECT according to the PERMIT and the LICENSE and assign personnel to supervise the application of herbicide. Copies of all correspondence and monitoring reports must be submitted to the EPGMD. The supervisory personnel and all applicators shall be experienced with the identification of the desirable native plant species and the exotic/nuisance plant species within and adjacent to the PROJECT area. CITY or its contractor's supervisory personnel and applicators must possess a current Commercial Restricted Use Pesticide Applicator License with proof of aquatic herbicide application training and be in good standing with the Florida Department of Agriculture and Consumer Services (FDACS) and all other regulatory agencies having jurisdiction over such Licensor. No herbicide shall be applied by unlicensed personnel. A copy of this License must be provided to COUNTY prior to commencement of the mitigation work for the PROJECT. COUNTY shall have the right at any time to inspect the lands and the eradication of exotic plant species referenced in the PERMIT and in the LICENSE and to examine work records and to test chemicals being used.
21. CITY, by and through its Contractor(s) hired to perform the mitigation work for the PROJECT, agrees that transporting, storing, applying, and the herbicides shall be in accordance with federal, state, and local regulations, and the current manufacturer's label. No full, empty or partially empty containers shall be left on the site after application hours. All empty containers shall be triple rinsed and made unusable. The Contractor shall be required to supply rinse water and containers to store the rinsate. The rinsate and empty herbicide containers shall be disposed of off-site by the Contractor in accordance with all federal, state, and local regulations. All herbicides purchased, shipped and stored for use under this agreement shall display the original manufacturer's label at all times. The Contractor shall take all necessary precautions to prevent any contamination of the surface and ground waters as required by the regulatory agencies. CITY agrees that, upon completion of the work under this Agreement, CITY shall cause all equipment, chemical containers, fuel, appurtenances, vegetative debris, and other materials or wastes associated with the mitigation work for the PROJECT to

be removed from COUNTY's PROPERTY and CITY's PROPERTY in accordance with federal, state, and local regulations.

22. CITY agrees that its Contractor(s) shall demonstrate satisfactory relevant experience and capability in wetland mitigation as defined in this Agreement. Relevant experience shall consist of five (5) years experience by the person in charge and directly responsible for the work. An individual possessing the education and relevant mitigation experience to satisfy COUNTY that the quality of plant materials and installation shall equal or exceed the PERMIT and the LICENSE requirements and COUNTY specifications shall supervise the installation of plant material. The Contractor(s) shall submit a minimum of three (3) work references in which the Contractor(s) has performed wetland mitigation construction within the past five (5) years. EPGMD shall have the right to exercise approval of Contractor(s), such approval shall not be unreasonably withheld.
23. This Agreement shall remain in effect until such time as necessary to satisfy the requirements of this Agreement, the PERMIT, and the LICENSE.
24. CITY agrees to include the following indemnification provisions in its contract with the successful contractor(s) engaged to complete the mitigation work for the PROJECT.
 - 24.1. In consideration of Twenty-Five Dollars (\$25.00) and other valuable consideration, the Contractor shall indemnify and save harmless COUNTY and CITY, its officers, agents and employees, from or on account of any injuries or damages, received or sustained by any person or persons during or on account of any operations connected with the work to be performed on the PROJECT including the Warranty Period; or as a consequence of any negligence (excluding sole negligence of COUNTY or CITY in connection with the same); or by use of any improper material or on account of any act or omission of the Contractor or his or her subcontractors, agents, servants or employees. Contractor agrees to indemnify and save harmless COUNTY and CITY, including the Warranty Period, against any claims or liability arising from or based upon the violation of any federal, state, county or city laws, by-laws, ordinances or regulations by the Contractor, his or her subcontractors, agents, servants or employees. Contractor agrees to indemnify and save harmless COUNTY and CITY from all such claims and fees and from any and all suits and actions of every name and description that may be brought against COUNTY or CITY. These indemnification provisions survive the term of the Contract. In the event that any action or proceedings is brought against COUNTY or CITY, by reason of any such claim or demand, the Contractor, upon written notice from COUNTY or CITY shall

defend such action or proceeding by counsel satisfactory to COUNTY or CITY.

- 24.2. The indemnification provided above shall obligate the Contractor to defend at its own expense or to provide for such defense, at COUNTY's or CITY's option, any and all claims of liability and all suits and actions of every name and description that may be brought against COUNTY or CITY, excluding only those which allege that the injuries arose out of the sole negligence of COUNTY or CITY which may result from the operations and activities under this Contract whether the application of herbicide be performed by the Contractor, its subcontractor, or by anyone directly or indirectly employed by either.
25. CITY agrees to include in its contract with the successful Contractor(s) the requirements contained in this Agreement and further agrees to provide COUNTY, prior to application of herbicide, Certificates of Insurance evidencing CITY compliance with the requirements of this paragraph:
- 25.1. Without limiting any of the other obligations or liabilities of CITY, it shall provide, pay for and maintain in force until all of its work to be performed under this Agreement has been completed and accepted by COUNTY (or for such duration as is otherwise specified hereinafter), the insurance coverages set forth herein.
- 25.1.1. Worker's Compensation insurance to apply for all employees in compliance with the "Worker's Compensation Law" of the State of Florida and all applicable federal laws. In addition, the policy(ies) must include Employers' Liability with a limit of Five Hundred Thousand Dollars (\$500,000.00) for each accident.
- 25.1.2. Comprehensive General Liability with minimum limits of Five Hundred Thousand Dollars (\$500,000.00) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form not more restrictive than the latest edition of the Comprehensive General Liability policy, without restrictive endorsements, as filed by the Insurance Services Office and must include:
- a. Premises and/or Operations; and
 - b. Independent Contractors; and
 - c. Products and/or Completed Operations.
- 25.2. If the initial insurance expires prior to the completion of the mitigation work, renewal copies of policies shall be furnished to COUNTY thirty (30) days

prior to the date of their expiration. The Comprehensive General Liability policy and Certificate of Insurance shall reflect COUNTY as an additional insured.

- 25.3. Notice of Cancellation and/or Restriction - The policy(ies) must be endorsed to provide COUNTY with thirty (30) days notice of cancellation and/or restriction.
- 25.4. Prior to COUNTY's approval, CITY shall furnish to COUNTY's Contract Administrator Certificates of Insurance or endorsements evidencing the insurance coverage specified above. The required Certificates of Insurance shall name the types of policies provided, the insured and additional insured, as well as inception and expiration dates.
26. Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the respective party providing or creating same.
27. COUNTY shall have the right to audit the books, records, and accounts of CITY and its subcontractors that are related to this Project. CITY and its subcontractors shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Project. All books, records, and accounts of CITY and its subcontractors shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, CITY or its subcontractor, as applicable, shall make same available at no cost to COUNTY in written form. CITY and its subcontractors shall preserve and make available, at reasonable times for examination and audit by COUNTY, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes, as may be amended from time to time, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by COUNTY to be applicable to CITY's and its subcontractors' records, CITY and its subcontractors shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by CITY or its subcontractors. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for COUNTY's disallowance and recovery of any payment upon such entry. CITY shall, by written contract, require its subcontractors to agree to the requirements and obligations of this Section.

28. Nondiscrimination, Equal Employment Opportunity, and Americans with Disabilities Act.
- 28.1. CITY shall not unlawfully discriminate on the basis of race, color, national origin, sex, religion, age, marital status, political affiliation, familial status, disability, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement, the solicitation for or purchase of goods or services relating to this Agreement, or in subcontracting work in the performance of this Agreement and shall not otherwise unlawfully discriminate in violation of the Broward County Code, Chapter 16½, as may be amended from time to time. CITY shall include the foregoing or similar language in its contracts with any subcontractors or subconsultants, except that any project assisted by the U.S. Department of Transportation funds shall comply with the non-discrimination requirements in 49 C.F.R. Parts 23 and 26, as amended. Failure to comply with the foregoing requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as COUNTY deems appropriate.
- 28.2. CITY shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement. CITY shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by COUNTY, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, CITY shall take affirmative steps to ensure nondiscrimination in employment against disabled persons.
- 28.3. By execution of this Agreement, CITY represents that it has not been placed on the discriminatory vendor list (as provided in Section 287.134, Florida Statutes, as may be amended from time to time). COUNTY hereby materially relies on such representation in entering into this Agreement. An untrue representation of the foregoing shall entitle COUNTY to terminate this Agreement and recover from CITY all monies paid by COUNTY pursuant to this Agreement, and may result in debarment from COUNTY's competitive procurement activities.
29. This Agreement incorporates and includes all prior negotiations, correspondence, conversions, agreements or understandings applicable to the matter contained herein. It is further agreed that no change, alteration or modification in the terms and conditions contained herein, other than changes to the PROJECT SCHEDULE, shall be effective unless contained in written document executed with the same formality and of equal dignity, herewith.

30. COUNTY and CITY agree that time is of the essence with respect to the terms and conditions of this Agreement.
31. No LICENSE, PERMIT, or other document issued by EPGMD or other agencies shall be released upon completion of the work until written authorization is obtained from EPGMD. CITY shall contact the EPGMD for an inspection upon completion of the work.
32. Except as provided for in this paragraph, no party to this Agreement intends to directly or substantially benefit a third party by virtue of entering into this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against the parties based upon this Agreement. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement. Notwithstanding the above, CITY agrees to include the following provision in its agreement with the contractor(s) performing the mitigation activities on COUNTY's PROPERTY: "Broward County shall be a third party beneficiary to this Agreement."
33. CITY is an independent contractor under this Agreement. Services provided by each party pursuant to this Agreement shall be subject to the supervision of the respective party. In providing such services, each party represents that it and its agents shall not act as officers, employees, or agents of the other parties. This Agreement shall not constitute or make the parties a partnership or joint venture.
34. Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered by CITY, except as provided for in the PERMIT the LICENSE, and Sections 27-58(b)(8) and 27-339(1)h. of the Broward County Code of Ordinances, and CITY shall not subcontract any portion of the work required by this Agreement, except as provided for herein.
35. Neither CITY nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with its loyal and conscientious exercise of judgment related to its performance under this Agreement. CITY agrees that none of its officers or employees shall, during the term of this Agreement, serve as an expert witness against any of the parties in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process. Further, CITY agrees that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of COUNTY in connection with any such pending or threatened legal or administrative proceeding. The limitations of this paragraph shall not preclude CITY or any other persons from representing themselves in any action or in any administrative or legal proceeding.

36. CITY warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for that party, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for a party, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For a breach or violation of this provision, COUNTY shall have the right to terminate this Agreement without liability at its discretion.
37. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in paragraphs 1 through 46 of this Agreement shall prevail and be given effect.
38. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the state courts of Florida for Broward County.
39. No modification, amendment, or alteration in the terms or conditions contained herein, except for amendments to the PROJECT SCHEDULE, shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Board of County Commissioners and the City Commission of Fort Lauderdale.
40. In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless COUNTY or CITY elects to terminate this Agreement. The election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.
41. The failure of any party to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.
42. The parties acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a

matter of judicial construction, be construed more severely against one of the parties than the other.

43. CITY shall remit to COUNTY A LUMP SUM AMOUNT OF \$84,370.00. Payment of the lump sum shall be made to COUNTY's Planning and Environmental Regulation Division within thirty (30) calendar days of approval by the Planning and Environmental Regulation Division of the successful completion of the initial construction phase of the PROJECT and prior to the commencement of CITY's five (5) year maintenance and monitoring period. Said remittance shall be placed by COUNTY in a Trust Fund for the purpose of providing future maintenance, via interest accrued on the principle, after CITY's five (5) year maintenance requirement for the Project has expired.
44. The truth and accuracy of the "Whereas" clauses set forth above is acknowledged by the parties.
45. The Contract Administrators are those individuals designated in paragraph 14. The primary responsibilities of the Contract Administrators are to coordinate and communicate with each other and to manage and supervise execution and completion of the scope of work and the terms and conditions of this Agreement as set forth herein. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely on the instructions or determinations made by the respective Contract Administrators for their particular entity.
46. This Agreement may be fully executed in five (5) copies by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.

- REMAINDER OF PAGE LEFT INTENTIONALLY BLANK -

IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, by and through its Mayor or Vice-Mayor, authorized to execute same by the Board action on the _____ day of _____, 20____; and the CITY OF FORT LAUDERDALE through its CITY COMMISSION, by and through its Mayor or Vice-Mayor, authorized to execute same by the Commission action on the _____ day of _____, 20____.

COUNTY

ATTEST:

BROWARD COUNTY, through its
BOARD OF COUNTY COMMISSIONERS

County Administrator, as
Ex-Officio Clerk of the Board of
County Commissioners of
Broward County, Florida

By _____
Mayor

_____ day of _____, 20____.

Insurance requirements
Approved by the COUNTY's
Risk Manager

By _____

Approved as to form by
Joni Armstrong Coffey
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

By Michael C. Owens 2/26/14
Michael C. Owens (Date)
Senior Assistant County Attorney

By Maite Azcoitia 2/28/14
Maite Azcoitia (Date)
Deputy County Attorney


AGREEMENT BETWEEN BROWARD COUNTY AND CITY OF FORT LAUDERDALE,
FOR MITIGATION AT MILLS POND PARK.


CITY


WITNESSES:

CITY OF FORT LAUDERDALE

Jeanette A. Johnson
Jeanette A. Johnson
Print/type Name

By 
Mayor
10th day of February, 2014.


MIRANDA SCOTT
Print/type Name

By 
City Manager
6 day of FEBRUARY, 2014.

(CORPORATE SEAL)

ATTEST:


City Clerk

APPROVED AS TO FORM:

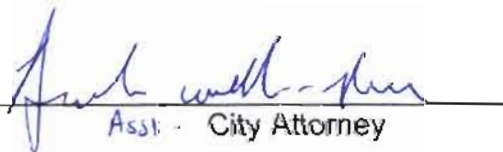

Asst. City Attorney

Exhibit "A"

Aerial Photo of Mills Pond Park Showing County Lands



(EXHIBIT "A")

DESCRIPTION :

A PORTION OF SECTION 28, TOWNSHIP 49 SOUTH, RANGE 42 EAST TOGETHER WITH ALL OF TRACT "B" AND A PORTION OF TRACT "D" OF LAKE LAUDERDALE RECREATION AREA" AS RECORDED IN PLAT BOOK 134, PAGE 38, IN THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTHEAST CORNER OF SAID TRACT "B"; THENCE ALONG THE SOUTH LINE OF SAID TRACT "B", SOUTH 87°30'27" WEST 333.03 FEET; THENCE ALONG THE WEST LINE OF SAID TRACT "B", NORTH 01°18'05" WEST 990.33 FEET; THENCE SOUTH 87°22'03" WEST 583.32 FEET TO A POINT ON THE EAST RIGHT OF WAY LINE OF INTERSTATE 95 ACCORDING TO THE FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT-OF-WAY MAP SECTION 86070-8412; THENCE ALONG SAID RIGHT-OF-WAY LINE THE FOLLOWING THREE (3) COURSES, (1) NORTH 30°55'09" EAST 270.27 FEET TO A POINT ON A 240.00 FOOT RADIUS NON-TANGENT CURVE CONCAVE TO THE NORTHWEST WHOSE RADIUS POINT BEARS NORTH 07°36'27" EAST; (2) NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 63°52'48" AN ARC DISTANCE OF 267.58 FEET TO A POINT OF TANGENCY; (3) NORTH 33°43'39" EAST 621.99 FEET TO THE POINT OF INTERSECTION WITH THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF CANAL C-13 (130 FEET WIDE); THENCE ALONG SAID RIGHT-OF-WAY LINE AND ALONG THE EASTERLY LINE OF THE AFORESAID TRACT "D" OF SAID "LAKE LAUDERDALE RECREATION AREA", SOUTH 33°22'06" EAST 3035.90 FEET TO A POINT OF CURVATURE OF A 420.00 FOOT RADIUS CURVE CONCAVE TO THE SOUTHWEST; THENCE SOUTHEASTERLY ALONG SAID EASTERLY LINE AND SAID CURVE THROUGH A CENTRAL ANGLE OF 16°20'53" AN ARC DISTANCE OF 119.84 FEET TO A POINT OF REVERSE CURVATURE OF A 580.00 FOOT RADIUS CURVE CONCAVE TO THE NORTHEAST; THENCE SOUTHEASTERLY ALONG SAID EASTERLY LINE AND SAID CURVE THROUGH A CENTRAL ANGLE OF 21°37'03" AN ARC DISTANCE OF 218.83 FEET TO A POINT OF NON-TANGENCY; THENCE ALONG THE SOUTHERLY BOUNDARY OF SAID TRACT "D" THE FOLLOWING FIVE (5) COURSES, (1) SOUTH 58°01'07" WEST 284.08 FEET; (2) NORTH 62°28'53" WEST 242.79 FEET; (3) SOUTH 87°46'07" WEST 177.96 FEET; (4) NORTH 02°13'53" WEST 123.99 FEET; (5) SOUTH 87°46'08" WEST 939.96 FEET; THENCE ALONG THE WEST LINE OF SAID TRACT "D", NORTH 01°15'17" WEST 991.43 FEET TO THE POINT OF BEGINNING.

SAID LANDS SITUATE, LYING, AND BEING IN BROWARD COUNTY, FLORIDA AND CONTAINING 2778394 SQUARE FEET (63.783 ACRES) MORE OR LESS.



SECTION 28, TOWNSHIP 49 SOUTH, RANGE 42 EAST

LOCATION MAP
N.T.S.

SURVEYOR'S NOTES:

1. BEARINGS SHOWN HEREON ARE ASSUMED AND ARE BASED ON A BEARING OF S33°22'06"E ALONG THE SOUTHWESTERLY R/W LINE OF THE C-13 CANAL.
2. SUBJECT PROPERTY WAS NOT ABSTRACTED BY THIS FIRM FOR EASEMENTS, RIGHTS-OF-WAY, RESERVATIONS OR OTHER MATTERS OF RECORD.

SKETCH & DESCRIPTION

THIS SKETCH DOES NOT
REPRESENT A BOUNDARY SURVEY

CERTIFIED TO:

CITY OF FORT LAUDERDALE

MILLER LEGG

South Florida Office: 5747 N. Andrews Way
Ft. Lauderdale, Florida - 33309-2384
954-436-7000 - Fax: 954-436-8664
www.millerlegg.com

I HEREBY CERTIFY THAT THIS SKETCH MEETS THE MINIMUM TECHNICAL STANDARDS AS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN CHAPTER 5J-17, FLORIDA ADMINISTRATIVE CODE PURSUANT TO SECTION 472.027, FLORIDA STATUTES.
DATED THIS 18th DAY OF OCTOBER, 2012 A.D.

Martin P. Rossi
MARTIN P. ROSSI

PROFESSIONAL SURVEYOR AND MAPPER
STATE OF FLORIDA REGISTRATION No. 5857
NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL
RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER
CERTIFICATE OF AUTHORIZATION: L98680

PROJECT NO.
09-00045

FILE NO.
SH-1

DRAWN BY: LP CHECKED BY: MR

SHEET 2 OF 3

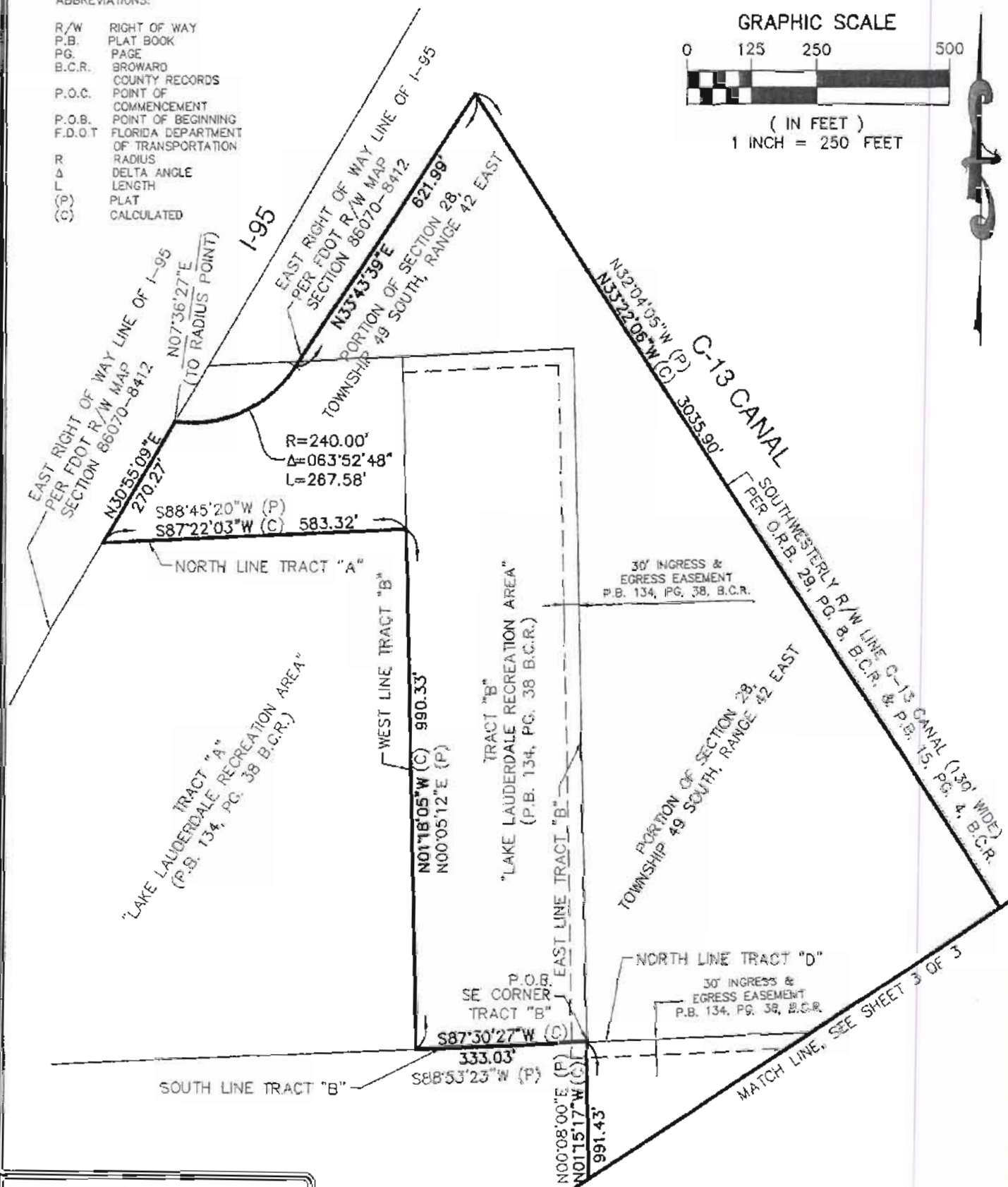
ABBREVIATIONS:

R/W	RIGHT OF WAY
P.B.	PLAT BOOK
P.G.	PAGE
B.C.R.	BROWARD COUNTY RECORDS
P.O.C.	POINT OF COMMENCEMENT
P.O.B.	POINT OF BEGINNING
F.D.O.T.	FLORIDA DEPARTMENT OF TRANSPORTATION
R	RADIUS
Δ	DELTA ANGLE
L	LENGTH
(P)	PLAT
(C)	CALCULATED

GRAPHIC SCALE



(IN FEET)
1 INCH = 250 FEET



MILLER LEGG

South Florida Office: 5747 N. Andrews Way
Ft. Lauderdale, Florida - 33309-2384
954-436-7000 Fax: 954-436-8664
www.millerlegg.com

Certificate of Authorization L.B. 6680

THIS SKETCH DOES NOT REPRESENT A BOUNDARY SURVEY

SKETCH & DESCRIPTION

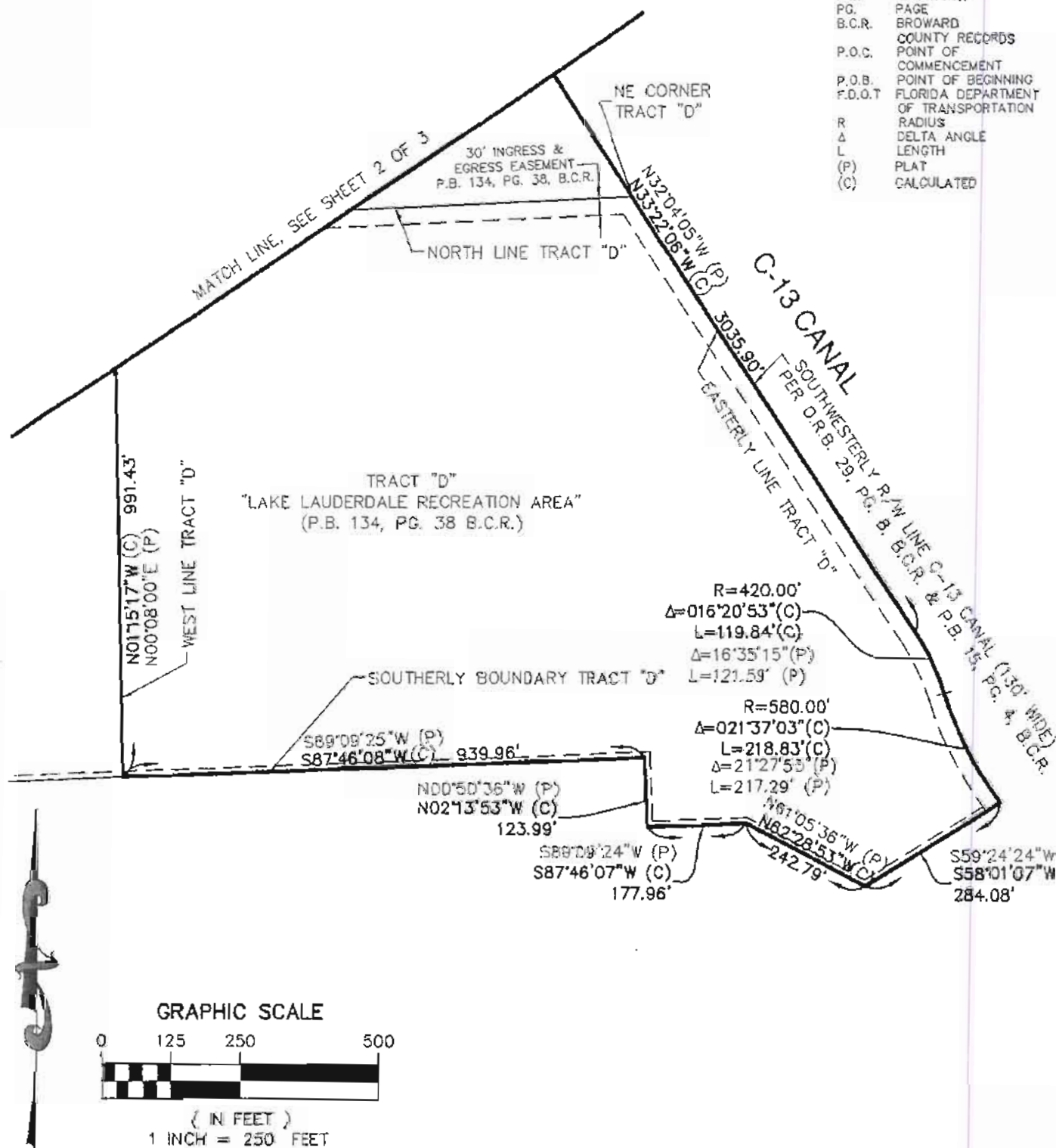
PROJECT NO.
09-00045

TILE NO.
SH-2

SHEET 3 OF 3

ABBREVIATIONS:

R/W	RIGHT OF WAY
P.B.	PLAT BOOK
P.G.	PAGE
B.C.R.	BROWARD COUNTY RECORDS
P.O.C.	POINT OF COMMENCEMENT
P.O.B.	POINT OF BEGINNING
F.D.O.T.	FLORIDA DEPARTMENT OF TRANSPORTATION
R	RADIUS
Δ	DELTA ANGLE
L	LENGTH
(P)	PLAT
(C)	CALCULATED



MILLER LEGG

South Florida Office: 5797 W. Andrews Way
Ft. Lauderdale, Florida - 33309-2364
954-436-7000 • Fax: 954-436-8664
www.millerlegg.com

Certificate of Authorization L.B. 6685

THIS SKETCH DOES NOT REPRESENT A BOUNDARY SURVEY

SKETCH & DESCRIPTION

PROJECT NO.
09-00045

SHEET NO.
SH-3

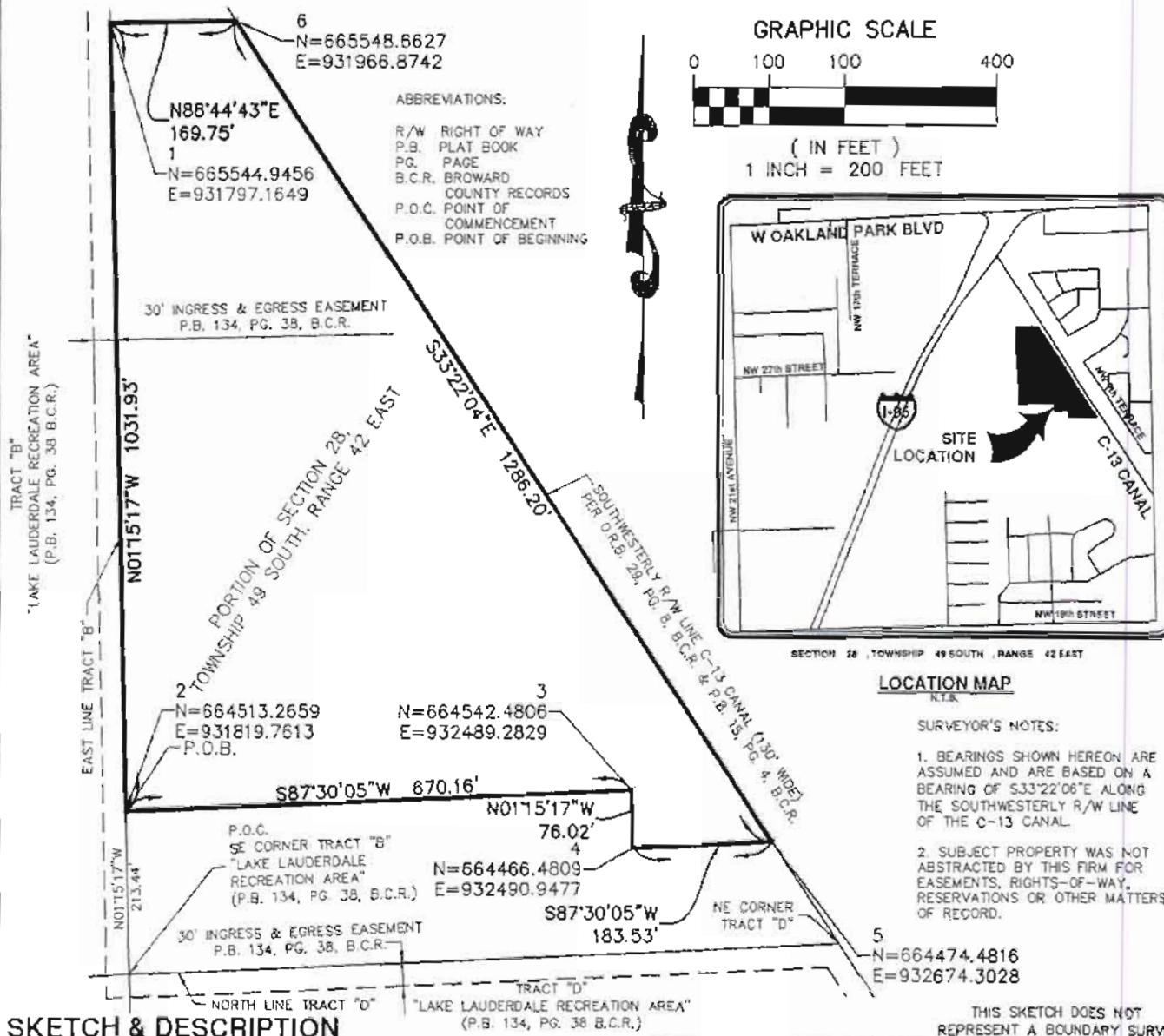
DESCRIPTION: (CONSERVATION EASEMENT)

(EXHIBIT "B")

SHEET 1 OF 1

A PORTION OF SECTION 28, TOWNSHIP 49 SOUTH, RANGE 42 EAST, MORE PARTICULARLY DESCRIBED AS FOLLOWS:
COMMENCE AT THE SOUTHEAST CORNER OF TRACT "B", "LAKE LAUDERDALE RECREATION AREA" ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 134, PAGE 38 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA; THENCE ALONG THE EAST LINE OF SAID TRACT "B" NORTH 01°15'17" WEST 213.44 FEET TO THE POINT OF BEGINNING; THENCE ALONG THE EAST LINE OF SAID TRACT "B" NORTH 01°15'17" WEST 1031.93 FEET; THENCE NORTH 88°44'43" EAST 169.75 FEET TO A POINT OF INTERSECTION WITH THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF THE C-13 CANAL (130 FEET WIDE); THENCE ALONG SAID RIGHT OF WAY LINE SOUTH 33°22'06" EAST 1286.20 FEET; THENCE SOUTH 87°30'05" WEST 183.53 FEET; THENCE NORTH 01°15'17" WEST 76.02 FEET; THENCE SOUTH 87°30'05" WEST 670.16 FEET TO THE POINT OF BEGINNING.

SAID LANDS SITUATE, LYING, AND BEING IN BROWARD COUNTY, FLORIDA AND CONTAINING 514340 SQUARE FEET (11.807 ACRES) MORE OR LESS.



SKETCH & DESCRIPTION

1/22/13	REVISE NORTH BOUNDARY LINE	LP	DL
REVISIONS			
DATE	DESCRIPTION	BY	CHK
DRAWN BY:	LP	CHECKED BY:	MR

CERTIFIED TO:

CITY OF FORT LAUDERDALE

MILLER LEGG

South Florida Office: 5747 N. Andrews Way
Ft. Lauderdale, Florida 33309-2384
954-436-7000 • Fax: 954-436-8664
www.millerlegg.com

I HEREBY CERTIFY THAT THIS SKETCH MEETS THE MINIMUM TECHNICAL STANDARDS AS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN CHAPTER 5J-17, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES.
DATED THIS 4th DAY OF OCTOBER, 2012 A.D.

Martin P. Rossi
MARTIN P. ROSSI

PROFESSIONAL SURVEYOR AND MAPPER
STATE OF FLORIDA REGISTRATION No. 5857
NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER
CERTIFICATE OF AUTHORIZATION: LB6680

09-00045

SH-1

(EXHIBIT "C")

Wetland and Upland Mitigation Plan Time Schedule (updated sep. 2013)
FXE Industrial Airpark - Parcels C&D - (& off-site mitigation at mills pond)
ERP 06-05307-P / SWM2003-057-2 / ERL DF03-1116 / TP10-1011
 Onsite Ft. Lauderdale Airpark and Mills Pond Offsite Mitigation Area
Onsite and Offsite Wetland and Upland Mitigation Plan Proposed Time Schedule

Parcel D On-site Mitigation (NRA & Wetlands)	Off-site Mitigation - Mills Pond	Activity
October 2011	April 2013	Remove invasive exotic and undesirable vegetation as listed as Category I and Category II species by the Florida Exotic Pest Plant Council (EPPC) and according to the <i>Wetland Mitigation Plan</i> .
November 2011	June 2013	Planting of mitigation/preservation area with suitable vegetation. This vegetation will include trees, shrubs and herbaceous plants. The buffers will be planted with a mixture of mesic trees and shrubs according to the <i>Wetland Mitigation Planting Plan</i> .
January 2012	July 2013	Time Zero mitigation monitoring report filed with Broward County Environmental Protection and Growth Management Department (EPGMD) and US Army Corps of Engineers (ACOE). Quarterly mitigation monitoring reports will be provided.
January 2013 YEAR 1	July 2014 YEAR 1	First annual mitigation monitoring report filed with EPGMD and ACOE. Quarterly mitigation monitoring reports will be provided during the months of June, September and December to EPGMD as required by permit.
January 2014 YEAR 2	July 2015 YEAR 2	Second annual Mitigation Monitoring Report filed with EPGMD and ACOE. Quarterly mitigation monitoring reports will be provided during the months of June, September and December to EPGMD as required by permit.
March 2014	July 2015	Onsite evaluation of mitigation area with EPGMD and ACOE staff
January 2015 YEAR 3	July 2016 YEAR 3	Third annual Mitigation Monitoring Report filed with EPGMD and ACOE. Quarterly mitigation monitoring reports will be provided during the months of June, September and December to EPGMD as required by permit.
March 2015	July 2016	Onsite evaluation of mitigation area with EPGMD and ACOE staff
January 2016 YEAR 4	July 2017 YEAR 4	Fourth annual Mitigation Monitoring Report filed with EPGMD and ACOE. Quarterly mitigation monitoring reports will be provided during the months of June, September and December to EPGMD as required by permit.
January 2017 YEAR 5	July 2018 YEAR 5	Fifth annual Mitigation Monitoring Report filed with EPGMD and ACOE. Quarterly mitigation monitoring reports will be provided during the months of June, September and December to EPGMD as required by permit.
January 2017	July 2018	Onsite evaluation of mitigation area with EPGMD and ACOE to close mitigation monitoring phase of project