


RESOLUTION 15-53

BE IT RESOLVED that the appropriate officers of the City are authorized but not required to execute and deliver on behalf the City that certain License Agreement between the City and the St. Joe Company, relating to the use of access roads or such other means of ingress and egress needed to perform the wetlands delineation study for the Glades stormwater basin, in substantially the form attached and presented to the Council today, with such changes, insertions or omissions as may be approved by the City Manager, whose execution of such agreement shall be conclusive evidence of such approval.

THIS RESOLUTION shall be effective immediately upon passage.

PASSED in regular session this 12th day of February, 2015.

CITY OF PANAMA CITY BEACH


By: 
Gayle F. Oberst, Mayor

ATTEST: 
Holly White, City Clerk

Memorandum

To: Mario Gisbert

CC: Holly White, Paul Casto, Al Shortt

From: Kelly Jenkins 

Date: February 6, 2015

Subject: License Agreement with St. Joe for the wetland delineation north of the Glades Subdivision

In January 2015 City Council approved a task order from McNeil Carroll Engineering Inc to perform wetland delineations and provide consultations with regulatory agencies. This would enable the City to determine the steps necessary to complete permitting and obtain approval to widen the existing channel north of the Glades Subdivision. The entire field work being performed for this task order is on property belonging to the St. Joe Company. Therefore, St. Joe has requested a license agreement to allow the City and it's consultants to have access to their property to perform the wetland delineation. Staff recommends approval of this license agreement.

LICENSE AGREEMENT

Breakfast Point Ditch Study

THIS LICENSE AGREEMENT (this “Agreement”) is made and entered into as of this 26th day of January, 2015, (the “Effective Date”) by and between **ST. JOE TIMBERLAND COMPANY OF DELAWARE, L.L.C.**, a Delaware limited liability company (“Owner”) and **CITY OF PANAMA CITY BEACH**, a Florida municipal corporation (“Licensee”).

RECITALS:

A. Licensee is performing wetland delineation, RGP-SAJ-86 wetland mapping and classification and wetland estimation service of approximately 16.25 acres (~7,000 linear feet) of a ditch feature located east of Phase 2 and Phase 3 of Breakfast Point Residential subdivision, originating north of Highway 98 and extending north into the Breakfast Point Mitigation Bank (the “Ditch Study Area”) on Bay County lands owned by Licensee (the “Licensee’s Property”).

B. The wetland delineation, mapping and classification of the “Ditch Study Area” requires Licensee to use perimeter and silviculture roads, which roads are owned by and shared with Owner.

C. Licensee will need access to, over, across or upon lands owned by Owner and located in Bay County, Florida as depicted on the attached **Exhibit “A”** (“Owner’s Property”). Licensee will access the “Ditch Study Area” from specific access points as depicted in the attached **Exhibit “B”** (“Access Points”).

D. Owner is willing to grant Licensee a temporary non-exclusive, revocable right to enter upon the Owner’s Property (“License”) and to conduct the Permitted Activities (defined below) pursuant to the terms provided herein.

E. Licensee acknowledges and appreciates the risks of coming onto the Owner’s Property.

F. Licensee agrees that it and any contractor it contracts with to conduct the Permitted Activities (“Contractor”) and its Contractor’s employees, agents, subcontractors and all persons under Licensee’s direction and control, as well as any other person on the Owner’s Property at the direction or because of Licensee (together with the Contractor, the “Invitees”) shall at all times exercise due care for their own personal safety and the safety of other employees working on the Owner’s Property.

G. Licensee agrees to provide Owner with copies of all final wetland delineation data related to the Ditch Study Area located within the Owner’s Property contemporaneously with its submittal of the results to the required agencies.

NOW, THEREFORE, the parties agree as follows:

1. Incorporation of Recitals. The Recitals above are incorporated herein as if restated in their entirety.

2. Grant of License. Owner hereby grants Licensee and its Invitees a temporary non-exclusive, revocable license to come on to Owner's Property, using the established access roads or such other means of ingress and egress and those certain silviculture roads designated by Owner to provide Licensee with access to the subject wetlands and ditch originating north of Highway 98 and extending north into the Breakfast Point Mitigation Bank (the "Permitted Activities"). This License is limited to Owner's Property in the general area depicted on "**Exhibit A**". It is understood and agreed that this is a temporary License to be used for the Permitted Activities for a term **to commence on January 28, 2015 and run no more than sixty (60) days** (the "Term"), unless otherwise agreed in writing.

3. Specifications. Prior to performing any work under this Agreement, Licensee's Contractor shall have executed and delivered to Owner a Joinder Agreement in the form attached hereto as **Exhibit "C"** wherein it expressly agrees to be bound by the terms of this Agreement attached hereto. Licensee and its Contractor shall comply with this Agreement, all permits as well as all applicable laws and regulations, with respect to performing the Permitted Activities.

4. Release and Indemnity. As further consideration for the License granted hereunder, Licensee hereby agrees:

a to release, acquit and forever discharge Owner of and from any and all known and unknown causes of action, damages, liabilities, costs, expenses and claims and demands of whatsoever kind or nature which the Licensee may have against Owner on account of any and all known and unknown present or future injuries, losses and damages sustained or received or which may be sustained by the Licensee as a result of the License granted herein, and/or arising from or in connection with the Permitted Activities;

b. to indemnify Owner for claims brought against Owner only to the extent that they are found to result from the sole negligence of the Licensee, its governing body, or its employees. This indemnification shall not be construed to be an indemnification for the acts or omissions of third parties, independent contractors or third party agents of the Licensee. This indemnification shall not be construed as a waiver of the Licensee's sovereign immunity, and shall be interpreted as limited to only such traditional liabilities for which the Licensee could be liable under the common law interpreting the waiver of sovereign immunity. An action may not be instituted on a claim against the Licensee unless the claimant presents the claim in writing to the City Manager within 3 years after such claim accrues or the City Manager denies the claim in writing. For purposes of this paragraph, the requirements of notice to the City Manager and denial of the claim are conditions precedent to maintaining an action but shall not be deemed to be elements of the cause of action and shall not affect the date on which the cause of action accrues. Notwithstanding any other provision of this paragraph, the value of this indemnification is limited to the maximum sum of \$300,000 as a result of all claims and judgments arising out of the same incident or occurrence, not to exceed the sum of \$200,000 for any claim or judgment or portions thereof. In addition, this indemnification shall be construed to limit recovery by the indemnified party against the Licensee to only those damages caused by the Licensee's sole negligence, and shall specifically exclude any attorney's fees or costs associated therewith.

c. that neither Licensee nor its Invitees shall record a Notice of Commencement on the Owner's Property and that Licensee shall pay for all services in connection with the Permitted Activities and pay or bond off any liens recorded against the Owner's Property by Invitees within fifteen (15) days of recording of said liens;

The provisions of this Section 4 shall survive the expiration or earlier termination of this License.

5. Warranty. Licensee represents and warrants to Owner that it (i) has the professional experience and skill to exercise its rights and perform its obligations hereunder, (ii) shall comply with applicable federal, state and local laws, including all professional registration and licensing (both corporate and individual) for all Permitted Activities, (iii) shall exercise its rights and perform their obligations in accordance with generally accepted professional standards, (iv) has sufficient capital assets and are adequately financed to meet all financial obligations it may be required to incur hereunder and (v) has obtained all permits necessary to perform the Permitted Activities.

6. Assumption of Risk. Licensee acknowledges that Owner shall not be responsible for the personal safety of the Licensees and Invitees or any persons on or about the Owner's Property at the direction or because of Licensee, or for any damage to or theft of any materials, equipment or other property or the contents thereof, located on or about the Owner's Property, and Licensee shall advise the Invitees and such other parties that their use of the Owner's Property is at their own risk. Licensee assumes all risks involved in entering upon the Owner's Property and agrees to be fully responsible for the safety of its Invitees and such other parties, hereby releasing, saving and discharging Owner, its successors and assigns, from any and all claims and demands of whatever nature, whether for personal injury or death of any persons, or loss of, or damage to personal property, and hereby assume further full responsibility for any accident, death, dismemberment, temporary or permanent disability resulting to any Invitees or such other parties occurring on the Owner's Property.

7. No Waste. Licensee agrees that no act shall be permitted and nothing shall be kept in, on or about the Owner's Property that will increase the risk of any hazard, including an uncontrollable fire or catastrophe, and no waste shall be permitted or committed upon or any damage done to Owner's Property. Licensee shall not permit the Owner's Property to be used or occupied in any manner which violates any laws or regulations of any governmental agency.

8. Condition of Property at End of Agreement; Repair of Property. Subsequent to performing the Permitted Activities, Licensee agrees to restore the Owner's Property to the original condition (or better condition with the Owner's prior written consent) that it was in prior to Licensee performing the Permitted Activities. In the event Owner consents to any improvement remaining on the Owner's Property after the expiration of this Agreement, the parties understand and agree that Owner shall be the owner of the improvements. Licensee shall promptly repair damage to the Owner's Property caused by the Licensee or the Invitees during the term of this Agreement. Such repairs shall be made at Licensee's expense.

Licensee shall inspect roads with Owner personnel prior to commencement of activities and at conclusion of activities, Owner's contact: David Harrelson.

The provision of this Section 8 shall survive the termination of this License.

9. Assignment. Licensee may not assign this License in whole or in part, without the prior written approval of Owner, which said approval may be withheld at Owner's absolute discretion.

10. Termination. This License shall terminate upon the first to occur of (i) receipt by the Owner of written notice from the Licensee that the Permitted Activity is complete, (ii) **March 29, 2015**, or (iii) delivery by Owner to Licensee of written notice that the License is terminated. Owner shall have the right to terminate this License pursuant to subsection (iii) of this paragraph 10 in its sole and absolute discretion for any reason.

11. Compliance with OSHA and Environmental Matters. In the use of the Owner's Property, Licensee shall use, and cause the Invitees and any persons on or about the Property at the direction or because of Licensee to use, the Owner's Property only in full compliance with, and shall indemnify the Owner in accordance with (i) the provisions of the Occupational Safety Health Act and the implementing regulations promulgated pursuant thereto, as the same may have been or may be amended from time to time, and (ii) all Environmental Laws. Licensee shall not permit the generation, storage, dispersal, release or transportation of any petroleum products or other Hazardous Substance on, in, under or upon the Owner's Property. Notwithstanding any other provision of this paragraph, the value of this indemnification is limited to the maximum sum of \$200,000 as a result of all claims and judgments arising out of the same incident or occurrence, not to exceed the sum of \$100,000 for any claim or judgment or portions thereof. In addition, this indemnification shall be construed to limit recovery by the indemnified party against the Licensee to only those damages caused by the Licensee's sole negligence, and shall specifically exclude any attorney's fees or costs associated therewith.

For purposes of this License, "**Hazardous Substance**" means any substance, material or waste of any kind or character which may be dangerous to health or to the environment, or which is or may become regulated as hazardous or toxic waste, pollutants, contaminants or substances, or which requires special handling, storage or treatment, including without implied limitation, all "hazardous matter," "hazardous waste," "hazardous substances," "asbestos," "petroleum products," and "oil" as defined in or contemplated by any Environmental Laws.

For purposes of this License, "**Environmental Laws**" means (i) any federal, state or local law, rule, order or regulation relating to Hazardous Substances or the protection of human health and the environment, including all of the following statutes and their implementing regulations, as the same may have been or may be amended from time to time: (a) Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601 et seq.; (b) Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; (c) Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §136; (d) Hazardous Materials Transportation Act, 49 U.S.C. §§1801-1812; (e) Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq.; (f) Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq.; (g) Clean Air Act, 42 U.S.C. §7401 et seq.; (h) Safe Drinking Water Act, 42 U.S.C. §3808 et seq.; and (ii) applicable or equivalent laws, ordinances and regulations of the local municipality, county and state in which the Owner's Property is located, relating to hazardous matter, substances or wastes, oil or other petroleum products, asbestos, and air or water quality.

Upon notification from Owner that there has been a violation of any Environmental Laws or any contamination of the Owners' Property by any Hazardous Substance caused by Licensee or any such Invitees or other parties, or if at any time Owner shall notify Licensee that it has been notified by any governmental authority that any such violation or contamination has occurred and has been caused by Licensee or any such Invitees or other parties, Licensee shall immediately, forthwith, diligently and expeditiously remediate such violation or contamination in full compliance with all Environmental Laws, all requirements of any such governmental authorities, and all recommendations of Owner's environmental consultant. Owner, at the cost and expense of the Licensee which shall be reimbursed to Owner by Licensee within 30 days of demand by Owner, may have such environmental audits performed to determine whether or not any such remediation has been so completed as Owner in its sole discretion deems necessary. If Licensee shall fail to commence any such remediation within fifteen (15) days after demand by Owner to do so, or, after commencing such remediation fails to immediately, forthwith, diligently and expeditiously complete such remediation, Owner shall have the right but not the obligation to perform and complete such remediation and Licensee shall reimburse Owner for the cost thereof together with interest thereon at the rate of ten percent (10%) per annum from the date of each advance by Owner for any such costs. The decision of Owner's environmental consultant, whom Owner may select in its sole discretion, shall be binding on Owner and Licensee as to all questions of whether or not any such contamination exists, the method of remediating any such contamination, and whether or not the remediation of any such contamination has been satisfactorily completed.

12. Trash. The Invitees and anyone else on the Owner's Property because of Licensee shall not leave trash, bottles, cans or other debris on the property.

13. Insurance. Licensee shall ensure that all Contractors will throughout the Term carry, maintain and provide proof of, at their sole cost and expense, the following types of insurance, which shall provide coverage on an occurrence basis, with respect to the Property, in the amounts specified and in the form hereinafter provided for::

- a. Commercial General Liability Insurance. Commercial general liability insurance covering claims arising from bodily injury and property damage with a minimum limits of \$1,000,000 per occurrence and \$2,000,000 general aggregate and insuring against legal liability of the insured with respect to the Property or arising out of the use thereof. The liability policy also shall cover, but not be limited to, the contractual liabilities of the Licensee arising from this Agreement.
- b. Automobile Liability Insurance. With minimum limits of \$1,000,000 per accident; and
- c. Workers' Compensation Insurance. As required by applicable state law; and
- d. Certificate of Insurance. A certificate of insurance naming Owner as an additional insured in connection with its general liability is attached and incorporated hereto as "**Exhibit D**".

14. Notices. Any notice, demand, consent, authorization, request, approval or other communication that any party is required, or may desire, to give to or make upon the other party pursuant to this Agreement (“Notice”) shall be effective and valid only if in writing, signed by the party giving Notice and delivered personally to the other parties or sent by express 24-hour guaranteed courier or delivery service or by certified mail of the United States Postal Service, postage prepaid and return receipt requested, addressed to the other party as follows (or to such other place as any party may by Notice to the others specify):

To Owner:

The St. Joe Company
133 South WaterSound Parkway
WaterSound, Florida 32413
Attention: David Harrelson
Telephone Number: 850-231-7408
Facsimile Number: 850-231--6588

With a copy to:

The St. Joe Company.
133 South WaterSound Parkway
WaterSound, Florida 32413
Attention: Ken Borick
Telephone Number: 850-231-6575
Facsimile Number: 850-231-6572

To Licensee:

City of Panama City Beach
110 S. Arnold Road
Panama City Beach, Florida 32413
Attention: Kelly Jenkins
Telephone Number: 850-233-5100
Facsimile Number: 850-233-5108

Notice shall be deemed given two days after mailing if sent certified mail, the day after delivery if by overnight courier and the date of delivery if by confirmed facsimile transmission or hand delivery.

15. Recording. This License shall not be recorded in the public records.

OWNER:

**ST. JOE TIMBERLAND COMPANY OF
DELAWARE, L.L.C.,**
a Delaware limited liability company

By: _____
Name: _____
Title: _____

LICENSEE:

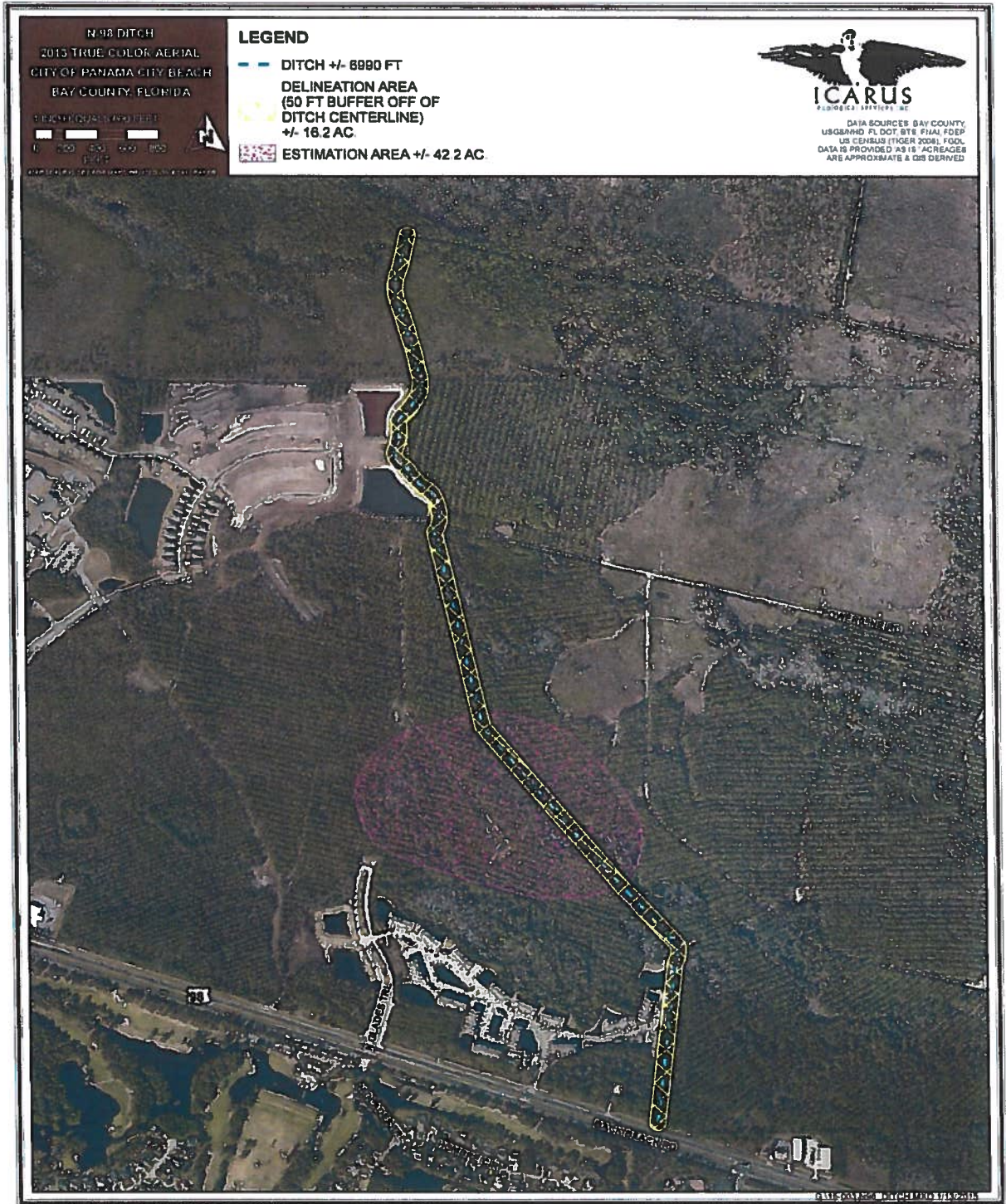
CITY OF PANAMA CITY BEACH,
a Florida municipal corporation

By: _____
Name: Mario Gisbert
Title: City Manager

ATTEST:

Holly White, City Clerk

EXHIBIT "A" OWNER'S PROPERTY



139306.1
License – City of Panama City Beach – Breakfast Point wetland ditch delineation

EXHIBIT "B"
ACCESS POINTS

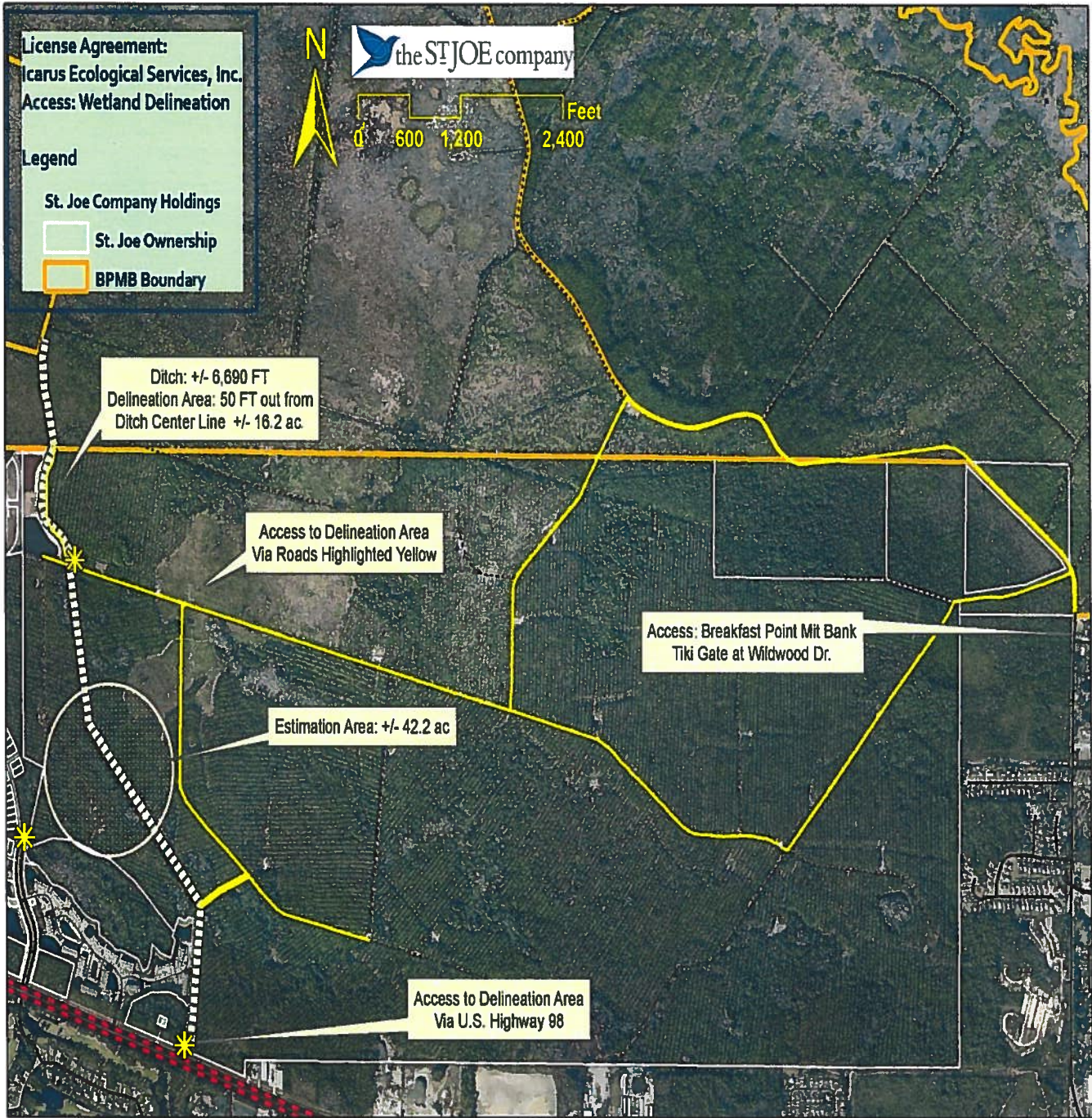


EXHIBIT "C"
JOINDER AGREEMENT

The undersigned, _____ [INSERT NAME OF CONTRACTOR AND TYPE OF ENTITY], hereby acknowledges receipt of a copy of the License Agreement (the "Agreement") dated _____, 2015 by and between **ST. JOE TIMBERLAND COMPANY OF DELAWARE, L.L.C.**, a Delaware limited liability company ("Owner") and **CITY OF PANAMA CITY BEACH**, a Florida municipal corporation ("Licensee").

By completion of this Joinder Agreement, the undersigned agrees to comply with and to be bound by the terms, conditions, covenants and restrictions of the Agreement in all respects, including, without limitation, the obligation to conduct its work for the Licensee in accordance with the provisions of the Agreement, to assume the risks provided in Paragraph 6 of the Agreement and to carry insurance and provide evidence of such consistent with Paragraph 13 of the Agreement. The undersigned understands that all provisions of the Agreement are hereby made a part of this Joinder Agreement.

The undersigned Contractor additionally agrees to indemnify and hold harmless Owner, its successors and assigns, from any liability, costs and expenses, including attorney's fees, on account of injury or death of any person or persons, whomsoever, including Licensee, Contractor, employees, agents or representatives of the parties hereto, or third person, or for any loss or damage to property arising from or in connection with the use or occupancy of the Owner's Property, including, without limitation, the Permitted Activities.

The undersigned Contractor specifically represents and warrants to Owner that it (i) has the professional experience and skill to exercise its rights and perform its obligations hereunder, (ii) shall comply with applicable federal, state and local laws, including all professional registration and licensing (both corporate and individual) for all Permitted Activities, (iii) shall exercise its rights and perform their obligations in accordance with generally accepted professional standards, (iv) have sufficient capital assets and are adequately financed to meet all financial obligations it may be required to incur hereunder and (v) has obtained all permits necessary to perform the Permitted Activities.

All references in the Agreement to a "Contractor" of the Company shall henceforth be deemed to include the undersigned.

Any notice to be addressed to the undersigned pursuant to the provisions of the Agreement shall be sent to:

The undersigned may change the address for notice if necessary in the future by notifying Owner and Licensee in writing of such change.

Dated the _____ day of _____, 20____.

[INSERT NAME OF CONTRACTOR]

By: _____
Its: _____
Date: _____

EXHIBIT "D"
CERTIFICATE OF INSURANCE

(Attached)