

**Lee County Board Of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20040363

1. REQUESTED MOTION:

ACTION REQUESTED: Execute Contract OT040073 with the South Florida Water Management District (SFWMD) for Lee County Drainage Improvements. The total project cost is \$400,000.00 including the District's contribution of \$275,000.00 with a \$125,000.00 cost share by Lee County. Approve Budget Transfer from SFWMD Grant (Project 208534) to SFWMD Drainage Improvements (Project 208583) of \$400,000.00 in expenses and \$275,000.00 in revenue for FY03/04 and amend the FY03/04-07/08 CIP accordingly.

WHY ACTION IS NECESSARY: Board approval is required for all contracts and amendments to the CIP.

WHAT ACTION ACCOMPLISHES: Provides mechanism to reimburse County for activities relating to drainage improvements on Powell Creek and Gator Slough – Yellow Fever Interconnect.

2. DEPARTMENTAL CATEGORY:
COMMISSION DISTRICT #: 1&4

C8C

3. MEETING DATE:

04-06-2004

4. AGENDA:

5. REQUIREMENT/PURPOSE:
(Specify)

6. REQUESTOR OF INFORMATION:

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED:

- STATUTE
- ORDINANCE
- ADMIN. CODE
- OTHER Agreement

- A. COMMISSIONER _____
- B. DEPARTMENT Public Works
- C. DIVISION Natural Resources
- BY: Roland E. Ottolini, P.E.

[Signature]

7. BACKGROUND:

In 2003, SFWMD sought funding from the Florida State Legislature for a series of water restoration projects from Charlotte Harbor to the Ten Thousand Islands. These projects were grouped into five Watershed Initiatives. Within the Charlotte Harbor Watershed Initiative were a number of projects addressing water flows in North Lee County. While the Legislature did not fund these projects, the District included funding in its budget in support of the Charlotte Harbor Watershed Initiative.

Two areas in the Watershed were selected for review, Powell Creek and the Gator Slough-Yellow Fever Interconnect. Powell Creek has become shallow and narrow in some areas. Sedimentation has reduced historic flow from four and five feet to less than three inches at low tide. Sediments indicate heavy metal contamination and are significantly reducing the creek's conveyance capacity. Invasive vegetation has further reduced the hydraulic efficiency of the creek. The primary objective of this portion of the project is to perform a baseline study and soil borings to identify areas for sediment removal. Construction of the Gator Slough Canal has adversely affected stormwater flows to Matlacha Pass. The Gator Slough – Yellow Fever Creek Interconnect project will determine alternatives to route excess fresh water flows to Yellow Fever Creek from Gator Slough Canal and delineate possible land acquisition along the alignment.

Funds will be available in 20858330100 (Capital Projects; SFWMD Drainage Improvements, Capital Improvement Fund).

8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL:

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
					OA	OM	Risk	GC	
<i>J. J. J. 3-24-04</i>	<i>[Signature] 3/24</i>	<i>N/A</i>	<i>BAD 3/24/04</i>	<i>KLW 3/24/04</i>	<i>elaw 3-25-04</i>	<i>[Signature] 3/25/04</i>	<i>vs 3/25/04</i>	<i>[Signature] 3/25/04</i>	<i>J. J. J. 3-24-04</i>

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

Rec. by CoAtty
Date: *3/24/04*
Time: *1:00 pm*
Forwarded To:
Co. Treas. 3/25/04

RECEIVED BY
COUNTY ADMIN: *[Signature]*
3/25/04
4:15 pm
COUNTY ADMIN
FORWARDED TO: *[Signature]*
3/25/04
4 pm

REQUEST FOR TRANSFER OF FUNDS

FUND NAME: Capital Improvement Fund DATE: 03/24/04 BATCH NO.: _____

FISCAL YEAR: 03/04 FUND NO.: 30100 DOC. TYPE: YB LEDGER TYPE: BA

TO: _____
 Capital Projects Water Resources Capital Projects
 (Division Name) (Program Name)

NOTE: Please list the account number below in the following order:
Business Unit (dept/div, program, fund, subfund); Object Account; Subsidiary; Subledger
(Example: BB 5120100100.503450)

<u>Account Number</u>	<u>Object Name</u>	<u>DEBIT</u>
20853430100.337300.9006	SFWMD Grants	\$275,000
20858330100.503490	Other Contracted Services	\$400,000
TOTAL TO:		<u>\$675,000</u>

FROM: _____
 Capital Projects Water Resources Capital Projects
 (Division Name) (Program Name)

<u>Account Number</u>	<u>Object Name</u>	<u>CREDIT</u>
20858330100.337300.9006	SFWMD Grants	\$275,000
20853430100.503490	Other Contracted Services	\$400,000
TOTAL FROM:		<u>\$675,000</u>

EXPLANATION: To fund SFWMD Agreement No. OT040073, Lee County Drainage Improvements.

 3/24/04
DIVISION DIRECTOR SIGNATURE/DATE

 3-24-04
DEPARTMENT HEAD SIGNATURE/DATE

DBO: APPROVAL DENIAL

 3-25-04
OPS. ANALYST SIGNATURE DATE

OPS. MGR.: APPROVAL DENIAL

 3/25/04
OPS. MGR. SIGNATURE DATE

CO. MGR.: APPROVAL DENIAL

CO. MANAGER SIGNATURE DATE

BCC APPROVAL DATE: _____

BCC CHAIRMAN SIGNATURE

BA. NO. _____ AUTH CODE _____ TRANS DATE _____



ORIGINAL

SOUTH FLORIDA WATER MANAGEMENT DISTRICT AGREEMENT

THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT (hereinafter referred to as DISTRICT) HEREBY ENTERS INTO THIS AGREEMENT WITH: Name: LEE COUNTY Address: 1500 Monroe Street Ft. Myers, FL 33902 Project Manager: Rolando Ottolini Telephone No: (941) 478-8127 Fax No: (941) 479- 8198 Hereinafter referred to as: COUNTY	This number must appear on all Invoices and Correspondence <h2 style="text-align: center;">OT040073</h2>
	MBE PARTICIPATION: 0%
	COST SHARING INFORMATION Total Project Cost: \$ 400,000.00 COUNTY Contribution: \$ 125,000.00

PROJECT TITLE: LEE COUNTY DRAINAGE IMPROVEMENTS

The following Exhibits are attached hereto and made a part of this AGREEMENT:

Exhibit "A" - Not Applicable	Exhibit "H" - Not Applicable
Exhibit "B" - General Terms and Conditions	Exhibit "I" - Not Applicable
Exhibit "C" - Statement of Work	Exhibit "J" - Not Applicable
Exhibit "D" - Payment and Deliverable Schedule	Exhibit "K" - Not Applicable
Exhibit "E" - Not Applicable	Exhibit "L" - Not Applicable
Exhibit "F" - Not Applicable	Exhibit "M" - Not Applicable
Exhibit "G" - Not Applicable	

TOTAL DISTRICT CONSIDERATION: \$275,000.00	AGREEMENT TYPE: Not-to-Exceed
Multi-Year Funding (If Applicable)	
Fiscal Year:	Fiscal Year:
Fiscal Year:	Fiscal Year:
Fiscal Year:	Fiscal Year:
*Subject to District Governing Board Annual Budget Approval	

AGREEMENT TERM: One Year	EFFECTIVE DATE: Last Date of Execution by the Parties
District Project Manager: Carla Palmer	District Contract Administrator:
Telephone No: (239) 338-2929	Marilyn Ivory (561) 682-6381
Fax No. (239) 338-2936	Fax No.: (561) 682-5381 or (561) 681-6275

SUBMIT INVOICES AND NOTICES TO THE DISTRICT AT:

South Florida Water Management District
 3301 Gun Club Road
 West Palm Beach, Florida 33406
Attention: Procurement Department

SUBMIT NOTICES TO THE COUNTY AT:
 LEE COUNTY

1500 Monroe Street

 Ft. Myers, FL 33902
Attention: Rolando Ottolini

IN WITNESS WHEREOF, the authorized representative hereby executes this AGREEMENT on this date, and accepts all Terms and Conditions under which it is issued.

LEE COUNTY

Accepted By: _____
 Signature of Authorized Representative

Title: _____

Date: _____

**SOUTH FLORIDA WATER MANAGEMENT DISTRICT
 BY ITS GOVERNING BOARD**

Accepted By: _____
Frank Hayden, Procurement Director

Date: _____

SFWMD PROCUREMENT APPROVED
 By: *Marilyn Ivory* Date: 2/19/04



SOUTH FLORIDA WATER MANAGEMENT DISTRICT

EXHIBIT "B"

GENERAL TERMS AND CONDITIONS

ARTICLE 1 - STATEMENT OF WORK

1.1 The **COUNTY** shall, to the satisfaction of the **DISTRICT**, fully and timely perform all work items described in the "Statement of Work," attached hereto as Exhibit "C" and made a part of this **AGREEMENT**.

1.2 As part of the services to be provided by the **COUNTY** under this **AGREEMENT**, the **COUNTY** shall substantiate, in whatever forum reasonably requested by the **DISTRICT**, the methodology, lab analytical examinations, scientific theories, data, reference materials, and research notes. The **COUNTY** shall also be required to substantiate any and all work completed, including but not limited to, work completed by subcontractors, assistants, models, concepts, analytical theories, computer programs and conclusions utilized as the basis for the final work product required by the **AGREEMENT**. This paragraph shall survive the expiration or termination of this **AGREEMENT**.

1.3 The parties agree that time is of the essence in the performance of each and every obligation under this **AGREEMENT**.

1.4 In the event **COUNTY** employees or hired workers are authorized by Exhibit "C" to perform services on-site at **DISTRICT** facilities, the **COUNTY** hereby agrees to be bound by all applicable **DISTRICT** policies and standards of conduct listed in Attachment 1, "Contractor Policy Code Acknowledgement" to Exhibit "C" and shall require each individual performing such on-site work to execute the Attachment 1 form. It is the **COUNTY**'s responsibility to advise its employees or hired workers of the nature of the project, as described in Exhibit "C".

The **COUNTY** shall determine the method, details and means of performing the services, within the parameters established by Exhibit "C". The **DISTRICT** shall provide additional guidance and instructions to **COUNTY**'s employees or hired workers where necessary or appropriate as determined by the **DISTRICT**.

ARTICLE 2 - COMPENSATION/ CONSIDERATION

2.1 The total consideration for all work required by the **DISTRICT** pursuant to this **AGREEMENT** shall not exceed the amount as indicated on the cover/signature page of this **AGREEMENT**. Such amount includes all expenses which the **COUNTY** may incur and therefore no additional consideration shall be authorized.

2.2 Notwithstanding the foregoing, the amount expended under this **AGREEMENT** shall be paid in accordance with, and subject to the multi-year funding allocations for each **DISTRICT** fiscal year indicated on the cover/signature page of this **AGREEMENT**. Funding for each applicable fiscal year of this **AGREEMENT** is subject to **DISTRICT** Governing Board budgetary appropriation. In the event the **DISTRICT** does not approve funding for any subsequent fiscal year, this **AGREEMENT** shall terminate upon expenditure of the current funding, notwithstanding other provisions in this **AGREEMENT** to the contrary. The **DISTRICT** will notify the **COUNTY** in writing after the adoption of the final **DISTRICT** budget for each subsequent fiscal year if funding is not approved for this **AGREEMENT**.

2.3 The **COUNTY** assumes sole responsibility for all work which is performed pursuant to the Statement of Work, Exhibit "C". By providing funding hereunder, the **DISTRICT** does not make any warranty, guaranty, or any representation whatsoever regarding the correctness, accuracy, or reliability of any of the work performed hereunder.

2.4 The **COUNTY** by executing this **AGREEMENT**, certifies to truth-in-negotiation, specifically, that wage rates and other factual unit costs supporting the consideration are accurate, complete, and current at the time of contracting. The **COUNTY** agrees that the **DISTRICT** may adjust the consideration for this **AGREEMENT** to exclude any significant sums by which the consideration was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs.



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The **DISTRICT** shall make any such adjustment within one (1) year following the expiration or termination of this **AGREEMENT**.

ARTICLE 3 - INVOICING AND PROMPT PAYMENT

3.1 The **COUNTY's** invoices shall reference the **DISTRICT's** Contract Number and shall be sent to the **DISTRICT's** address specified on the cover/signature page of this **AGREEMENT**. The **COUNTY** shall not submit invoices to any other address at the **DISTRICT**.

3.2 The **COUNTY** shall submit the invoices on a completion of deliverable basis, pursuant to the schedule outlined in the Payment and Deliverable Schedule, attached hereto as Exhibit "D" and made a part of this **AGREEMENT**. In the event the schedule does not specify payment on a completion of deliverable basis, all invoices shall be substantiated by adequate supporting documentation to justify hours expended and expenses incurred within the not-to-exceed budget, including but not limited to, copies of approved timesheets, payment vouchers, expense reports (including approved travel costs, if applicable), receipts and subcontractor invoices. Any authorized travel shall be reimbursed in accordance with Chapter 112, Florida Statutes.

3.3 It is the policy of the **DISTRICT** that payment for all goods and services shall be made in a timely manner and that interest payments are made on late payments. In accordance with Florida Statutes, Section 218.70, Florida Prompt Payment Act, a "proper" invoice is defined as an invoice that conforms to all statutory requirements and all **DISTRICT** requirements as specified in the **AGREEMENT** for invoice submission. The time at which payment shall be due from the **DISTRICT** shall be forty-five (45) days from receipt of a proper invoice and acceptance of services and/or deliverables, based on compliance with the statutory requirements set forth in Section 218.70, F.S. and upon satisfaction of the **DISTRICT** conditions as detailed in the **AGREEMENT**.

Failure of the **COUNTY** to follow the instructions set forth in the **AGREEMENT** regarding a proper invoice and acceptable services and/or deliverables may result in an unavoidable delay in payment by the **DISTRICT**. All payments due from the **DISTRICT** for a proper invoice and acceptable services and/or deliverables and not made within the time specified in this section shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance. The **COUNTY** shall invoice the **DISTRICT** for payment of any accrued unpaid interest.

Any disputes regarding invoice payments which cannot be resolved by the appropriate department of the **DISTRICT** shall be concluded by final written decision of the **DISTRICT** Leadership Team not later than sixty (60) days after the date on which the proper invoice was received by the **DISTRICT**.

3.4 Unless otherwise stated herein, the **DISTRICT** shall not pay for any obligation or expenditure made by the **COUNTY** prior to the commencement date of this **AGREEMENT**.

ARTICLE 4 - PROJECT MANAGEMENT/ NOTICE

4.1 The parties shall direct all technical matters arising in connection with the performance of this **AGREEMENT**, other than invoices and notices, to the attention of the respective Project Managers specified on the cover/signature page of the **AGREEMENT** for attempted resolution or action. The Project Managers shall be responsible for overall coordination and oversight relating to the performance of this **AGREEMENT**. The **COUNTY** shall direct all administrative matters, including invoices and notices, to the attention of the **DISTRICT's** Contract Specialist specified on the cover/signature page of the **AGREEMENT**.

All formal notices between the parties under this **AGREEMENT** shall be in writing and shall be deemed received if sent by certified mail, return receipt requested, to the respective addresses specified on the cover/signature page of the **AGREEMENT**. The **COUNTY** shall also provide a copy of all notices to



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the **DISTRICT's** Project Manager. All notices required by this **AGREEMENT** shall be considered delivered *upon receipt*. Should either party change its address, written notice of such new address shall promptly be sent to the other party.

All correspondence to the **DISTRICT** under this **AGREEMENT** shall reference the **DISTRICT's** Contract Number specified on the cover/signature page of the **AGREEMENT**.

ARTICLE 5 - INSURANCE

5.1 The **COUNTY** assumes any and all risks of personal injury, bodily injury and property damage attributable to the negligent acts or omissions of the **COUNTY** and the officers, employees, servants, and agents thereof. The **COUNTY** warrants and represents that it is self-funded for Worker's compensation and liability insurance, covering at a minimum bodily injury, personal injury and property damage with protection being applicable to the **COUNTY's** officers, employees, servants and agents while acting within the scope of their employment during performance under this **AGREEMENT**. The **COUNTY** and the **DISTRICT** further agree that nothing contained herein shall be construed or interpreted as (1) denying to either party any remedy or defense available to such party under the laws of the State of Florida; (2) the consent of the State of Florida or its agents and agencies to be sued; or (3) a waiver of sovereign immunity of the State of Florida beyond the waiver provided in Section 768.28, Florida Statutes.

5.2 In the event the **COUNTY** subcontracts any part or all of the work hereunder to any third party, the **COUNTY** shall require each and every subcontractor to identify the **DISTRICT** as an additional insured on all insurance policies as required by the **COUNTY**. Any contract awarded by the **COUNTY** for work under this **AGREEMENT** shall include a provision whereby the **COUNTY's** subcontractor agrees to defend, indemnify, and pay on behalf, save and hold the **DISTRICT** harmless from all damages arising in connection with the **COUNTY's** subcontract.

ARTICLE 6 - TERMINATION/REMEDIES

6.1 It is the policy of the **DISTRICT** to encourage good business practices by requiring contractors to materially perform in accordance with the terms and conditions of the **DISTRICT AGREEMENT**. In accordance with **DISTRICT** Rule 40E-7, Part II, F.A.C., "material breach" is defined as any substantial, unexcused non-performance by failing to perform an act that is an important part of the transaction or performing an act inconsistent with the terms and conditions of the **AGREEMENT**.

If the **COUNTY** materially fails to fulfill its obligations under this **AGREEMENT**, the **DISTRICT** will provide written notice of the deficiency by forwarding a Cure Notice citing the specific nature of the material breach. The **COUNTY** shall have thirty (30) days to cure the breach. If the **COUNTY** fails to cure the breach within the thirty (30) day period, the **DISTRICT** shall issue a Termination for Default Notice. Once the **DISTRICT** has notified the **COUNTY** that it has materially breached its contract with the **DISTRICT**, by sending a Termination for Default Notice, the **DISTRICT's** Governing Board shall determine whether the **COUNTY** should be suspended from doing future work with the **DISTRICT**, and if so, for what period of time. The **DISTRICT's** Governing Board will consider the factors detailed in Rule 40E-7, Part II, F.A.C. in making a determination as to whether a **COUNTY** should be suspended, and if so, for what period of time. Should the **DISTRICT** terminate for default in accordance with this provision, the **DISTRICT** shall be entitled to recover procurement costs in addition to all other remedies under law and/or equity.

6.2 The **DISTRICT** may terminate this **AGREEMENT** with or without cause at any time for convenience upon thirty (30) calendar days prior written notice to the **COUNTY**. The performance of work under this **AGREEMENT** may be terminated by the **DISTRICT** in accordance with this clause in whole, or from time to time in part, whenever the **DISTRICT** shall determine that such termination is in the best interest of the **DISTRICT**. Any such



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termination shall be effected by delivery to the COUNTY of a Notice of Termination specifying the extent to which performance of work under the AGREEMENT is terminated, and the date upon which such termination becomes effective.

In the event of termination for convenience, the DISTRICT shall compensate the COUNTY for all authorized and accepted deliverables completed through the date of termination in accordance with Exhibit "C", Statement of Work. The DISTRICT shall be relieved of any and all future obligations hereunder, including but not limited to lost profits and consequential damages, under this AGREEMENT. The DISTRICT may withhold all payments to the COUNTY for such work until such time as the DISTRICT determines the exact amount due to the COUNTY.

6.3 In the event a dispute arises which the project managers cannot resolve between themselves, the parties shall have the option to submit to non-binding mediation. The mediator or mediators shall be impartial, shall be selected by the parties, and the cost of the mediation shall be borne equally by the parties. The mediation process shall be confidential to the extent permitted by law.

6.4 The DISTRICT may order that all or part of the work stop if circumstances dictate that this action is in the DISTRICT's best interest. Such circumstances may include, but are not limited to, unexpected technical developments, direction given by the DISTRICT's Governing Board, a condition of immediate danger to DISTRICT employees, or the possibility of damage to equipment or property. This provision shall not shift responsibility for loss or damage, including but not limited to, lost profits or consequential damages sustained as a result of such delay, from the COUNTY to the DISTRICT. If this provision is invoked, the DISTRICT shall notify the COUNTY in writing to stop work as of a certain date and specify the reasons for the action, which shall not be arbitrary or capricious. The COUNTY shall then be obligated to suspend all work efforts as of the effective date of the notice and until further written direction from the DISTRICT is received. Upon resumption of work, if deemed appropriate by the DISTRICT, the

DISTRICT shall initiate an amendment to this AGREEMENT to reflect any changes to Exhibit "C", Statement of Work and/or the project schedule.

6.5 The DISTRICT anticipates a total project cost as indicated on the cover/signature page, with the balance of matching funds and/or in-kind services to be obtained from the COUNTY in the amount as specified on the cover/signature page of this AGREEMENT. In the event such COUNTY matching funding and/or in-kind services becomes unavailable, that shall be good and sufficient cause for the DISTRICT to terminate the AGREEMENT pursuant to Paragraph 6.2 above.

ARTICLE 7 - RECORDS RETENTION/ OWNERSHIP

7.1 The COUNTY shall maintain records and the DISTRICT shall have inspection and audit rights as follows:

A. Maintenance of Records: The COUNTY shall maintain all financial and non-financial records and reports directly or indirectly related to the negotiation or performance of this AGREEMENT including supporting documentation for any service rates, expenses, research or reports. Such records shall be maintained and made available for inspection for a period of five years from completing performance and receiving final payment under this AGREEMENT.

B. Examination of Records: The DISTRICT or its designated agent shall have the right to examine in accordance with generally accepted governmental auditing standards all records directly or indirectly related to this AGREEMENT. Such examination may be made only within five years from the date of final payment under this AGREEMENT and upon reasonable notice, time and place.

C. Extended Availability of Records for Legal Disputes: In the event that the DISTRICT should become involved in a legal dispute with a third party arising from performance under this AGREEMENT, the COUNTY shall extend the period of maintenance for all records relating to the AGREEMENT until the final disposition of the legal dispute, and all such



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records shall be made readily available to the **DISTRICT**.

7.2 The **DISTRICT** shall retain exclusive title, copyright and other proprietary rights in all work items, including but not limited to, all documents, technical reports, research notes, scientific data, computer programs, including the source and object code, which are developed, created or otherwise originated hereunder by the **COUNTY**, its subcontractor(s), assign(s), agent(s) and/or successor(s) as required by the Exhibit "C", Statement of Work (the "Work"). In consideration for the **DISTRICT** entering into this **AGREEMENT**, and other good and valuable consideration the sufficiency and receipt in full of which is hereby acknowledged by the **COUNTY**, the **COUNTY** hereby assigns, transfers, sells and otherwise grants to the **DISTRICT** any and all rights it now has or may have in the Work (the "Grant"). This Grant shall be self-operative upon execution by the parties hereto, however the **COUNTY** agrees to execute and deliver to the **DISTRICT** any further assignments or other instruments necessary to evidence the Grant, without the payment of any additional consideration by the **DISTRICT**. The **COUNTY** may not disclose, use, license or sell any work developed, created, or otherwise originated hereunder to any third party whatsoever. This paragraph shall survive the termination or expiration of this **AGREEMENT**.

7.3 The **COUNTY** represents and warrants that proprietary software, if any, to be provided to the **DISTRICT** by the **COUNTY** hereunder, as specifically identified in Exhibit "C", Statement of Work shall have been developed solely by or for the **COUNTY**, or lawfully acquired under license from a third party, including the right to sublicense such software. The **COUNTY** shall include copyright or proprietary legends in the software and on the label of the medium used to transmit the software. The **COUNTY** shall grant to the **DISTRICT** a perpetual, non-transferable, non-exclusive right to use the identified software without an additional fee. The **DISTRICT** acknowledges that title to the software identified in Exhibit "C" shall remain with the Licensor.

7.4 Any equipment purchased by the **COUNTY** with **DISTRICT** funding under this **AGREEMENT** shall be returned and title transferred from the **COUNTY** to the **DISTRICT** immediately upon termination or expiration of this **AGREEMENT** upon the written request of the **DISTRICT** not less than thirty (30) days prior to **AGREEMENT** expiration or termination. Equipment is hereby defined as any non-consumable items purchased by the **DISTRICT** with a value equal to or greater than \$500.00 and with a normal expected life of one (1) year or more. The **COUNTY** will maintain any such equipment in good working condition while in its possession and will return the equipment to the **DISTRICT** in good condition, less normal wear and tear. The **COUNTY** will use its best efforts to safeguard the equipment throughout the period of performance of this **AGREEMENT**. However the **DISTRICT** will not hold the **COUNTY** liable for loss or damage due to causes beyond the **COUNTY**'s reasonable control. In the event of loss or damage, the **COUNTY** shall notify the **DISTRICT** in writing within five (5) working days of such occurrence.

7.5 The **DISTRICT** has acquired the right to use certain software under license from third parties. For purposes of this **AGREEMENT**, the **DISTRICT** may permit the **COUNTY** access to certain third party owned software on **DISTRICT** computer systems. The **COUNTY** acknowledges the proprietary nature of such software and agrees not to reproduce, distribute or disclose such software to any third party. Use of or access to such software shall be restricted to designated **DISTRICT** owned systems or equipment. Removal of any copy of licensed software is prohibited.

ARTICLE 8 - STANDARDS OF COMPLIANCE

8.1 The **COUNTY**, its employees, subcontractors or assigns, shall comply with all applicable federal, state, and local laws and regulations relating to the performance of this **AGREEMENT**. The **DISTRICT** undertakes no duty to ensure such compliance, but will attempt to advise the **COUNTY**, upon request, as to any such laws of which it has present knowledge.



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8.2 The **COUNTY** hereby assures that no person shall be discriminated against on the grounds of race, color, creed, national origin, handicap, age, or sex, in any activity under this **AGREEMENT**. The **COUNTY** shall take all measures necessary to effectuate these assurances.

8.3 The laws of the State of Florida shall govern all aspects of this **AGREEMENT**. In the event it is necessary for either party to initiate legal action regarding this **AGREEMENT**, venue shall be in the Fifteenth Judicial Circuit for claims under state law and in the Southern District of Florida for any claims which are justiciable in federal court.

8.4 The **COUNTY**, by its execution of this **AGREEMENT**, acknowledges and attests that neither it, nor any of its suppliers, subcontractors, or consultants who shall perform work which is intended to benefit the **DISTRICT** is a convicted vendor or has been placed on the discriminatory vendor list. If the **COUNTY** or any affiliate of the **COUNTY** has been convicted of a public entity crime or has been placed on the discriminatory vendor list, a period longer than 36 months has passed since that person was placed on the convicted vendor or discriminatory vendor list. The **COUNTY** further understands and accepts that this **AGREEMENT** shall be either void by the **DISTRICT** or subject to immediate termination by the **DISTRICT**, in the event there is any misrepresentation or lack of compliance with the mandates of Section 287.133 or Section 287.134, respectively, Florida Statutes. The **DISTRICT**, in the event of such termination, shall not incur any liability to the **COUNTY** for any work or materials furnished.

8.5 The **COUNTY** shall be responsible and liable for the payment of all of its FICA/Social Security and other applicable taxes resulting from this **AGREEMENT**.

8.6 The **COUNTY** warrants that it has not employed or retained any person, other than a bona fide employee working solely for the **COUNTY**, to solicit or secure this **AGREEMENT**. Further the **COUNTY** warrants that it has not paid or agreed to pay any person, other than a bona fide employee working solely for the **COUNTY**, any fee, commission, percentage,

gift, or other consideration contingent upon or resulting from the awarding or making of this **AGREEMENT**. For breach of this provision, the **DISTRICT** may terminate this **AGREEMENT** without liability and, at its discretion, deduct or otherwise recover the full amount of such fee, commission, percentage, gift, or other consideration.

8.7 The **COUNTY** shall allow public access to all project documents and materials in accordance with the provisions of Chapter 119, Florida Statutes. Should the **COUNTY** assert any exemptions to the requirements of Chapter 119 and related Statutes, the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon the **COUNTY**.

8.7.1 Pursuant to Sections 119.07(3)(o), and 240.241 Florida Statutes, data processing software obtained by an agency under a license **AGREEMENT** which prohibits its disclosure and which software is a trade secret, as defined in Sections 812.081(c), Florida Statutes is exempt from the disclosure provisions of the Public Records law. However, the parties hereto agree that if a request is made of the **DISTRICT**, pursuant to Chapter 119, Florida Statute, for public disclosure of proprietary property being licensed to the **COUNTY** (Licensee) hereunder, the **DISTRICT** shall advise the **COUNTY** (Licensee) of such request and, as between the **DISTRICT** and the **COUNTY** (Licensee), it shall be the **COUNTY**'s (Licensee's) sole burden and responsibility to immediately seek and obtain such injunctive or other relief from the Courts and to immediately serve notice of the same upon the Licensor to protect the Licensor's claimed exemption under the Statute.

8.8 The **COUNTY** shall make reasonable efforts to obtain any necessary federal, state, local, and other governmental approvals, as well as all necessary private authorizations and permits, prior to the commencement of performance of this **AGREEMENT**. A delay in obtaining permits shall not give rise to a claim by the **COUNTY** for additional compensation. If the **COUNTY** is unable to obtain all necessary permits in a timely manner, either party may elect to terminate this



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AGREEMENT, each party to bear its own costs, notwithstanding other provisions of this **AGREEMENT** to the contrary.

8.9 Pursuant to Section 216.347, F.S., the **COUNTY** is prohibited from the expenditure of any funds under this **AGREEMENT** to lobby the Legislature, the judicial branch or another state agency.

8.10 The **DISTRICT** is a governmental entity responsible for performing a public service and therefore has a legitimate interest in promoting the goals and objectives of the agency. The work under this **AGREEMENT** involves a project consistent with these goals and objectives. Consequently, the **DISTRICT** is desirous of satisfactorily completing and successfully promoting this project with the cooperation of its **COUNTY**. Therefore, as the **DISTRICT'S COUNTY** for this project, the **COUNTY** assures the **DISTRICT** that the **COUNTY**, its employees, subcontractors and assigns will refrain from acting adverse to the **DISTRICT'S** legitimate interest in promoting the goals and objectives of this project. The **COUNTY** agrees to take all reasonable measures necessary to effectuate these assurances. In the event the **COUNTY** determines it is unable to meet or promote the goals and objectives of the project, it shall have the duty to immediately notify the **DISTRICT**. Upon such notification the **DISTRICT**, in its discretion, may terminate this **AGREEMENT**.

ARTICLE 9 - RELATIONSHIP BETWEEN THE PARTIES

9.1 The **COUNTY** shall be considered an independent contractor and neither party shall be considered an employee or agent of the other party. Nothing in this **AGREEMENT** shall be interpreted to establish any relationship other than that of independent contractor between the parties and their respective employees, agents, subcontractors, or assigns during or after the performance on this **AGREEMENT**. Both parties are free to enter into contracts with other parties for similar services.

9.2 In the event that the **COUNTY** is providing staff who will be working on-site at **DISTRICT** facilities, it

is further understood that the **COUNTY** shall be the employer of the staff provided pursuant to the **AGREEMENT** for all purposes under state and federal law and that the **COUNTY'S** staff shall not be eligible for any benefit programs the **DISTRICT** offers to its employees. All benefits available to the **COUNTY'S** staff shall be exclusively provided by the **COUNTY** or by the **COUNTY'S** employee.

The **COUNTY** is solely responsible for compliance with all labor and tax laws pertaining to officers, agents and **COUNTY** employees and shall indemnify and hold the **DISTRICT** harmless from any failure by the **COUNTY** to comply with such laws. The **COUNTY'S** duties with respect to such personnel shall include, but are not limited to, the following:

9.2.1 Billing, collection, payroll services and tax withholding, and any other related services

9.2.2 Providing insurance coverage pursuant to Article 5 of this **AGREEMENT**.

9.2.3 Providing any and all employment benefits, including, but not limited to, annual leave, sick leave, paid holidays, health insurance, retirement benefits and disability insurance.

9.2.4 Complying with the Fair Labor Standards Act, 29 U.S.C. 201, et.seq., including payment of overtime in accordance with the Act.

9.2.5 Providing employee training for all activities necessary for job performance, except those functions that are unique to the **DISTRICT**, in which event, the **DISTRICT**, in its sole judgment and discretion, may provide training.

9.3 It is the intent and understanding of the Parties that this **AGREEMENT** is solely for the benefit of the **COUNTY** and the **DISTRICT**. No person or entity other than the **COUNTY** or the **DISTRICT** shall have any rights or privileges under this **AGREEMENT** in any capacity whatsoever, either as third-party beneficiary or otherwise.

9.4 The **COUNTY** shall not assign, delegate, or otherwise transfer its rights and obligations as set forth



SOUTH FLORIDA WATER MANAGEMENT DISTRICT

EXHIBIT "B"

GENERAL TERMS AND CONDITIONS

in this **AGREEMENT** without the prior written consent of the **DISTRICT**. Any attempted assignment in violation of this provision shall be void.

9.5 The **COUNTY** shall not pledge the **DISTRICT's** credit or make the **DISTRICT** a guarantor of payment or surety for any **AGREEMENT**, debt, obligation, judgement, lien, or any form of indebtedness.

9.6 The **DISTRICT** assumes no duty with regard to the supervision of the **COUNTY** and the **COUNTY** shall remain solely responsible for compliance with all safety requirements and for the safety of all persons and property at the site of **AGREEMENT** performance.

ARTICLE 10 - MBE PARTICIPATION

10.1 The **COUNTY** hereby acknowledges that no Minority Business Enterprises (MBE) participation level has been established for this **AGREEMENT**; however, both parties agree to provide the other advance notice of competitive contracts that may result from this **AGREEMENT** along with timelines for public notice and award of such contracts. In the event subsequent competitive contract awards do result in MBE participation, such participation shall be reported to the other party. Both the **COUNTY** and the **DISTRICT** will ensure compliance with the provisions of their respective program, laws, ordinances and policies and will support the other's initiatives to the extent allowed by law.

ARTICLE 11 - GENERAL PROVISIONS

11.1 Notwithstanding any provisions of this **AGREEMENT** to the contrary, the parties shall not be held liable for any failure or delay in the performance of this **AGREEMENT** that arises from fires, floods, strikes, embargoes, acts of the public enemy, unusually severe weather, outbreak of war, restraint of Government, riots, civil commotion, force majeure, act of God, or for any other cause of the same character which is unavoidable through the exercise of due care and beyond the control of the parties. Failure to perform shall be excused during the continuance of such circumstances, but this **AGREEMENT** shall otherwise remain in effect. This provision shall not

apply if the "Statement of Work" of this **AGREEMENT** specifies that performance by **COUNTY** is specifically required during the occurrence of any of the events herein mentioned.

11.2 Any inconsistency in this **AGREEMENT** shall be resolved by giving precedence in the following order:

- (a) Exhibit "A" Special Provisions, if applicable
- (b) Exhibit "B" General Terms and Conditions
- (c) Exhibit "C" Statement of Work
- (d) all other exhibits, attachments and documents specifically incorporated herein by reference

11.3 Failures or waivers to insist on strict performance of any covenant, condition, or provision of this **AGREEMENT** by the parties, their successors and assigns shall not be deemed a waiver of any of its rights or remedies, nor shall it relieve the other party from performing any subsequent obligations strictly in accordance with the terms of this **AGREEMENT**. No waiver shall be effective unless in writing and signed by the party against whom enforcement is sought. Such waiver shall be limited to provisions of this **AGREEMENT** specifically referred to therein and shall not be deemed a waiver of any other provision. No waiver shall constitute a continuing waiver unless the writing states otherwise.

11.4 Should any term or provision of this **AGREEMENT** be held, to any extent, invalid or unenforceable, as against any person, entity or circumstance during the term hereof, by force of any statute, law, or ruling of any forum of competent jurisdiction, such invalidity shall not affect any other term or provision of this **AGREEMENT**, to the extent that the **AGREEMENT** shall remain operable, enforceable and in full force and effect to the extent permitted by law.

11.5 This **AGREEMENT** may be amended only with the written approval of the parties hereto.

11.6 This **AGREEMENT** states the entire understanding and **AGREEMENT** between the parties and supersedes any and all written or oral representations, statements, negotiations, or contracts previously existing between the parties with respect to the subject matter of this **AGREEMENT**. The **COUNTY**



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recognizes that any representations, statements or negotiations made by **DISTRICT** staff do not suffice to legally bind the **DISTRICT** in a contractual relationship unless they have been reduced to writing and signed by an authorized **DISTRICT** representative. This **AGREEMENT** shall inure to the benefit of and shall be binding upon the parties, their respective assigns, and successors in interest.

ARTICLE 12 – SAFETY REQUIREMENTS

12.1 The **COUNTY** shall require appropriate personal protective equipment in all operations where there is exposure to hazardous conditions.

12.2 The **COUNTY** shall instruct employees required to handle or use toxic materials or other harmful substances regarding their safe handling and use, including instruction on the potential hazards, personal hygiene and required personal protective measures. A Material Safety Data Sheet (MSDS) shall be provided by the **COUNTY** to the **DISTRICT** on each chemical product used.

12.3 The **COUNTY** shall comply with the standards and regulations set forth by the Occupational Safety and Health Administration (OSHA), the Florida Department of Labor and Employment Security and all other appropriate federal, state, local or **DISTRICT** safety and health standards.

12.4 It is the **COUNTY's** sole duty to provide safe and healthful working conditions to its employees and those of the **DISTRICT** on and about the site of **AGREEMENT** performance.

12.5 The **COUNTY** shall initiate and maintain an accident prevention program which shall include, but shall not be limited to, establishing and supervising programs for the education and training of employees in the recognition, avoidance, and prevention of unsafe conditions and acts.

12.6 The **COUNTY** shall erect and maintain, as required by existing conditions and performance of the **AGREEMENT**, reasonable safeguards for safety and protection, including posting of danger signs and

other warnings, against hazards.

12.7 The **COUNTY** shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to:

12.7.1 employees on the work and other persons who may be affected thereby; including pedestrians, visitors, or traveling public;

12.7.2 the work, materials, and equipment to be incorporated therein; whether in storage on or off the site, under care, custody or control of the **COUNTY**, or the **COUNTY's** subcontractors; and

12.7.3 other properties at the site or adjacent thereto; such as trees, shrubs, lawns, walks, utilities, pavement, roadways, structures, building, vehicles, and equipment not designated for removal, relocation or replacement in the course of work.

12.8 The **COUNTY** shall provide first aid services and medical care to its employees.

12.9 The **COUNTY** shall develop and maintain an effective fire protection and prevention procedures and good housekeeping practices on the work site throughout the **AGREEMENT**.

12.10 *Emergencies:* In emergency affecting safety of persons or property on or about the site or as a result of the work; the **COUNTY** shall act, timely and with due diligence, to prevent threatened damage, injury, or loss.

12.11 *Environmental:* When the **COUNTY**, **COUNTY's** contractors, or subcontractors, use petroleum products, hazardous chemicals, or any other chemicals used on or about the site, the **COUNTY** shall be responsible for handling these chemical constituents in accordance with federal, state and local regulations during the terms of the **AGREEMENT**. For accidental discharges or releases onto the floor, air, ground, surface waters, ground waters, it shall be the **COUNTY's** sole responsibility to respond immediately to clean the site, at his expense, to the complete satisfaction of federal, state, local regulatory agencies and to the **DISTRICT** requirements.



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GENERAL TERMS AND CONDITIONS

12.12 The **DISTRICT** may order the **COUNTY** to halt operations under the **AGREEMENT**, at the **COUNTY's** expense, if a condition of immediate danger to the public and/or **DISTRICT** employees, equipment, or property exist. This provision shall not shift the responsibility or risk of loss for injuries or damage sustained from the **COUNTY** to the **DISTRICT**; and the **COUNTY** shall remain solely responsible for compliance with all federal, state and local safety requirements, provisions of this section, and safety of all persons and property on or about the site.

EXHIBIT "C"
Statement of Work

1.0 INTRODUCTION

In 2003, the South Florida Water Management District (District) sought funding from the Florida State Legislature for a series of water restoration projects stretching from Charlotte Harbor in the north to Naples Bay and the Ten Thousand Islands in the south. These projects were grouped into five Watershed Initiatives. Within the Charlotte Harbor Watershed Initiative were a number of projects addressing water flows in North Lee County.

While the Legislature did not fund the projects, the District included funding in its FY 2003 – 2004 budget in support of the Charlotte Harbor Watershed Initiative. Lee County has requested funding from the District for the following projects:

Powell Creek Drainage Improvements

Powell Creek is a natural waterway located in North Fort Myers. The creek meanders south for seven miles to the Caloosahatchee River. As a result of road drainage, improvements to Bayshore Road, and the construction of a bypass channel, the creek has become shallow and narrow in some areas. Parts of the downstream portion of the creek that historically were four to five feet deep are now less than three inches at low tide. Fine materials have settled out forming a false bottom up to four inches. The sediments in this area contain significantly high levels of heavy metals. In the upstream portion of the creek, the sediments are sandy and have collected in areas adjacent to roadways significantly reducing the conveyance capacity. In some areas, the channel that previously was approximately 50 feet wide has been reduced to less than ten feet. These locations have become overgrown with aggressive, invasive vegetation that further reduces the hydraulic efficiency of the creek.

Gator Slough – Yellow Fever Creek Interconnect

Construction of the Gator Slough Canal has been identified as adversely affecting the timing and volumes of stormwater flows to Matlacha Pass. In reviewing historic aerials (circa 1950), it is apparent that there are drainage features indicating flows from the northeast of the Gator Slough canal to the Yellow Fever Creek system. Ultimately, this project is intended to create a controlled interconnect between Gator Slough and Yellow Fever Creek that will enable freshwater flows to be redirected to improve sheet flow, water quality, and flood protection.

2.0 SCOPE OF WORK

Lee County shall be responsible for the selection and hiring of consultants, contractors, and other professionals necessary to complete the project. Lee County shall be responsible for securing all permits necessary for the project. The District shall review deliverables and provide input to the project as specified in the work breakdown structure and as agreed to by the District and Lee County Project managers.

Powell Creek Drainage Improvements

The primary objective of this project is to perform a baseline study to identify the extent of the

siltation problem in the creek. This information will be used to determine those areas where sediments can be removed to improve drainage through the creek and to reduce the possibility of re-suspension of the pollutant loads within the water column.

Gator Slough – Yellow Fever Creek Interconnect

The limits of the corridor to be studied will be bounded by Gator Slough Canal and Littleton Road. The northerly portion of the project, north of Del Prado, is envisioned as using the existing canal network within the Cape Coral subdivision of Units 84, 85 and 88. The southerly portion involves creation of a conveyance from Del Prado to the culvert crossing at Littleton Road.

3.0 WORK BREAKDOWN STRUCTURE

The District shall review deliverables and provide input to the project as specified in this work breakdown structure and as agreed to by the District and Lee County project managers.

Powell Creek Drainage Improvements

This project is being conducted to determine the extent of the sedimentation problems in Powell Creek. The resulting data are to be used to determine the location and extent of potential sediment removal projects. The project will include a baseline survey of the creek to specifically determine the locations of problem sedimentation. Additional work may include the collection of soil borings to be used in determining the depth of the sediments and pollutant loadings.

Task 1. Project Kickoff:

Within two weeks of the execution of the contract, Lee County will meet with District staff to discuss the project and make sure that both the County's project managers and the District project manager remain in agreement as to the expectations of the project and scope of work to be conducted.

Task 2. Project Work Plan:

Lee County will develop a Project Work Plan (PWP) that documents the County's understanding of the project and describes the proposed extent of the project. District approval of the PWP is required before additional tasks are performed. Should the District not approve of the PWP, the County and District shall make a good faith effort to resolve all outstanding issues. If no resolution is reached, Article 6 contract provisions will govern.

Task 3. Pre-construction activities:

Lee County shall be responsible for carrying out all pre-construction activities including, but not limited to, activities necessary to prepare and submit permit applications and activities necessary to prepare bid documents to secure the services of a licensed surveyor and a driller.

Pre-construction activities will be considered complete when all necessary permits have been issued and a notice to proceed has been issued to each contractor.

Task 4. Construction activities:

Lee County shall be responsible for carrying out all construction activities including all activities necessary to perform the baseline survey and soil borings. The deliverables from these activities will be submitted to the District as monthly progress reports and other supporting documents that indicate completion of the construction activities, including invoices from contractor(s).

Task 5. Final Report:

On completion of the project, Lee County shall prepare a final report summarizing the project. The report shall include copies of the baseline survey and the soil boring logs. In addition, the report will include a map identifying and detailing problem areas and recommendations for a future sediment removal project. All documents will be provided in digital format as well as hard copy.

Gator Slough – Yellow Fever Creek Interconnect

This project will determine alternatives to route excess fresh water flows to Yellow Fever Creek from the Gator Slough Canal and, upon completion of a preliminary route survey, delineate possible land acquisitions along the alignment.

Task 1. Project Kickoff:

Within two weeks of the execution of the contract, Lee County will meet with District staff to discuss the project and make sure that both the County's project managers and the District project manager remain in agreement as to the expectations of the project and scope of work to be conducted.

Task 2. Project Work Plan:

Lee County will develop and submit to the District a Project Work Plan (PWP). The PWP shall document the Lee County's understanding of the project and shall describe the work to be undertaken in addressing property acquisition and route corridor selection. District approval of the PWP is required before additional tasks are performed.

Task 3. Pre-construction activities: Should say that Lee County will do this

Lee County shall be responsible for carrying out all pre-construction activities including, but not limited to: securing easements or purchasing land necessary to create a controlled interconnect between Gator Slough and Yellow Fever Creek; activities necessary to prepare

and submit permit applications; and activities necessary to prepare bid documents. Pre-construction activities will be considered complete when all necessary permits have been issued and a notice to proceed has been issued to each contractor.

Task 4. Construction Activities: Should say that Lee County will do this

Lee County shall be responsible for carrying out all construction activities including all activities necessary to prepare plans and specifications, construction, or improvements. Lee County will submit quarterly progress reports and other supporting documents indicating the state of the construction activities, including invoices from contractors, to the District.

Task 5. Final Report:

On or before September 30, 2004, Lee County shall prepare an annual report summarizing land purchases and surface water management improvements. The report shall also include a recommended schedule of future project activities and deliverables. All documents will be provided in digital format as well as hard copy.

SCHEDULE OF PAYMENTS AND DELIVERABLES

Powell Creek Drainage Improvements

Task 1	Meet with District staff to discuss the project and assure that County and District project managers are in agreement as to expectations and scope of work.	N/A
Task 2	Develop a Project Work Plan (PWP) that documents the County's understanding of the project and describes the proposed extent of the project. District approval of the PWP is required before additional tasks are performed.	\$ 2,500
Task 3	Prepare and submit permit applications. Prepare bid documents to secure the services of a licensed surveyor and a driller. Pre-construction activities will be considered complete when all necessary permits have been issued and a notice to proceed has been issued to each contractor.	\$35,000
Task 4	Perform the baseline survey and soil borings. The deliverables from these activities will be submitted to the District as monthly progress reports and other supporting documents that indicate completion of the construction activities, including invoices from contractor(s).	\$75,000
Task 5	Prepare a final report summarizing the project that includes copies of the baseline survey, soil boring logs, a map identifying and detailing problem areas, and recommendations for a future sediment removal project. All documents will be provided in digital format as well as hard copy.	\$12,500
TOTAL		\$125,000

Gator Slough – Yellow Fever Creek Interconnect

Task 1	Meet with District staff to discuss the project and assure that County and District project managers are in agreement as to expectations and scope of work.	N/A
Task 2	Develop and submit a Project Work Plan (PWP) to the District. The PWP shall document Lee County's understanding of the project and shall describe the work to be undertaken in addressing property acquisition and route corridor selection. District approval of the PWP is required before additional tasks are performed.	\$5,000
Task 3	Begin work on securing easements or land purchases necessary to create a controlled interconnect between Gator Slough and Yellow Fever Creek. Prepare and submit permit applications. Prepare bid documents.	\$50,000
Task 4	Prepare plans and specifications and begin construction or improvements. Lee County will submit quarterly progress reports and other supporting documents indicating the state of the construction activities, including invoices from contractors, to the District.	\$80,000
Task 5	Prepare an annual report summarizing land purchases, surface water management improvements and a recommended schedule of future project activities and deliverables. All documents will be provided in digital format as well as hard copy.	\$15,000
TOTAL		\$150,000