

INTERLOCAL AGREEMENT FOR INTERCONNECTION TO YELLOW FEVER CREEK

THIS Interlocal Agreement for Interconnection to Yellow Fever Creek ("Agreement") is made and entered into this 19th day of February of 2019, by and between, Lee County, a political subdivision of the State of Florida ("County"), and the City of Cape Coral, a Florida municipal corporation, of the State of Florida ("City"), collectively known as the parties ("Parties" or "Party").

RECITALS:

WHEREAS, the construction of Gator Slough Canal in North Fort Myers and northeast Cape Coral has altered the historic flow patterns to the Caloosahatchee River and Charlotte Harbor, including Yellow Fever Creek; and

WHEREAS, there is a desire to restore such flows to the extent reasonably practicable without negatively impacting the City's surface water supplies; and

WHEREAS, the County and the City desire to enter into this Agreement for the purpose of outlining the responsibilities for design, permitting, construction, operation and maintenance of those certain surface water management systems within Yellow Fever Creek, known as the YFC Interconnect System ("YFC" or "YFC System") and Weir #29 Interconnect System ("Weir 29" or "Weir 29 System"), collectively known as the Interconnect System ("Interconnect System") and generally depicted on the concept plans attached as Exhibits "A" and "B", both being incorporated herein by reference and collectively known as the Concept Plan ("Concept Plan"); and

WHEREAS, the Concept Plan also depicts the following system components to be constructed and utilized for the Interconnect System: 1) a pump station on the 0.3 ± acre City-owned parcel on the north side of Del Prado Boulevard; 2) a 15.0± acre lake/reservoir to be constructed on City-owned property; 3) a 5.0± acre fill storage area for excavated material from the lake/reservoir, located on City-owned property to the east of the lake/reservoir; 4) a companion temporary haul path between the lake/reservoir and the fill storage area; and Weir 29 (collectively known as the "System Components"); and

WHEREAS, the Concept Plan also depicts the intended outfall from the depicted lake/reservoir, extending in a generally southerly direction to Yellow Fever Creek, and the outfall from Weir 29, that will also flow to Yellow Fever Creek; and

WHEREAS, the Interconnect System will be designed, constructed and operated to help reduce excess water at the North Spreader Waterway System and Matlacha Pass; and

WHEREAS, the Interconnect System will be designed, constructed and operated to also help reduce excess water and the reduction of fresh water flow into Matlacha Pass; and

WHEREAS, such excess waters will be stored and treated prior to discharge into the Caloosahatchee River; and

WHEREAS, the City's irrigation system is recognized by the South Florida Water Management District ("*SFWMD*") as an Alternative Water Supply ("*AWS Irrigation System*"); and

WHEREAS, the Weir 29 System will be designed, constructed and operated to store excess waters and will be utilized in the City's AWS Irrigation System; and

WHEREAS, the YFC System may will be designed, constructed and operated to help to restore the natural hydrologic flow to Matlacha Pass and provide for wetland enhancement; and

WHEREAS, the YFC System will provide enhancement of groundwater recharge; and

WHEREAS, the Interconnect System will provide an overall improvement to the water quality of Matlacha Pass, Charlotte Harbor, the Caloosahatchee River and additional estuaries and water bodies in Lee County; and

WHEREAS, the City and County will cooperate in the permitting process, when necessary, joining as co-permittees to achieve the intended purposes of this Agreement; and

WHEREAS, both the City and County must agree on the approval of designs and any future modifications to the Interconnect System as depicted on the Concept Plan; and

WHEREAS, the County intends to obtain water quality credits from Florida Department of Environmental Protection ("*FDEP*") towards the County's Total Maximum Daily Load ("*TMDL*") obligation as a result of implementation of the YFC System; and

WHEREAS, the City and County are duly empowered pursuant to Florida Statutes §163.01, to enter into this Agreement for the sharing of certain governmental powers and obligations.

NOW THEREFORE, in consideration of the mutual benefits and promises contained herein, the sufficiency of which is acknowledged, the Parties hereby agree as follows:

I. INCORPORATION OF RECITALS.

The Recitals as set forth above are true and are incorporated into the terms of this Agreement as if set out herein at length.

II. OWNERSHIP.

The County will be granted an easement and will be responsible for maintenance and operation of the YFC System located in the City of Cape Coral. This will include, but is not be limited to, use of telemetry monitoring instruments, a pump operated storm water transfer station (with electrical control panel), and additional components. A portion of the resulting Interconnect System will be placed within City's public road rights-of-way.

The City will own and be responsible for maintenance and operation of the Weir 29 System. The will include, but not be limited to, any weir structure(s), gates, motor control systems, telemetry monitoring instrument, system control instruments and additional appurtenant components. The Weir 29 structure will be constructed within the City's road rights-of-way.

III. OPERATION SCHEDULE FOR THE INTERCONNECT SYSTEM.

The City and County agree to the System Operation and Maintenance Protocol ("*Operation Protocol*") as detailed in Exhibit "C", attached hereto and incorporated herein by reference. This Operation Protocol will be subject to an annual review by both the City and County. Should any term or requirement within the Operation Protocol be changed as a result of the aforesaid annual review, both the City and County must agree in writing to any resulting change to the Operation Protocol. The Lee County Division of Natural Resources Director and the City of Cape Coral Utilities Director will have the authority to mutually approve any changes to the Operation Protocol.

IV. MAINTENANCE AND OPERATION OF THE INTERCONNECT SYSTEM.

- A. The County will, at its sole cost and expense, maintain and operate the YFC System throughout its expected useful life.
- B. The City will, at its sole cost and expense, maintain and operate the Weir 29 System throughout its expected useful life.

- C. In maintaining the YFC System, the County will be responsible to perform all activities necessary to keep the YFC System fully and properly functioning at all times for its normal expected useful life in accordance with the original design thereof, whether necessitated by normal wear and tear, accidental or intentional damage, or acts of nature. Said maintenance will include, but not be limited to, routine inspection and testing, preventative maintenance, emergency maintenance, replacement of any component parts of the YFC System, and the locating/relocating of facilities as may be necessary.
- D. In maintaining the Weir 29 System, the City will be responsible to perform all activities necessary to keep the Weir 29 System fully and properly functioning at all times for its normal expected useful life in accordance with the original design thereof, whether necessitated by normal wear and tear, accidents or intentional damage, or acts of nature. Said maintenance will include, but not be limited to, routine inspection and testing, preventative maintenance, emergency maintenance, replacement of any component parts of the Weir 29 System, and the locating/relocating of facilities as may be necessary.
- E. As the owner and operator of the YFC System, the County will be solely responsible for any local, state or federal permit violations and fines or penalties that may be assessed. The County will promptly remedy any permit violation(s) and failure to do so will constitute a material breach of this Agreement.
- F. As the owner and operator of the Weir 29 System, the City will be solely responsible for any local, state or federal permit violations and fines or penalties that may be assessed. The City will promptly remedy any permit violation(s) and failure to do so will constitute a material breach of this Agreement.

V. TOTAL MAXIMUM DAILY LOAD.

The County intends to obtain water quality credits from FDEP for the TMDL's resulting for the implementation of the YFC System as depicted in the Concept Plan. The County will construct the lake and receive the TMDL credits and agrees to offset the City's decreased flows from the Weir 29 System. As approved by Florida permitting agencies.

VI. ACCESS AND EASEMENTS.

- A. To the extent any portion of the resulting YFC System is located on City property, the City agrees to timely provide those easements necessary for access, maintenance and operation of the YFC System.
- B. The City will be responsible for acquiring easements necessary for access maintenance and operation of the Weir 29 System.
- C. In the event either the YFC System or the Weir 29 System must be relocated or removed due to other infrastructure installation, the cost of relocation or removal of these systems will become the responsibility of the party requesting relocation or removal.

VII. OPERATING COSTS.

- A. In addition to the costs of maintaining the YFC System, the County will be responsible for all costs of operating the YFC System, including, but not limited to, all costs for electrical power consumed by the YFC System and all other electrical charges.
- B. In addition to the costs of maintaining the Weir 29 System, the City will be responsible for all costs of operating the Weir 29 System, including, but not limited to, all costs for electrical power consumed by the Weir 29 System and all other electrical charges.

VIII. RECORD KEEPING.

- A. For YFC System, the County agrees to keep records of all activities performed and costs expended pursuant to this Agreement. All such records will be deemed to be public records subject to the provisions of Chapter 119, Florida Statutes
- B. For Weir 29 System, the City agrees to keep records of all activities performed and costs expended pursuant to this Agreement. All such records will be deemed to be public records subject to the provisions of Chapter 119, Florida Statutes.

IX. DEFAULT.

If either Party fails to fulfill its obligations under this Agreement, that party will be considered to be in default. The other Party to the Agreement must provide written notice of the default and an opportunity to cure the default within 30 days of receipt of said notice. If the defaulting Party fails to cure the default within said time period, the other party may terminate this Agreement for cause or breach. The failure of either party to exercise its rights in the event of any breach will not constitute a waiver of such rights. Neither the City nor the County will be deemed to have waived any failure to perform by the other party unless such waiver is in writing and signed by the waiving Party. In any litigation arising out of this Agreement, the prevailing Party will be entitled to recover reasonable attorney's fees and costs from the non-prevailing Party.

X. ASSUMPTION OF LIABILITY.

- A. Each Party hereby agrees to assume liability for the negligent acts of its own officers, employees and agents arising directly, or indirectly, from that Party's activities pursuant to the terms of this Agreement and will defend all claims, causes of action, damages, suits or other actions which any person may pursue based on the willful or negligent acts of that Party's officers, employees or agents during the term of this Agreement. Neither Party assumes any liability beyond that allowed by §768.28, Florida Statutes.
- B. Additionally, both Parties agree when project construction, maintenance or monitoring is not performed by either County or City employees, only licensed and insured consultants and contractors with an insurance policy in an amount not less than One Million Dollars, will be used. Further, either Party may request to be named as an "*additional insured*" if the work is being performed on their respective property by a consultant or contractor engaged by the other Party.

XI. FORCE MAJEURE.

Neither the City nor the County will be liable to the other for any failure to perform under the terms of this Agreement to the extent such performance is prevented by an act of God, war, riots, natural catastrophe, or other event beyond the control of the non-performing party and which could not have been avoided or overcome by the exercise of due diligence, provided that the party claiming the excuse from performance has (a) promptly notified the other party of the occurrence and its estimate duration, (b) promptly remedied or mitigated the effect of the occurrence to the extent reasonably possible, and (c) resumed performance as soon as possible.

XII. TIME AND NOTICES.

- A. Time is of the essence in the performance of all obligations under this Agreement.
- B. All notices required pursuant to the terms hereof may be sent by first class United States Mail, facsimile transmission, hand delivery, or express mail and will be deemed to have been received by the end of 5 business days from the proper sending thereof unless proof of prior actual receipt is provided.
- C. Unless otherwise notified in writing, notices will be sent to the following addresses:

If to City of Cape Coral:

Utilities Director
City of Cape Coral
Post Office Box 150027
Cape Coral, Florida 33915-0027

With a copy to the City Attorney.

If to Lee County:

Director, Division of Natural Resources
Lee County Board of County Commissioners
Post Office Box 398
Fort Myers, Florida 33902-0398

With a copy to the County Attorney.

XIII. TERM OF AGREEMENT.

The term of this Agreement will be from the date first written above, and will continue until terminated according to the provisions contained herein.

XIV. NO THIRD PARTY BENEFICIARIES.

Nothing in this Agreement may be construed as creating any rights or entitlement that inure to the benefit of any person or entity not a party of this Agreement.

XV. ASSIGNMENT.

Neither party has the right to assign or transfer this Agreement, in whole or in part, without the prior written agreement of the other party.

XVI. TERMINATION.

This Agreement may only be terminated by mutual agreement of the Parties. If the Interconnect System is intended to continue to be operated after termination of this Agreement, the resulting agreement to terminate must include a mutual agreement concerning responsibility for operation and maintenance of the Interconnect System. If the Parties contemplate that the Interconnect System will no longer be operated and maintained upon termination of this Agreement, then such agreement to terminate will be subject to the consent of any and all state and federal agencies with jurisdiction over the Interconnect System. If all or any portion of the Interconnect System is to be removed upon termination of this Agreement, the cost of removal will be shared equally unless otherwise agreed.

XVII. AMENDMENTS.

With exception to an annual change in Operation Schedule as provided herein, this Agreement may only be amended by written amendment approved with the same formalities as this Agreement. All unchanged terms and conditions of this Agreement will be incorporated into any such amendment and will otherwise remain in full force and effect.

XVIII. GOVERNING LAWS.

This Agreement will be controlled and interpreted according to the laws, rules and regulations of the State of Florida. Any provision hereof found to be unlawful or unenforceable will be severable and will not affect the validity of the remaining provisions hereof.

XIX. EFFECTIVE DATE.

This Agreement will become effective on upon date first written above. This Agreement, and any subsequent amendment(s) thereto, will be filed with the Clerk of the Circuit Court for Lee County.

[End of provisions.]

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their duly authorized officers and their official seals affixed hereto.

ATTEST:

CITY OF CAPE CORAL

BY: Kimberly Bruns
[Signature]
Kimberly Bruns
[Type or print name]
City Clerk (Interim)

BY: [Signature]
[Signature]
Joe Coviello
[Type or print name]
Mayor

APPROVED AS TO LEGAL FORM:

BY: [Signature]
[Signature]
Mark McKinstry
[Type or print name]
for City Attorney

ATTEST:

LINDA DOGGETT, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: Chris Du
Deputy Clerk
CHRIS DU
[Type or print name]

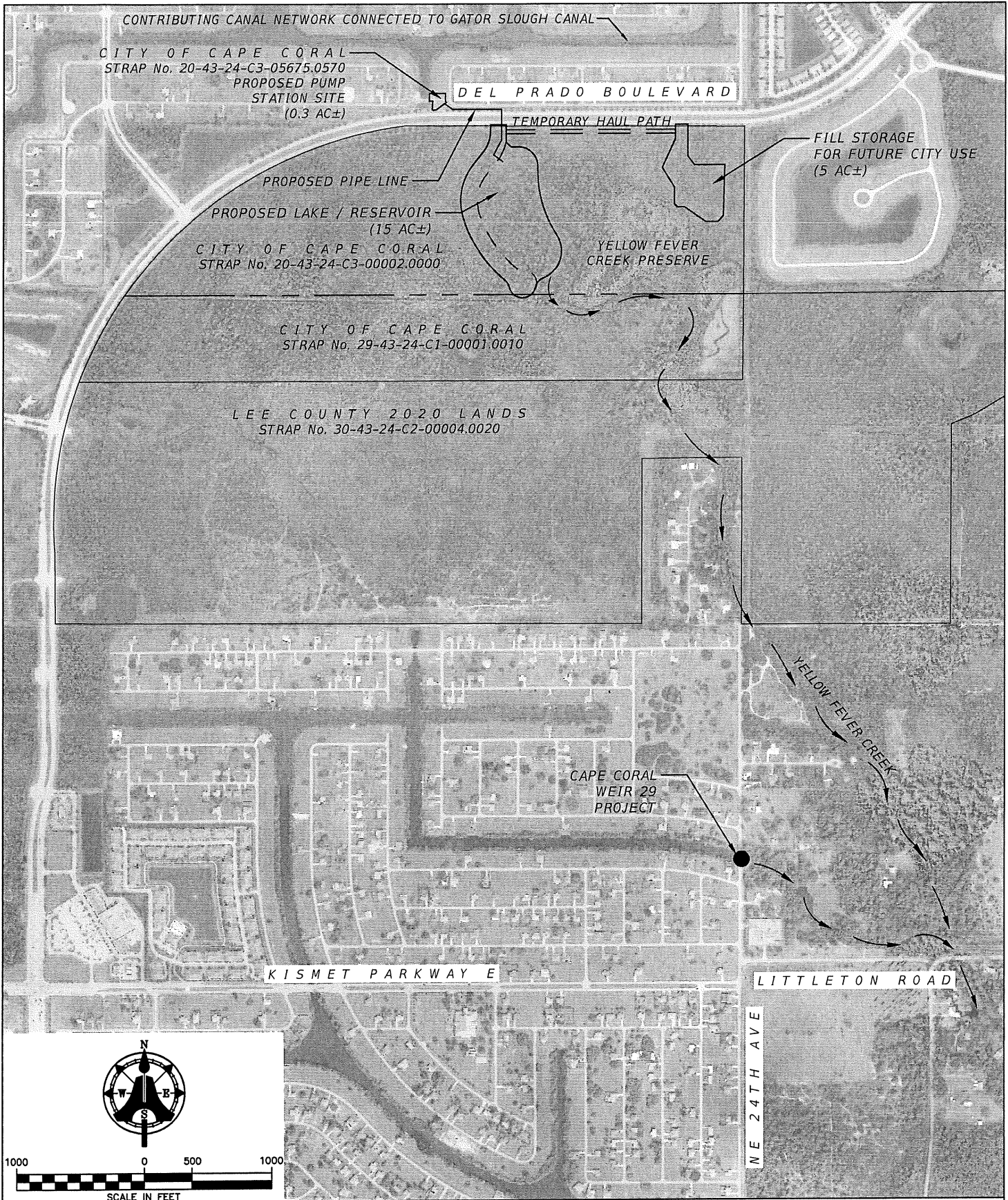
By: [Signature]
[Signature]
Brian Hamman
[Type or print name]
Chair/Vice-Chair

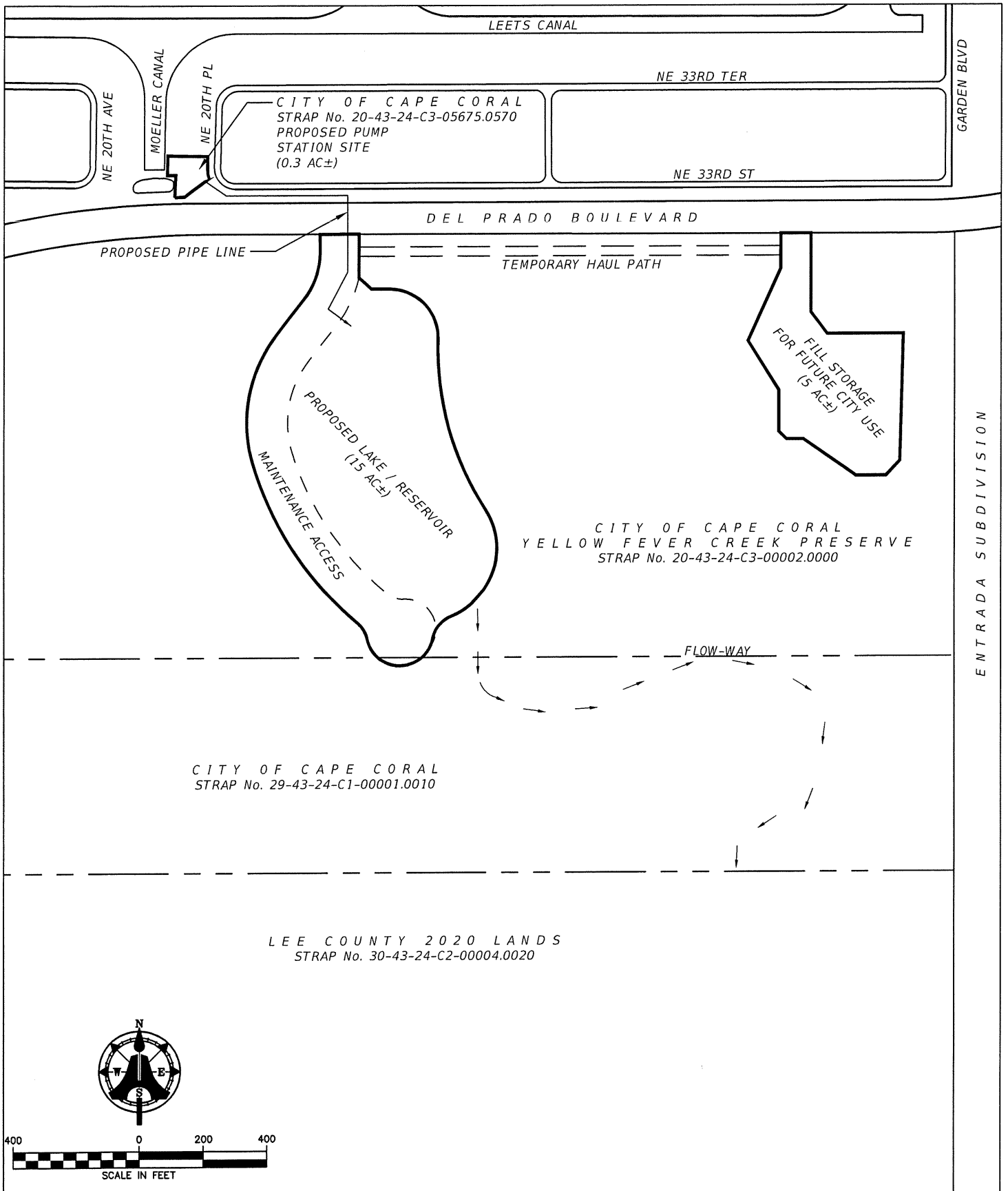


APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY:

By: [Signature]
[Signature]
JOHN J. FREDYMA
[Type or print name]
Lee County Attorney's Office

Attachments: Exhibit "A" and "B" - YFC and Weir #29 Concept Plan(s)
Exhibit "C" - System Operation and Maintenance Protocol





**AIM Engineering
& Surveying, Inc.**

2161 FOWLER ST. FORT MYERS, FL 33901
Phone: 239.332.4569 www.aimengr.com

Engineering Business Certificate of Authorization No. 3114

EXHIBIT B

LEE COUNTY DIVISION OF NATURAL RESOURCES
YELLOW FEVER CREEK HYDROLOGIC RESTORATION PROJECT /
GATOR SLOUGH TRANSFER FACILITY

SCALE: 1"=400' BY: JS DATE: 04/30/18 REV.: 5/23/2018 SHEET: 1 OF 1

EXHIBIT C

Operating Plan for Weir 29 and Gator Slough/Yellow Fever Interconnect

Weir 29 Operation. Weir 29 is proposed to be a gated weir that will be constructed in Cape Coral Surface Water Basin 3 on the Midsummer Canal at NE 24th Ave (see **Figure 1**). The structure will have a 60-ft wide weir with a fixed top elevation of 9.83 ft-NGVD and two 8-ft wide overflow gates that have a closed top position of 9.83 ft-NGVD, and a fully-open position of 8.33 ft-NGVD. The gates will typically be maintained in a fully open position during a normal wet season (considered to be June 1 – September 15) and closed in a normal dry season (considered to be September 16 – May 31). Gate adjustment dates may be modified depending upon actual seasonal weather conditions. The overflow gates will generally stay closed in the dry season when the Yellow Fever Interconnect (YFI) is operational. However, until the YFI is operational, Weir 29's gates will be routinely adjusted to release approximately 2 cfs until the canal water level reaches the fixed weir elevation (9.83ft-NGVD) at which time the overflow gates will be closed. The systematic adjustment of the weir gates may resume upon a rise in canal levels.

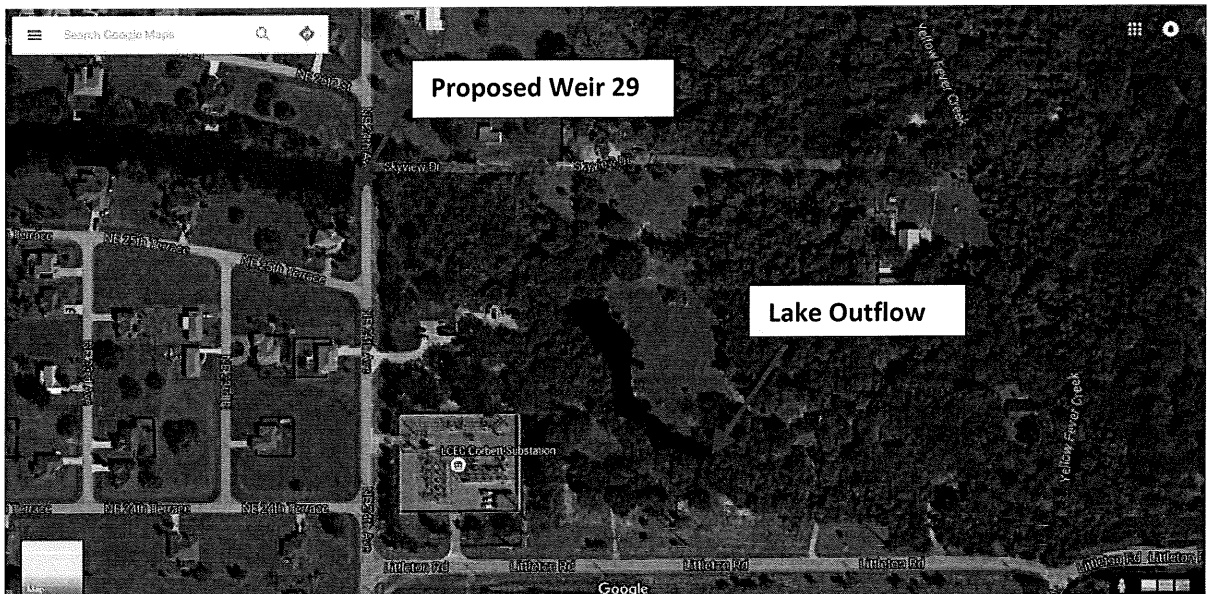


Figure 1 - Proposed Weir 29 and Downstream Lake

Gator Slough/Yellow Fever Interconnect. The Gator Slough/Yellow Fever Interconnect is a proposed 10-cfs pump station designed to transfer water from Leets Canal in Cape Coral Surface Water Basin 1, south under Del Prado Boulevard N to the Yellow Fever Creek Preserve (see **Figure 2**). Leets Canal connects to Gator Slough, so the Interconnect will act as an inter-basin transfer from the Gator Slough basin to the Yellow Fever Creek basin. The proposed interconnect will discharge from Leets Canal through the pump station into a shallow reservoir that is proposed to be constructed on the Yellow Fever Creek Preserve. The proposed plan is to operate the interconnect pump during seasonal periods when there is positive flow over the weir in Gator Slough at Burnt Store Road (Weir 11 – top elevation of 3.33 ft-NGVD) and Gator Slough at Andalusia Boulevard (Weir 19 - top elevation of 12.0 ft-NGVD). Another condition governing the operation of the interconnect pump will be when the receiving body downstream of the transfer pump system has an elevation less than 21.3 ft-NGVD.

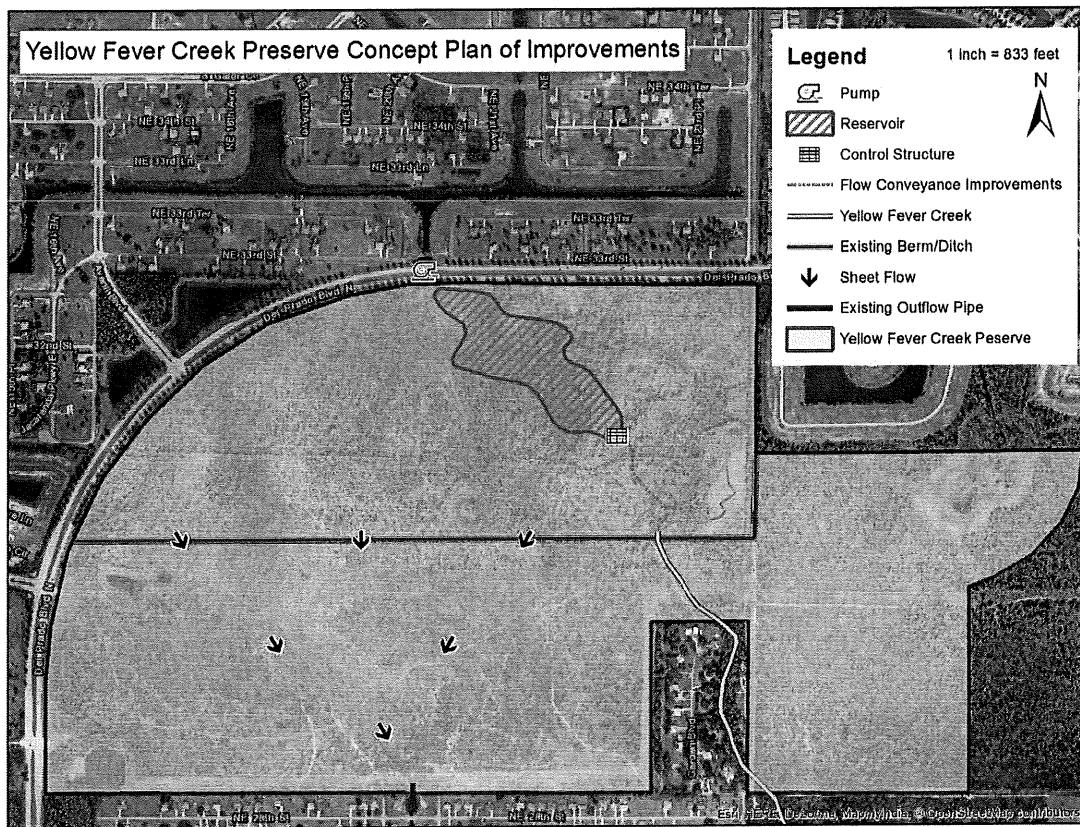


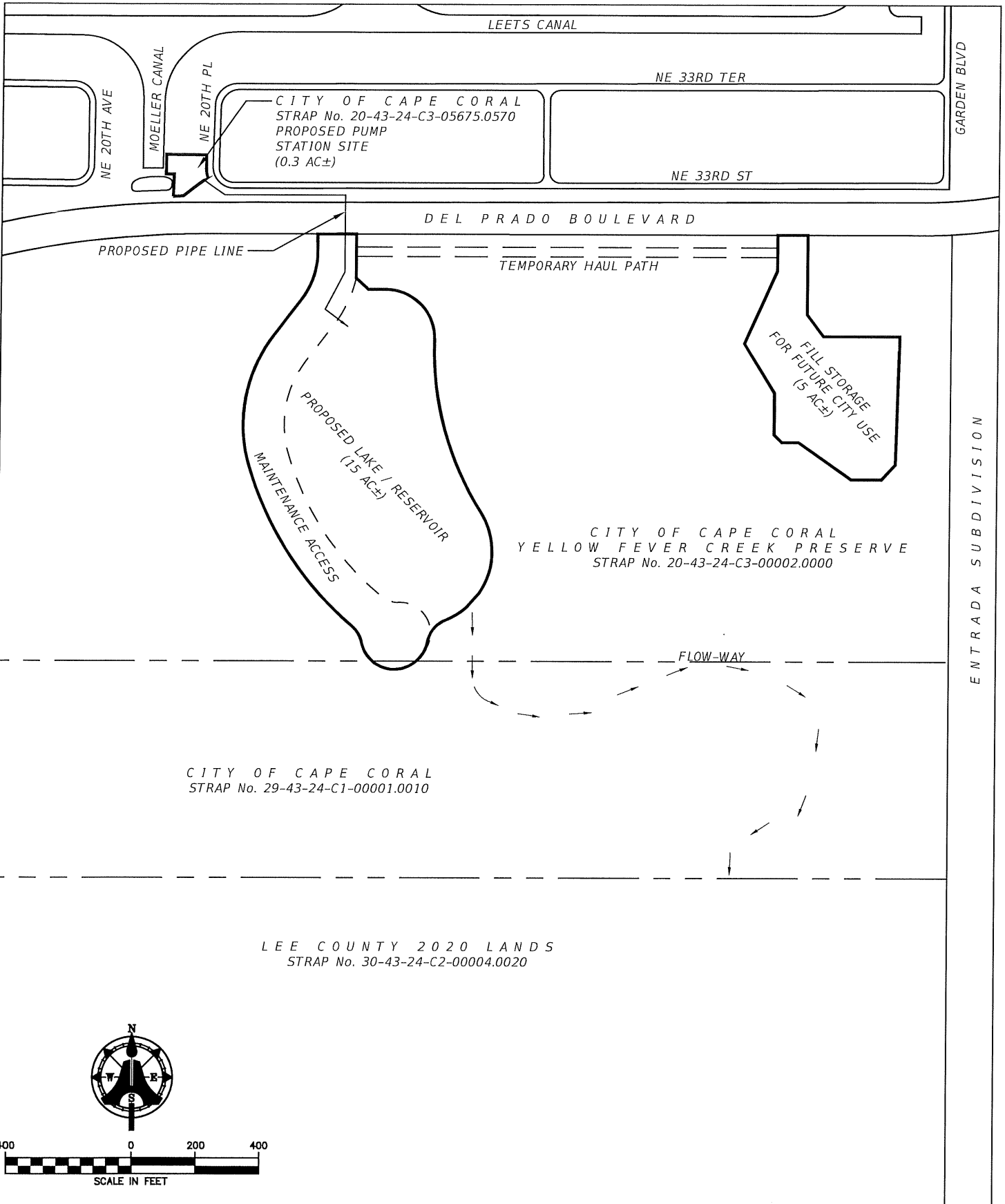
Figure 2 - Proposed Components of the Gator Slough/Yellow Fever Creek Interconnect

City of Cape Coral electronically monitors the levels of Weir 11 and Weir 19. This continuous level recording will be utilized by the City to dictate the overall operational control of the system. This information will be shared with the County. In addition, the County will use strategically located level indicators to indicate the capacity of the Yellow Fever Creek system relative to its ability to accept additional flow. When Weir 11 and Weir 19 are indicating flow over the respective weirs the County will be notified by a system control dashboard or by monthly reports that transfer pumping into the Yellow Fever Creek basin may occur. If the County determines the Yellow Fever Creek basin is able to absorb the additional flow the interconnect pump system may be placed into operation. If the County determines the Yellow Fever Creek basin cannot absorb additional flow then the interconnect transfer pump will be placed in the off position. When Weir 11 and Weir 19 are not indicating a flow over the respective weirs then the interconnect transfer pump will normally be in the off position. Because flows over Weir 11 are rare during December through May, the Interconnect transfer pump may operate during only a portion of the early dry season. However, if the City determines that available capacity in the canal system can support additional flow and the County's control system indicates that it can accept flow into the Yellow Fever Creek basin then the interconnect transfer pump system may be placed into operation.

The water that will be transferred via the Interconnect will increase overall water inputs to the Yellow Fever Creek Preserve thereby restoring flows to the Yellow Fever Creek watershed, which historically was larger than the present boundaries. Initially discharging the imported water into the proposed shallow reservoir is expected to increase groundwater elevations in the headwaters of the Yellow Fever Creek watershed. This action is expected to result in higher baseflows during at least a portion of the dry season.

The County will be responsible for, but limited to, the maintenance and support of all functions of the pump station, electrical system, electrical usage, downstream telemetry and the flow meter.

The City will be responsible for, but not limited to, the maintenance and support of all functions of the SCADA system, software programing and upstream telemetry.



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Figure 1 - Proposed Weir 29 and Downstream Lake

Gator Slough/Yellow Fever Interconnect. The Gator Slough/Yellow Fever Interconnect is a proposed 10-cfs pump station designed to transfer water from Leets Canal in Cape Coral Surface Water Basin 1, south under Del Prado Boulevard N to the Yellow Fever Creek Preserve (see **Figure 2**). Leets Canal connects to Gator Slough, so the Interconnect will act as an inter-basin transfer from the Gator Slough basin to the Yellow Fever Creek basin. The proposed interconnect will discharge from Leets Canal through the pump station into a shallow reservoir that is proposed to be constructed on the Yellow Fever Creek Preserve. The proposed plan is to operate the interconnect pump during seasonal periods when there is positive flow over the weir in Gator Slough at Burnt Store Road (Weir 11 – top elevation of 3.33 ft-NGVD) and Gator Slough at Andalusia Boulevard (Weir 19 - top elevation of 12.0 ft-NGVD). Another condition governing the operation of the interconnect pump will be when the receiving body downstream of the transfer pump system has an elevation less than 21.3 ft-NGVD.

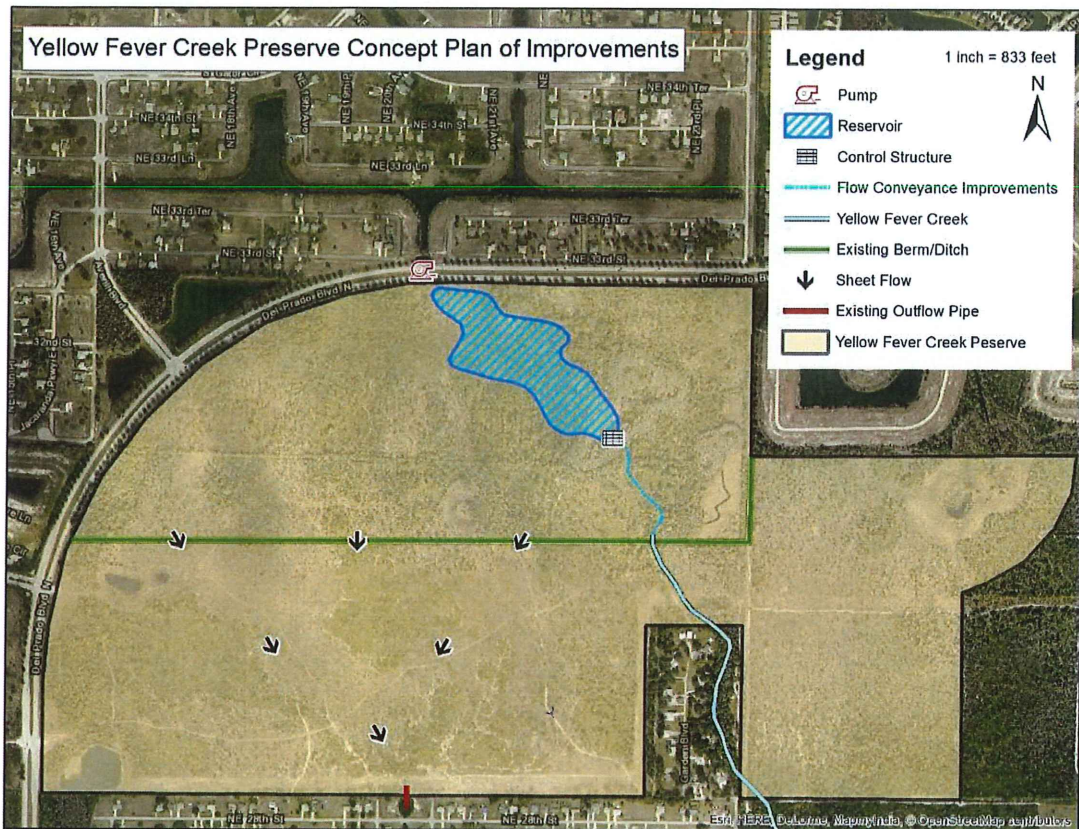


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The City will be responsible for, but not limited to, the maintenance and support of all functions of the SCADA system, software programing and upstream telemetry.