

THE SOUTHEAST TRACT
LOCAL DEVELOPMENT AGREEMENT

This **LOCAL DEVELOPMENT AGREEMENT** (“Development Agreement”) is made and entered into this ____ day of May, 2018, by and between **MANATEE COUNTY**, a political subdivision of the State of Florida, whose address is 1112 Manatee Avenue West, Bradenton, Florida 34205, (the “County”) and **MOSAIC FERTILIZER, LLC**, a Delaware Limited Liability Company, whose address is 13830 Circa Crossing Drive, Lithia Florida 33547, (“Developer”), pursuant to the Florida Local Government Development Agreement Act, Section 163.3220, F.S., et. seq.

WITNESSETH:

WHEREAS, Developer, as part of its operation in Manatee County, operates the Wingate Creek Mine and the Southeast Tract, the former containing a phosphate beneficiation facility and the latter containing Clay Settling Areas FM-1 and FM-2, each being an integral part of the Mosaic mining process for producing phosphate ore and each having been a Development of Regional Impact (“DRI”); and

WHEREAS, Developer did, on February 15, 2017, receive from the County the approval of a request to rezone 3,598.3 acres to Extraction (Ord. Z-14-09) and approval of an application for a Master Mining Plan (Res. R-17-017) for same, for the mine known as Wingate East; and

WHEREAS, product from Wingate East will be processed at the Wingate Creek Mine beneficiation facility and the clays resulting from the process will be stored, in part, in the Clay Settling areas FM-1 and FM-2 located on the Southeast Tract; and

WHEREAS, the operation of Wingate East necessitates the modification of Master Mining Plans for the Wingate Creek Mine (Res. 91-250, Res. 96-188, Res. 97-242, Res. 98-182, Res. R-04-203, Res. R-08-007, and Res. R-13-001) and the Southeast Tract (Res. R-00-271, Res. R-08-009) as well as the DRI Development Orders previously

approved for the Wingate Creek Mine (Res. 88-236, Res. 90-60, Res. 99-89, Ord. 04-21, Ord. 08-21, and Ord. 13-01) and the Southeast Tract (Ord. 08-20 and Ord. 00-49); and

WHEREAS, Manatee County Ordinance 04-39 (as further defined herein, the “Manatee County Phosphate Mining Code”) as currently codified in Chapter 2-20, Manatee County Code of Laws upon its effective date, superseded Manatee County Ordinance 81-22 which was previously codified in Chapter 2-20, Manatee County Code of Laws; and

WHEREAS, Manatee County Ordinance 81-22 (as further defined herein, the “Manatee County Phosphate Mining Ordinance”) was previously codified in Chapter 2-20, Manatee County Code of Laws and governed phosphate mines permitted subsequent to its effective date; and

WHEREAS, the pending Master Mining Plan Amendment for the Southeast Tract includes removing the 103 acre Wingate Utility Corridor Parcel (now included in the Wingate East Mine MMP Res. R-17-017), which was included in the DRI Development Order (Ord. 08-20) and was subject to the requirements of the Manatee County Phosphate Mining Code (Ord. 04-39); and

WHEREAS, the DRI Development Order (Ord. 08-20) for the Southeast Tract has recognized that the Southeast Tract mine area, which was originally permitted as the Four Corners Mine Southeast Tract Addition in Ord. 00-49, retains vested rights (as further defined herein, “Vested Rights”) to be governed by the Manatee County Phosphate Mining Ordinance (Ord. 81-22) because the initial approval occurred prior to the enactment of the Manatee County Phosphate Mining Code (Ord. 04-39); and

WHEREAS, Subsection 380.0651(2)(t), F.S. now exempts solid mineral mines (Phosphate Mines) from the requirements of the DRI review process and provides for rescission of existing DRI Development Orders; and

WHEREAS, Section 163.3227, F.S. authorizes the use of Development Agreements to insure certainty in the approval of development for the Developer and

encourages a stronger commitment to conformity with the Community Planning Act and the Florida State Comprehensive Planning Act of 1972; and

WHEREAS, the Developer desires and requests, and the County agrees, to enter into a Development Agreement to eliminate any inconsistencies between the existing DRI Development Orders for the Southeast Tract and the pending Master Mining Plan Amendment and to preserve the Developer's Vested Rights; and

WHEREAS, the Developer holds legal title to a 2,508 acres parcel of real property, described and referred to as the Southeast Tract. It is located in Section 36, Township 33S, Range 22 E, and Sections 1, 2, 11, 12, 13 and 14 in Township 34S, Range 22E, Manatee County, Florida, the complete legal description for which is attached hereto as Exhibit "A" (the "Project Site"); and

WHEREAS, the County has approved Master Mining Plans for the Southeast Tract (Res. R-00-271 and Res. R-08-009) pursuant to the terms of the Manatee County Phosphate Mining Ordinance (Ord. 81-22) and the Manatee County Phosphate Mining Code (Ord. 04-39), the latter of which recognizes Vested Rights. The Developer has applied for a Master Mining Plan Amendment approval for the Southeast Tract from Manatee County pursuant to applicable provisions of the Manatee County Phosphate Mining Code (Ord. 04-39); and

WHEREAS, the Developer has an approved Operating Permit (Res. R-14-002) for the Southeast Tract. The Developer will apply for an Operating Permit Amendment approval from the County pursuant to the terms of the Manatee County Phosphate Mining Code (Ord. 04-39), and shall be entitled to continue to conduct mining activities at the Project in accordance with the requirements of the Manatee County Phosphate Mining Ordinance applicable to the Project as set forth above; and

WHEREAS, the Board has approved DRI Development Orders for the Southeast Tract (Ord. 08-20, Ord. 00-49); and

WHEREAS, the Developer does, provided this Development Agreement and the proposed Master Mining Plan Amendment for the Project are approved by the Board,

request the County to rescind its rights and interest in DRI Development Order for the Southeast Tract, Ord. 08-20, provided that those Vested Rights referenced in paragraph 7 of this Agreement are preserved pursuant to this Agreement; and

WHEREAS, Section 380.06, Florida Statutes, provides the owner of a DRI Development Order with certain vested rights. It is the intent of the parties hereto to preserve Vested Rights available to the Developer pursuant to the DRI Development Order for the Project pursuant to the provisions of this LDA once the Developer rescinds the DRI Development Order; and

WHEREAS, the Developer desires and requests, and the County agrees, that the DRI Development Orders for the Southeast Tract should be rescinded in order to achieve consistency between the Wingate East Master Mining Plan (Res. R-17-017) and the Southeast Tract Master Mining Plan Amendment pursuant to the Manatee County Comprehensive Plan and the consistency requirement of the Manatee County Phosphate Mining Code (Ord. 04-39); and

WHEREAS, the applicable Development conditions and Developer commitments in the DRI Development Orders for the Southeast Tract have been incorporated into the pending Master Mining Plan Amendment (Res. R-18-013) and obsolete or completed conditions and commitments have been incorporated into this Development Agreement in order to preserve Vested Rights and document compliance (Exhibit B incorporated herein by reference); and

WHEREAS, it is the intent of the Developer and the County that this Development Agreement shall be construed and implemented so as to effectuate the purpose and intent of the parties and the purpose and intent of the Florida Local Government Development Agreement Act, 163.3220, F.S., et. seq.; and

WHEREAS, the first of two required public hearings on this Development Agreement was held by the Planning Commission on April 23, 2018, at which time the Planning Commission has reviewed this Development Agreement, has received the recommendation of the Planning staff, and has found the Development Agreement to be

consistent with the Manatee County Comprehensive Plan and The Manatee County Phosphate Mining Code (Ord. 04-39); and the Manatee County Phosphate Mining Ordinance (Ord. 81-22); and

WHEREAS, the second required public hearing on this Development Agreement was held by the Board on May 24, 2018, at which time the Board approved this Development Agreement and authorized its Chairman to execute this Development Agreement on behalf of the County; and

NOW, THEREFORE, in consideration of the conditions, covenants and mutual promises hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and in demonstration of satisfaction of the various goals, objectives and policies of the Comprehensive Plan, Developer and the County agree as follows:

1. **Recitals True and Correct.** The recitals set forth above are true and correct and are incorporated herein by reference. All exhibits to this Agreement are hereby deemed to be a part of this Agreement.

2. **Intent.** It is the intent of the Developer and the County that this Agreement shall be construed and implemented so as to effectuate the purposes and intent of the parties and the purposes and intent of the Florida Local Government Development Agreement Act, Section 163.3229, F.S., et. seq.

3. **Description of Development Uses.**

Development Uses:

The Project is, has been and shall be developed with the following components:

- Phosphate mining activities, transportation of sand and clay, and reclamation activities pursuant to Master Mining Plan Res. R-08-009 and Master Mining Plan Res. R-18-013.

4. Local Development Permits Approved or Needed to be Approved for the Development of the Project.

- The Project Site has an Extraction Zoning District designation
- The Project Site has an Ag/R Comprehensive Plan Future Land Use Classification
- Master Mining Plan
- Reclamation Plan
- Operating Permits
- Annual Progress Reports
- Inspections
- Construction Plans for dams, dikes, water control structures, impoundments and diversionary systems
- Building Permits
- Any building permit, variance, waiver, Master Mining Plan approval, Operating Permit approval or any other official action of the local government having the effect of permitting the development of the Project.

5. **Ownership of Land Subject to Development Agreement.** The Developer, MOSAIC FERTILIZER, LLC, a Delaware Limited Liability Company, is the current legal owner of the land subject to this Development Agreement (i.e., the Project Site described above).

6. **Definitions.** As used in this Agreement, the following words, terms, and phrases shall have the meanings ascribed to them here:

(A) “Comprehensive Plan” means the Manatee County Comprehensive Plan adopted by the County pursuant to Chapter 163, Part II, F.S., Ord. 89-01, as amended, and which is in effect as of the date of execution of this Agreement.

(B) “Development” means the carrying out of any building activity or mining operation, the making of any material change in the use or appearance of any structure or land, or the dividing of land into three or more parcels and includes all other development

customarily associated with it unless otherwise specified, and such other activities as described in Section 163.3221 (4), F.S.

(C) “Development Permit” means any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, waiver, Master Mining Plan, Operating Permit or any other permissible official action of local government having the effect of permitting the mining, beneficiation activities, transportation activities and reclamation of the Project.

(D) “Development of Regional Impact” (DRI) means any development which, because of its character, magnitude, or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county. Section 380.06(1), F.S.

(E) “DRI Development Order” means a Local Government (Manatee County) Development Order issued pursuant to Chapter 380, F.S.

(F) “Governmental Agency” means any local government, as defined in Chapter 380, F.S., or any department, commission, agency or other instrumentality thereof. Section 380.031(6)(c), F.S.

(G) “Manatee County Phosphate Mining Code” means Manatee County Ordinance 04-39 as currently codified in Chapter 2-20, Manatee County Code of Laws which, upon its effective date, superseded Manatee County Ordinance 81-22 which was previously codified in Chapter 2-20, Manatee County Code of Laws.

(H) “Manatee County Phosphate Mining Ordinance” means Manatee County Ordinance 81-22 which was previously codified in Chapter 2-20, Manatee County Code of Laws and governed phosphate mines permitted subsequent to its effective date.

(I) “Master Mining Plan” means a Board-approved plan that provides a description of proposed mining activities over the life of a mine, which shall allow review of the applicant’s (Developer’s) proposed pre-mining and mining activities, including the plan for reclamation. (II. DEFINITIONS, The Manatee County Phosphate Mining Code).

(J) “Operating Permit” means the written authorization, granted by the Board through an adopted resolution, for an applicant (Developer) to proceed with specified phosphate mining activities for a specified period of time, on a tract unit. An operating permit shall generally require that the applicant (Developer) provide more site-specific information than that available at the time of master mining plan review.

(K) “The Parties” means the County and the Developer.

7. **Vested Rights.** The County hereby agrees, in consideration for the Developers rescission of the DRI Development Order for the Project, that throughout the duration of this Agreement the Developer shall be entitled to the following Vested Rights for the Project:

- (i) The right to develop the Project in accordance with all of Developer’s DRI Development Orders in effect as of the date of this Agreement, which are attached hereto as Exhibit “C”, and the Master Mining Plans and Operating Permits for the Southeast Tract issued pursuant thereto; and
- (ii) The right to continue to develop the portions of the Project governed by the Manatee County Phosphate Mining Ordinance in accordance with Section 2-20-4(7) of the Phosphate Mining Code.

Except as expressly set forth in this paragraph, the Southeast Tract shall be governed in accordance with the Manatee County Phosphate Mining Code (Ord. 04-39), which recognizes Vested Rights permitted under the Manatee County Phosphate Mining Ordinance (Ord. 81-22) including applicable Development Order conditions and Developer commitments for the Southeast Tract described in MMP Res. R-18-013. The Vested Rights recognized herein are limited to those mining activities (as defined in the Manatee County Phosphate Mining Code) approved pursuant to DRI Development Order Ord. 08-20, and shall not apply to expansions of such mining activities.

8. **Public Facilities.** Transportation activities upon County roadways for the Project are governed by the terms and conditions of the Master Mining Plan. There are no other public facilities that service the Project.

9. **Consistency.** The Board finds that the Project is consistent with the Comprehensive Plan and the applicable provisions of the Manatee County Land Development Code.

10. **Rescission of DRI Development Orders.** By entering into this Development Agreement, Developer has requested and the County has approved that Ord. 08-20, and to the extent applicable, Ord. 00-49 are rescinded. In accordance with Section 380.115(2), F.S. all required mitigation related to the amount of development on the effective date of this Development Agreement will be completed under the Master Mining Plan (R-18-013) for the Southeast Tract in effect as of the effective date of this Development Agreement, which has been approved by the County, a governmental agency. In addition, said Master Mining Plan is subject to enforcement through administrative and judicial remedies pursuant to law and the applicable provisions of the Manatee County Phosphate Mining Code (Ord. 04-39).

11. **Omission from Development Agreement.** The failure of this Development Agreement to address a particular permit, condition, term, or restriction shall not relieve the Developer of the necessity of complying with the law, including without implied limitation the applicable provisions of the County's Comprehensive Plan or the Manatee County Phosphate Mining Code (Ord. 04-39) governing said permitting requirements, conditions, terms, or restrictions. However, any Vested Rights heretofore granted and approved by Manatee County under previously existing (prior to the effective date hereof) Development Orders shall continue in full force and effect.

12. **Disclaimer of Joint Venture.** Developer and the County represent that by the execution of this Development Agreement it is not the intent of the parties that this Development Agreement be construed or deemed to represent a joint venture or common undertaking between the County and Developer, or either, with any third party. While engaged in carrying out and complying with the terms of this Development Agreement, Developer is an independent principal and not a contractor for or an officer or employee of the County. Developer shall not at any time or in any manner represent that it or any of its agents or employees are employees of the County.

13. **Successors in Interest.** The burdens of this Development Agreement shall be binding upon, and the benefits shall inure to, all successors in interest to the parties to this Development Agreement including all mortgagees to the parties to this Development Agreement. Notwithstanding anything in this Development Agreement to the contrary, the County shall have no responsibility or liability for any obligations of Developer under this Development Agreement, and the County does not assume any obligations to or for Developer.

14. **Amendments:** All amendments to this Development Agreement, including any such amendments extending the term of the Development Agreement, shall be ineffective unless reduced to writing by written agreement and executed by the County and Developer, in accordance with Section 350 of the Manatee County Land Development Code and Sections 163.3237 and 163.3229, F.S.

15. **Applicable County Ordinances and Codes:**

(A) This Development Agreement is entered into in accordance with Section 163.3233, F.S, and Section 350 of the Manatee County Land Development Code. The applicable codes, policies, and ordinances of the County governing the development of the Project upon the date of execution of this Development Agreement are referenced herein and shall govern the development of the Project for the duration of this Development Agreement.

(B) Prior to the termination of this Development Agreement in accordance with paragraph 24 hereof, the County may not apply codes, policies, resolutions and ordinances adopted subsequent to the execution hereof to the Project that would, in any manner, modify, diminish or undermine Developer's Vested Rights. Said codes, policies, and ordinances include, but are not limited to, amendments to the Comprehensive Plan, the Phosphate Mining Code or the Manatee County Land Development Code. Section 163.3233 F.S. In addition, nothing in this section shall abrogate any rights that may vest pursuant to common law.

(C) The expiration or termination of this Agreement, for any reason, shall not be considered a waiver of, or limitation upon, the rights, including, but not limited to, any claims of vested rights or equitable estoppel, obtained or held by Developer or its successors or assigns to continue Development of the property consistent with the development approvals and all prior and subsequent Development Permits granted by the County.

16. **Recording of this Development Agreement:** The Clerk of the Circuit Court of Manatee County, as Clerk to the Board of County Commissioners (the “Clerk”) shall record this Development Agreement in the Public Records of Manatee County, Florida, no later than fourteen (14) days after the execution of this Development Agreement by all parties. Developer shall bear the expense of recording this Development Agreement.

17. **Applicable Law and Venue.** This Development Agreement shall be construed, and the rights and obligations of the parties hereunder shall be determined, in accordance with the laws of the State of Florida and/or applicable federal law. Venue for any litigation pertaining to the subject matter hereof shall be in Manatee County, Florida, or in the Federal District Court for the Middle District of Florida, Tampa Division.

18. **Severability.** In the event any term or provision of this Development Agreement shall be held invalid by a Court of competent jurisdiction, such invalid term or provision should not affect the validity of any term or provision hereof; and all such terms and provisions hereof shall be enforceable to the fullest extent permitted by law as if such invalid term or provision had never been part of this Development Agreement; provided, however, if any term or provision of this Development Agreement is held to be invalid due to the scope or extent thereof, then, to the extent permitted by law, such term or provision shall be automatically deemed modified in order that it may be enforced to the maximum scope and extent permitted by law.

19. **Entire Agreement.** This Development Agreement constitutes the entire agreement between the parties hereto as to the subject matter contained herein and supersedes any and all prior understandings, if any. There are no other oral or written promises, conditions, representations, understandings, or terms of any kind as conditions

or inducements to the execution hereof, and none have been relied upon by either party. Any subsequent conditions, representations, warranties, or agreements shall not be valid and binding upon the parties unless they are in writing signed by both parties and executed in the same manner as this Development Agreement.

20. **Parties Drafted Equally.** The County and Developer agree that both parties have played an equal and a reciprocal part in drafting this Development Agreement. Therefore, no provision of this Development Agreement shall be construed by a Court or judicial authority against any party hereto because such party is deemed to have drafted or structured such provisions.

21. **Notices.** All notices, demands, requests for approvals or other communications given by either party to another shall be in writing and shall be sent by registered or certified mail, postage prepaid, return receipt requested or by a recognized national overnight courier service, or by hand delivery to the office of each party indicated below and addressed as follows:

To Developer: Russell Schweiss, Director,
Public Affairs, Land & Resource Strategies
MOSAIC FERTILIZER, LLC,
A Delaware Limited Liability Company
13830 Circa Crossing Drive
Lithia Florida 33547

To County: Director, Parks and Natural Resources Department
Manatee County
1112 Manatee Avenue West
Suite 203
Bradenton, FL 34205

With Copies to: County Administrator
Manatee County
1112 Manatee Avenue West
Bradenton, FL 34205

Office of the County Attorney
Manatee County
1112 Manatee Avenue West
Bradenton, FL 34205

22. **Survival of Warranties, Representations.** The warranties, representations, covenants and obligations of the parties hereto shall be binding upon the parties and their respective successors in interest.

23. **Effective Date.** This Agreement shall become effective immediately upon the occurrence of all the following (the “Effective Date”):

(A) The recordation of a fully executed original of this Agreement in the public records of Manatee County, Florida, as provided in Paragraph 16 hereof;

(B) The expiration of any and all appeal periods for any challenge to or appeal of the Master Mining Plan Amendment or the Operating Permit for the Southeast Tract; the Operating Permit for the Wingate East Mine and this Development Agreement; and

(C) Such time period as any challenge or appeal described in subparagraph (B) above has been finally decided by a tribunal of competent jurisdiction and all appellate or equitable remedies associated therewith have been exhausted.

24. **Termination.** This Development Agreement shall automatically terminate and expire upon the occurrence of the first of the following:

(A) The full performance by the Developer of each and every one of its obligations arising under the terms of this Development Agreement.

(B) The revocation of this Development Agreement by the Board in accordance with Section 163.3235, F.S. and Section 350 of the Manatee County Land Development Code.

(C) The execution of a written agreement by all parties, or their successors in interest, providing for the cancellation and termination of this Development Agreement.

(D) Thirty (30) years from the Effective Date of this Development Agreement unless it is extended by mutual consent of the County and the Developer, subject to a public hearing in accordance with Section 163.3225, F.S. .

WHEREFORE, the parties hereto have executed this Agreement as of the date set forth above and shall have an effective date pursuant to paragraph 23 herein.

MANATEE COUNTY, FLORIDA
Board of County Commissioners

By: _____,
Chairperson

Date: _____

ATTEST:
Angelina Colonnese
Clerk of the Circuit Court
and Comptroller

By: _____
Deputy Clerk

(THIS AREA INTENTIONALLY LEFT BLANK)

MOSAIC FERTILIZER, LLC,
A Delaware Limited Liability Company

By: _____

Name: _____

Date: _____

Witnesses' signatures, identification and Notary Public below:

WITNESSES:

Signature

Print Name

Signature

Print Name

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this ___ day of May, 2018, by Russell T. Schweiss, Director, Land & Resource Strategies, as authorized agent of MOSAIC FERTILIZER, LLC on behalf of the Limited Liability Company. He/she is personally known to me or who has produced _____ as identification and did not take an oath.

Notary Public, State of _____

(Seal)

Print name: _____