

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

**Blue Sheet No. 20050367**

**1. ACTION REQUESTED/PURPOSE:** Execute Contract OT050302 with South Florida Water Management District (District) for North West Lee County Surface Water Management Project. The total project cost is \$160,000 including the District contribution of \$139,000. Approve Budget Transfer from SFWMD Grant Projects (Project 208534) to North West Lee County Surface Water Project (Project 208587) in the amount of \$160,000 and amend the FY04/05-08/09 CIP accordingly.

**2. WHAT ACTION ACCOMPLISHES:** Provides for District funding 86% of a drainage and water quality improvement project in the Burnt Store/Gator Slough area.

**3. MANAGEMENT RECOMMENDATION:** Staff supports approval.

**4. Departmental Category:** 08

*C8A*

**5. Meeting Date:** *03-29-2005*

**6. Agenda:**

- Consent
- Administrative
- Appeals
- Public
- Walk-On

**7. Requirement/Purpose:** (specify)

- Statute
- Ordinance
- Admin. Code
- Other
- Agreement

**8. Request Initiated:**

Commissioner \_\_\_\_\_  
 Department Public Works  
 Division Natural Resources  
 By: Roland Ottolini, P.E.

**9. Background:**

On November 5, 2002, the Board of Commissioners awarded CN-02-19, Northwest Lee County Surface Water Management Plan, to Boyle Engineering Corporation. Analysis provided by Boyle identifies issues of concern and service deficiencies for flooding along Burnt Store Road. The District receives funding from the Florida State Legislature for watershed initiatives and restoration projects in Southwest Florida and proposes using a portion of that funding to implement some of the recommendations of the aforementioned study.

Scope of the project includes installation of a new rain gauge with telemetry instrumentation, replacement of culverts under Burnt Store Road, replacement of drop structures that drain roadside ditches to Gator Slough Canal and improvement to roadside ditches along Burnt Store Road. Estimated project costs total \$160,000 with Lee County contributing \$21,000 for project management and rain gauge installation or construction costs. The District will provide \$139,000 of total project costs.

Funding will be made available in account no. 20858730100.

Attachments: Two (2) original agreements OT050302.

**10. Review for Scheduling:**

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
					Analyst	Risk	Grants	Mgr.	
<i>J. Mueller 3-15-05</i>	<i>N/A CL</i>	<i>N/A</i>	<i>N/A</i>	<i>K. S. 3/15/05</i>	<i>3-16-05</i>	<i>3/16/05</i>	<i>3/16/05</i>	<i>3/16/05</i>	<i>J. Mueller 3-15-05</i>

**11. Commission Action:**

- Approved
- Deferred
- Denied
- Other

Rec. by CoAtty  
 Date: *3/15/05*  
 Time: *2:55*  
 Forwarded To: \_\_\_\_\_  
*3/15/05*

RECEIVED BY  
 COUNTY ADMIN: \_\_\_\_\_  
*3-16-05*  
*9:08 am*  
 COUNTY ADMIN  
 FORWARDED TO: \_\_\_\_\_  
*3/17/05*  
*2011*





ORIGINAL

# SOUTH FLORIDA WATER MANAGEMENT DISTRICT AGREEMENT

<b>THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT</b> (hereinafter referred to as <b>DISTRICT</b> ) <b>HEREBY ENTERS INTO THIS AGREEMENT WITH:</b> <b>Name: LEE COUNTY BOARD OF COUNTY COMMISSIONERS</b> <b>Address: 1500 Monroe Street, 4<sup>th</sup> Floor</b> <b>Fort Myers, FL 33901</b>  <b>Project Manager: Rolando Ottolini</b> <b>Telephone No: 239-479-8109</b> <b>Fax No:</b> <b>Hereinafter referred to as: COUNTY</b>	This number must appear on all Invoices and Correspondence  <b>OT050302</b>
	<b>MBE PARTICIPATION: 0 %</b>

**PROJECT TITLE: NORTHWEST LEE COUNTY SURFACE WATER MANAGEMENT**

- 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 & 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                   | Exhibit "N" - Not Applicable |

**TOTAL DISTRICT CONSIDERATION: \$ \$139,000.00**      **AGREEMENT TYPE: Not-to-Exceed**

**Multi-Year Funding (If Applicable)**  
 Fiscal Year: October 1, 2005 – September 30, 2006 \$ 24,000.00      Fiscal Year: October 1, 2007 – September 30, 2008 \$ 5,000.00\*  
 Fiscal Year: October 1, 2006 – September 30, 2007 \$ 110,000.00\*  
 \*Subject to District Governing Board Annual Budget Approval

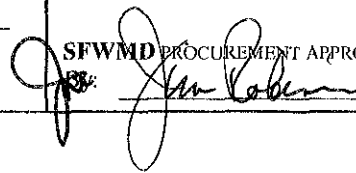
**TERM: Two (2) Years**      **EFFECTIVE DATE: Last Date of Execution by the Parties**

<b>District Project Manager:</b> Steven Sentes	<b>District Contract Specialist:</b> Jim Robinson
<b>Telephone No:</b> 239-338-2929	<b>561-682-6373</b>
<b>Fax No.</b> 239-338-2936	<b>Fax No.:</b> 561-682-5373

<b>SUBMIT INVOICES AND NOTICES TO THE DISTRICT AT:</b>	<b>SUBMIT NOTICES TO THE COUNTY AT:</b>
South Florida Water Management District 3301 Gun Club Road West Palm Beach, Florida 33406 <u>Attention:</u> Procurement Department	Lee County Board of County Commissioners Natural Resources 1500 Monroe Street, 4 <sup>th</sup> Floor Fort Myers, FL 33901 Attention: Rolando Ottolini

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

<b>LEE COUNTY BOARD OF COUNTY COMMISSIONERS</b>	<b>SOUTH FLORIDA WATER MANAGEMENT DISTRICT BY ITS GOVERNING BOARD</b>
Accepted By: _____ Signature of Authorized Representative	Accepted By: _____ Frank Hayden, Procurement Director
Title: _____	Date: _____
Date: _____	

SFWMD PROCUREMENT APPROVED  
  
 Date: 2-14-05



# 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 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.

The DISTRICT shall make any such adjustment



# SOUTH FLORIDA WATER MANAGEMENT DISTRICT

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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 the DISTRICT's Project Manager. All notices required by this **AGREEMENT** shall be considered



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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 indemnify, and pay on behalf, 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 termination shall be effected by delivery to the **COUNTY** of a Notice of Termination specifying the extent to which performance of work under the



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



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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 \$1,000.00 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.

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





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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 **COUNTY** crime or has been placed on the discriminatory vendor list, a period longer than 36 months must have 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**, 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 included on the list of Specially Designated Nationals and Blocked Persons (SDN List) which is administered by the U.S. Department of Treasury, Office of Foreign Assets Control. 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. The **DISTRICT**, in the event of such termination, shall not incur any liability to the

**COUNTY** for any work or materials furnished.

8.6 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**.

8.7 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.

8.8 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**.

8.8.1 Pursuant to Sections 119.07(3)(o), and 1004.32 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



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Courts and to immediately serve notice of the same upon the Licensor to protect the Licensor's claimed exemption under the Statute.

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

8.10 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.

8.11 The **DISTRICT** is a governmental agency 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, 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



# SOUTH FLORIDA WATER MANAGEMENT DISTRICT

## EXHIBIT "B"

### GENERAL TERMS AND CONDITIONS

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 **COUNTY** 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 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 - COUNTY'S TEAM

10.1 **COUNTY'S TEAM** -The **DISTRICT** values spreading the work to many contractors and the **DISTRICT** supports the team that is awarded a contract. If a **COUNTY** has subcontractors, the prime was awarded the contract partially based on its ability as well as the ability of its subcontractors to provide the skills and equipment to perform the scope of work.

The **DISTRICT** does not expect changes to the team unless there are performance issues. This concept is paramount to fair and open competition. Requested changes to the **COUNTY'S** team, accompanied by supportive documentation on a firm's inability to perform, must be submitted to the **DISTRICT'S** Procurement Department for review and approval,

prior to any team changes.

The **COUNTY** should take all necessary and reasonable steps to keep the initial team in place. Additionally, the **COUNTY** should keep its commitment to its subcontractors regarding the portion of work that the subcontractors are to perform for the duration of the **AGREEMENT**.

At any time during the term of this **CONTRACT**, the **DISTRICT** may request information on the status of the **COUNTY's** team. The **COUNTY** shall notify the **DISTRICT** immediately of any change in business ownership, management, or control of the **COUNTY** or any of its subcontractor(s), that could affect the **COUNTY's** status or the **COUNTY's** ability to comply with the **AGREEMENT**.

10.2 The **COUNTY** shall identify all firms which will be utilized as subcontractors or joint venture partners. Each subcontractor and prime shall be listed in the *Team Composition Plan (Plan)* and submitted to the **DISTRICT**. The listing of the subcontractor's in the *Team Composition Plan* shall constitute the **COUNTY's** representation to the **DISTRICT** that the firms are technically and financially qualified and available to perform the assigned work.

The *Team Composition Plan* as well as the Organization Chart shall be submitted to the **DISTRICT** by the **COUNTY** in its proposal as part of the *Compliance Disclosure Form*.

10.3 **Invoicing**. The **COUNTY** agrees to submit with each invoice, a completed *Team Composition Plan* form, attached hereto as Exhibit "E" and made a part of this **AGREEMENT**. The **COUNTY** shall submit a completed *Final Team Composition Plan* form, attached hereto as Exhibit "F" and made a part of this **AGREEMENT**, with the final invoice.

10.4 **Compliance**. The **DISTRICT** shall monitor and evaluate compliance with the provisions of the **AGREEMENT**. During the term of the **AGREEMENT**, the **COUNTY** shall comply with the *Team Composition Plan* which can only be amended with the prior written approval from the



# SOUTH FLORIDA WATER MANAGEMENT DISTRICT

## EXHIBIT "B"

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DISTRICT's Procurement Department. Compliance for use of subcontractors shall include tasks and proportionate dollar amounts throughout the term of the AGREEMENT, including amendments, change orders, and work orders. The COUNTY shall maintain the level of subcontractor utilization as established in the COUNTY's *Team Composition Plan*.

To ensure that all subcontract requirements under this AGREEMENT are met, the COUNTY's subcontracting efforts throughout the performance of the AGREEMENT shall be reviewed by the DISTRICT. The COUNTY shall advise the DISTRICT of any situation in which regularly scheduled payments are not made to any subcontractor(s).

Nothing in ARTICLE 10 of this AGREEMENT implies a requirement that a COUNTY work with subcontractors if the COUNTY can perform the work without the use of subcontractors.

10.5 Prohibition of Not-To-Compete Agreements. The COUNTY is prohibited from entering into any agreements with a subcontractor in which the subcontractor has agreed not to provide subcontracting quotations to other respondents or potential respondents.

10.6 Records. The COUNTY shall maintain records, and information necessary to document compliance with AGREEMENT requirements and the DISTRICT shall have inspection rights.

#### 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, COUNTY 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,



# **SOUTH FLORIDA WATER MANAGEMENT DISTRICT**

## **EXHIBIT "B"**

### **GENERAL TERMS AND CONDITIONS**

statements, negotiations, or contracts previously existing between the parties with respect to the subject matter of this **AGREEMENT**. The **COUNTY** 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 comply with all applicable Federal, State and local safety standards, regulations applicable to the work performed pursuant to this **AGREEMENT**.

12.2 The **COUNTY** shall be responsible for the compliance of its subcontractors with all applicable Federal, State and local safety standards/regulations applicable to the work performed pursuant to this **AGREEMENT**.

**EXHIBIT "C"**  
**STATEMENT OF WORK**

**NORTH WEST LEE COUNTY SURFACE WATER MANAGEMENT**

**1. INTRODUCTION**

In 2004, the South Florida Water Management District (District) received funding from the Florida State Legislature for a series of five watershed initiatives and restoration projects in Southwest Florida with project limits from Charlotte Harbor to Naples Bay and the Ten Thousand Islands. The Charlotte Harbor Basin is included as one of the five initiatives.

The northwest region of Lee County (County) consists of four principal watersheds: Yucca Pen Creek, Durden Creek, Greenwell Branch, and Longview Run. All these watersheds drain into Charlotte Harbor Bay that lies within the Gulf of Mexico. Yucca Pen Creek and Durden Creek have a significant part of their upstream drainage area in Charlotte County. Burnt Store Road is the major road crossing these streams and delineates one of the boundaries between the City of Cape Coral and the County.

**2. HISTORICAL OVERVIEW**

There is limited development within these watersheds except mining, especially in areas west of Burnt Store Road. Residential development is anticipated in the watershed areas east of Burnt Store Road in the coming years. There are no formal surface water drainage systems in the areas east of Burnt Store Road. The watersheds conveyances are primarily by sheet flow and/or via shallow streams until water reaches Burnt Store Road.

The County has proposed development of a surface water management plan for the northwest region including an overall assessment of existing conditions. Boyle Engineering Corporation was retained for this project in 2002. The main focus of this analysis was the development of GIS data necessary for surface water management and hydrologic/hydraulic modeling of the surface water system. The modeling of the system allows the identification of issues of concern and existing, as well as future level of service deficiencies for flooding along Burnt Store Road. Water quality modeling was performed to assess the existing and future quality of runoff compared to existing water quality standards. Potential surface water improvement projects were identified within these watersheds.

**3. PROJECT GOALS**

The purpose of this project is to improve drainage and water quality in the region by implementing some of the recommendations proposed by the surface water management analysis conducted for the northwest region of the county.

#### **4. ENVIRONMENTAL ASSESSMENT PROJECT AREA**

Burnt Store Road acts as a berm and divides the land in the northwest part of the county in the east-west direction. A fairly large tract of conservation land owned by the state is located east of the roadway. This part of the county is relatively undeveloped at this time. However, development in the region is forthcoming. The roadway intercepts sheet flow over the conservation land. Mining activities on both sides of the road appear to influence any kind of surface water management improvements in the area. Most of the existing wetlands are located on the east side of the roadway. The roadway has been flooded during a number of occasions in the recent past. Many of the existing conveyances do not seem to have sufficient capacity to carry peak runoff from a design storm event.

#### **5. SCOPE OF WORK**

The scope of work includes implementation of some of the recommendations resulting from the Northwest Lee County Surface Water Management Study. These recommendations include installation of a new rain gauge with telemetry instrumentation, replacement of culverts under Burnt Store Road, replacement of drop structures that drain roadside ditches to Gator Slough Canal, and improvement to roadside ditches along Burnt Store Road.

Lee County shall be responsible for the hydrology and hydraulics, ground water movement, water management operations, engineering design, legal issues, project management, data management, GIS, and other areas required under this scope. In accordance with State Statutes and County policies and procedures, the County may acquire the services of a consultant to assist in the performance of the work.

The District's Project Manager will organize and plan quarterly project meetings, as needed throughout the term of the project. The purpose of the meetings will be to obtain status updates, review deliverables, review related projects, and discuss any outstanding issues. The County will attend and participate in all project team meetings. The County will also prepare summaries (with action items noted) for all project team meetings. Meeting summaries will be provided to the Project Manager by the County within 5 working days following each meeting. The Project Manager will provide the County with comments to be incorporated into updated deliverables.

The County shall be familiar with, and adhere to all state laws, regulations, and policies that govern the preparation, scope, and recommendations of water resources planning projects. This will include, but not be limited to, the Florida Government in the Sunshine Act, The National Environmental Policy Act, Endangered Species Act, and the U.S. Fish and Wildlife Coordination Act.

All deliverables must be submitted in electronic formats that are compatible with District software and hardware.

In addition, the County shall provide five (5) hard copies of all deliverables. Where required to more effectively communicate information, color copies will be provided.

## **7. WORK BREAKDOWN STRUCTURE**

### **Task 1.0 Project Kick-off Meeting**

The County shall coordinate a project kick-off meeting between County representatives, including the designated County project manager and District representatives within two weeks of the execution of the Agreement. This meeting shall serve to introduce project representatives and establish lines of communication. The location for the meeting shall be the District's Lower West Coast Service Center located in Fort Myers, Florida.

The County shall also prepare and submit a draft Project Work Plan, one week prior to the kick-off meeting, providing a detailed layout of objectives, individual tasks, deliverables and all other pertinent information required to complete each task of this project. The District's Project Manager, members of the Project Team and technical staff from the District will review the draft Project Work Plan and the District will provide written comments to the County.

#### **Task 1 Deliverable**

Within two (2) weeks of the kick-off meeting the County shall provide the meeting minutes to the District.

### **Task 2.0 Project Work Plan (PWP)**

Within eight weeks of receipt of the District comments, the County will incorporate the comments from the District and resubmit the Project Work Plan to the District in a final version.

The final, District approved, Final Project Work Plan shall become a binding document when the District's Project Manager has agreed to the Plan in writing. The County shall then proceed with the performance of this Agreement in accordance with the Final Project Work Plan and the requirements of this Statement of Work. In the event of any conflict between the Statement of Work and the Final Project Work Plan this Statement of Work shall take precedence.

#### **Task 2 Deliverable**

Within eight weeks of the execution of the Agreement the County shall provide the District a copy of the final version of the PWP.



### **Task 3.0 Preliminary Design Phase**

The County shall provide documentation of design alternatives and copies of the preliminary designs to the District within twelve (12) weeks of execution of the Agreement. The document shall summarize the data acquisition and evaluation of the design that was undertaken to produce detail design. The County shall also install a new rain gauge with telemetry instrumentation in the project area. The District will provide review comments to the County within two (2) weeks of receipt of the deliverables.

#### **Task 3 Deliverable**

The County shall provide documentation of the preliminary designs and evidence of installation of the rain gauge within 16 weeks of Agreement execution.

### **Task 4.0 Detailed Design Phase**

The County shall incorporate the comments or meet with District staff to discuss design recommendation to be incorporated. The County shall provide copies of the final detailed design to the district within twenty-six (26) weeks of the execution of the agreement. Along with the design details, the final alternative shall describe the operation and maintenance of the project.

#### **Task 4 Deliverable**

The County shall provide copies of the final detailed designs including a description of the operation and maintenance of the project.

### **Task 5.0 Pre-construction Activities**

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

#### **Task 5 Deliverable**

Within 32 weeks of Agreement execution, the County shall provide the District with a listing of permit applications, names of subcontractors and a copy of the notice to proceed with construction activities for each subcontractor.

### **Task 6.0 Construction Activities**

Construction activities will include, but not be limited to, all activities such as mobilization, site clearing and preparation, establishment of control (datum), excavation or earth moving work, installation of pipes, pumps, vegetation, site restoration and equipment demobilization. The deliverables from these activities will be submitted to the District as quarterly progress reports and other supporting documents that indicate completion of the construction activities, including invoices from contractor(s). Upon completion of construction, the County shall notify the District's Project Manager and the Project Manager shall conduct an inspection of the project prior to final acceptance.

**Task 6 Deliverables**

During the construction of the project the County shall prepare and submit quarterly reports on the status of the construction.

**EXHIBIT "D"**  
**SCHEDULE OF PAYMENTS AND DELIVERABLES**

- A summary deliverable schedule for each task associated with this project is set forth below.
- All deliverables submitted hereunder are subject to review by the District. The District shall maintain full responsibility and ultimate authority for providing all project direction to Lee County (County), including final approval of all project deliverables.
- Acceptability of all work will be based on the judgment of the District that the work is technically credible, accurate, precise and timely.
- The District's share of the Northwest Lee County Surface Water Management project is \$139,000.00.

**North West Lee County drainage and water quality improvements**

<b>Task #</b>	<b>Deliverable</b>	<b>Time to complete from contract execution</b>	<b>District Payment</b>
Task 1	Kickoff meeting minutes	2 weeks	\$1,000.00
Task 2	Project work plan	8 weeks	\$ 1,000.00
Task 3	Preliminary Design and installation of rain gauge	16 weeks	\$ 4,000.00
Task 4	Detailed Design/operation and maintenance	26 weeks	\$ 12,000.00
Task 5	Permits and Notices to Proceed	32 weeks	\$ 6,000.00
Task 6	Construction status by quarter	84 weeks	Qtr. 1 \$27,500 Qtr. 2 \$27,500 Qtr. 3 \$27,500 Qtr. 4 \$27,500
Task 7	Final completion	104 weeks	\$ 5,000.00
<b>Total</b>			<b>\$ 139,000.00</b>