

JAN 24 2006 *jm/jw*

RESOLUTION

*of the*  
**ORANGE COUNTY BOARD OF COUNTY COMMISSIONERS**

*regarding*  
**CREATING A MITIGATION BANK TRUST FUND TO  
DEMONSTRATE CONSTRUCTION AND IMPLEMENTATION  
FINANCIAL ASSURANCE FOR THE ORANGE COUNTY OWNED  
PORTION OF THE TM-ECON MITIGATION BANK;  
PROVIDING FOR AN EFFECTIVE DATE**

**Resolution No. 2006-M-04**

WHEREAS, Orange County (the "County") is the owner of certain real property in Orange County, Florida, and has requested from the St. Johns River Water Management District a transfer of a portion of Permit No. 4-095-84310-2 4 (the "Permit") authorizing the construction, implementation and operation of Phase IV of the TM-Econ Mitigation Bank (the "Bank");

*Permit*  
*[Signature]*

WHEREAS, the St. Johns River Water Management District, a public body created under 373, Florida Statutes (the "District"), has established certain regulations applicable to the County requiring a governmental mitigation bank permit holder to provide financial assurance that funds will be available when needed for corrective action if the permit holder fails to construct and implement that mitigation bank;

WHEREAS, pursuant to the Permit, Section 373.4136, Florida Statutes, and Section 12.4.8(1)1. of the District's Applicant's Handbook: Management and Storage of Surface Waters (A.H.), it is the County's burden to demonstrate, as Permit holder, proof of financial responsibility for the construction and implementation of Phase IV of the Bank.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY

COMMISSIONERS OF ORANGE COUNTY:

Section 1. Establishment of TM-Econ Mitigation Bank Phase IV Special Revenue Fund.

The Board of County Commissioners hereby establishes the TM-Econ Mitigation Bank Phase IV Special Revenue Fund ("Fund") for the sole purpose of providing financial assurances for the construction and implementation of Phase IV of the TM-Econ Mitigation Bank (hereinafter the "Bank") as required under the Permit. The Fund is established by the County's deposit of \$677,723.75 into the Fund, based on 110% of the estimated costs of construction, implementation and

annual monitoring of the Bank as set forth in Exhibit “A” attached hereto. Such monies and other monies subsequently placed in the Fund are referred to as the Fund, together with all earnings and profit thereon, less any payments or distributions made by the County pursuant to the Permit and this Resolution.

Section 2. The Fund shall be administered by the Orange County Comptroller (the “COMPTROLLER”). The COMPTROLLER has sole responsibility for the ultimate release and/or disbursement of all County funds. The COMPTROLLER shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the County, any payments necessary to discharge any liabilities of the County established by the District.

Section 3. Updated Cost Estimates and Fund Adjustments. Every two years the County shall undertake an estimate of the costs of the remaining construction and implementation of the Bank and shall make adjustments to the Fund in accordance with the Permit and section 12.4.8(k), A.H.

Section 4. Payment for Construction and Implementation. The Fund is established for the benefit of the District. The COMPTROLLER shall make payments from the Fund as the Director of the District’s Department of Water Resources shall direct in writing to provide for payment of the costs of completing construction and implementation of the Bank pursuant to the requirements of the Permit. The Director of the District’s Department of Water Resources shall be authorized to draw upon the Fund for payment for construction and implementation of the Bank only in the event the County fails to meet the requirements of the Permit, as such Permit may be amended. If such a failure occurs, the District must provide written notice of such failure to the County by certified mail, specifying the failure to be corrected. If the County does not correct the failure specified in the notice within thirty days of receipt of that notice, the District may draw upon the Fund in an amount required to correct such failure by submitting written instructions to the COMPTROLLER for payment of the

money within the Fund. The County reserves the right to challenge the District's determination that it has failed to meet the requirements of the Permit in accordance with the Florida Administrative Procedures Act.

The Fund may not be drawn upon to cover any of the following:

- a. Any obligation of the County under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- b. Bodily injury to an employee or contractor of the County arising from, and in the course of employment by the County;
- c. Bodily injury or non-realty property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft;
- d. Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by the County or contractor of the County that is not the direct result of the construction and implementation of the mitigation bank; and
- e. Bodily injury or property damage for which the County is obligated to pay damages by reason of the assumption of liability in a contract or agreement.

Section 5. Fund Management. The COMPTROLLER shall invest and reinvest the principal and income of the Fund in one or more investments and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with Florida Statutes and the County's general investment policies and guidelines, subject however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the COMPTROLLER shall discharge COMPTROLLER duties with respect to the Fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the

conduct of an enterprise of a like character and with like aims, except that:

a. Securities or other obligations of the County, or any other owner or operator of the mitigation bank, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a state government.

b. The COMPTROLLER is authorized to invest the Fund in time or demand deposits of the County, to the extent insured by an agency of the Federal or a state government; and

c. The COMPTROLLER is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of the interest thereon.

Section 6. The COMPTROLLER is expressly authorized in its discretion:

a. To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective account created by the COMPTROLLER in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other reserve accounts participating therein; and,

b. To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq. The COMPTROLLER may vote such shares in its discretion.

Section 7. Without limiting the powers and discretion conferred upon the COMPTROLLER by other provisions of this resolution or by law, the COMPTROLLER is expressly authorized and empowered:

a. To sell, exchange, convey, transfer, or otherwise dispose of any intangible property held by it, by public or private sale. No person dealing with the COMPTROLLER shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such

sale or other disposition;

b. To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

c. To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the COMPTROLLER in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the COMPTROLLER shall at all times show that all such securities are part of the Fund;

d. To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the COMPTROLLER, to the extent insured by an agency of the Federal or a State government; and

e. To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 8. The COMPTROLLER shall annually, at least thirty days prior to the anniversary date of establishment of the Fund, furnish to the County and the District a statement confirming the value of the Fund. Any securities in the Fund shall be valued at market value as of no more than sixty days prior to the anniversary date of establishment of the Fund.

Section 9. All orders, requests, and instructions by the District to the COMPTROLLER shall be in writing, signed by the District's Director of Water Resources or the Director's designee, and the COMPTROLLER shall act and be fully protected in acting in accordance with such orders,

requests, and instructions. The COMPTROLLER shall have no duty to act in the absence of such orders, requests, and instructions from the District, except as provided herein. The COMPTROLLER shall have the right to assume in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the District hereunder has occurred.

Section 10. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commission incurred by the Fund shall be paid from the Fund. All other expenses incurred by the County in connection with the administration of the Fund, including fees for legal services and all proper charges and disbursements to administer the Fund shall be paid from the Fund.

Section 11. Effective date. This Resolution shall be effective upon passage by the Orange County Board of County Commissioners.

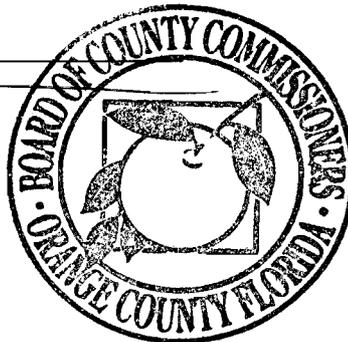
ADOPTED this 24 day of January, 2006.

ORANGE COUNTY, FLORIDA  
By: Board of County Commissioners

By: Richard T. Crotty  
Richard T. Crotty  
Orange County Mayor

ATTEST; Martha O. Haynie, County Comptroller  
As Clerk to the Board of County Commissioners

By: Martha O. Haynie  
Deputy Clerk



**Exhibit A  
To  
Mitigation Bank Dedicated Trust Agreement**

**TM/ Econ Mitigation Bank**

**Phase 4**

**(Phase 4)**

**Estimated**



**Construction and Implementation Costs**

Construction Cost:	\$39,500
Implementation Cost:	\$496,250
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Subtotal:	\$535,750
Contingency (15%)	\$80,362.50
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<b>Total Cost:</b>	<b>\$616,112.5</b>