

Lee County Board of County Commissioners
Agenda Item Summary

Blue Sheet No. 20020496

1. **REQUESTED MOTION:**

ACTION REQUESTED: Approve the Cooperative Agreement between the East County Water Control District and the County.

WHY ACTION IS NECESSARY: The Board of County Commissioners approves Cooperative Agreements.

WHAT ACTION ACCOMPLISHES: Clarifies the maintenance responsibilities relative to canal crossing improvements at public roadways.

2. **DEPARTMENTAL CATEGORY:** County Attorney (12)
COMMISSION DISTRICT: Countywide *C12A*

3. **MEETING DATE:** *05-21-2002*

4. **AGENDA:**
 CONSENT
 ADMINISTRATIVE
 APPEALS
 PUBLIC
 WALK ON
TIME REQUIRED:

5. **REQUIREMENT/PURPOSE:**
(Specify)
 STATUTE
 ORDINANCE
 ADMIN. CODE
 OTHER

6. **REQUESTOR OF INFORMATION:**
A. COMMISSIONER
B. DEPARTMENT County Attorney
C. DIVISION General Services
BY: Andrea R. Fraser
Assistant County Attorney

7. **BACKGROUND:**

The parties have been discussing the respective maintenance responsibilities for canal crossings and agreed to enter into a Cooperative Agreement that formalizes their responsibilities.

Attachment: Two Executed Originals-Cooperative Agreement

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
<i>Andrea Fraser</i>	N/A	N/A	N/A	<i>Andrea Fraser</i>	<i>OA</i> <i>5/6/02</i>	<i>QM</i> <i>5/6/02</i>	<i>RISK</i> <i>5/7</i>	<i>GC</i> <i>5/7/02</i>	<i>DRS</i> <i>5-7-02</i>

10. **COMMISSION ACTION:**

- APPROVED**
- DENIED**
- DEFERRED**
- OTHER**

CO. ATTY.
FORWARDED TO:
AD-ATTN
5/6/02 3:00pm

RECEIVED BY
COUNTY ADMIN. *AMC*
5/6/02
3:20 pm
COUNTY ADMIN.
FORWARDED TO:
5/7 1:00

COOPERATIVE AGREEMENT
BETWEEN THE
EAST COUNTY WATER CONTROL DISTRICT
AND LEE COUNTY
REGARDING CULVERT AND ROADWAY RESPONSIBILITY

This is a COOPERATIVE AGREEMENT, "Agreement," entered into and effective on the last date affixed hereto, between "the Parties," EAST COUNTY WATER CONTROL DISTRICT, a Florida special drainage district, "the District," and LEE COUNTY, a political subdivision of the State of Florida, "the County."

WITNESSETH THAT:

WHEREAS, the County is a political subdivision of the State of Florida, governed by Chapter 125, Florida Statutes, and given those powers and responsibilities enumerated therein, including the power to enter into contracts with public agencies, private corporations or other persons for the benefit of the County; and

WHEREAS, the District, is a Florida special drainage district, governed by Chapter 298, Florida Statutes and special legislation pertaining to the District, given those powers enumerated therein, including the power to clean out and open up the flow of water in or out of the District as deemed necessary to preserve and maintain the works in or out of the District; and

WHEREAS, the Parties desire to clarify their respective maintenance responsibilities relative to canal crossing improvements at public roadways; and

WHEREAS, the Parties have reached an agreement regarding canal crossing improvements at public roadways based on the best interest of the public health, safety and welfare and desire this agreement to be in writing as set forth herein; and

WHEREAS, the Parties' governing boards have authorized entering into this Agreement,

NOW THEREFORE, the District and the County, in consideration of the mutual benefits and covenants flowing from each to the other, do hereby agree as follows:

1. All canal rights-of-way intersecting roadways owned by the County are deemed to be the property of the District. The District agrees to grant a perpetual easement to the County crossing the canal rights-of-way equal to the width of the street rights-of-way (Exhibit "A").
2. The County as owner of their roadways shall have the responsibility of maintaining all County roadways, including the pavement, sub-grade, base, signage, and shoulders. Maintenance of any swale, pipe, culvert, or other improvement necessary to convey road side drainage into the canal system or culvert of the District will be the responsibility of the County.
3. The District shall have responsibility for maintaining culverts, risers or control devices for

water level control attached to culverts and canals leading to and from the culverts. This maintenance responsibility includes the removal of debris and sediment from the culvert(s).

4. The Parties agree that in the event they conduct work that impacts the responsibility of the other Party, they will: (a) notify the other Party in writing; (b) provide engineering plans if necessary; and, (c) waive any applicable permit or development order fees to the Party conducting work.

5. The District intends to conduct a culvert replacement project, "the project," which shall initially consist of replacing 27 critical culverts, the locations of which are provided in Exhibit "B." The Parties agree that the County shall be responsible for thirty-three percent (33%) of the culvert replacement costs and that the District shall be responsible for sixty-seven percent (67%) of the culvert replacement costs.

6. The District shall provide the County with engineering design for the initial replacement of twenty-seven (27) culverts subject to this agreement. The construction contract relative to the culvert replacement project will be administered by the District. The County shall have the right to review and approve culvert replacement construction contracts and design prior to letting the subject construction contract.

7. The District shall make monthly progress payments to the Contractor constructing the culvert replacements. The County shall reimburse the District for the County's thirty-three percent (33%) share of each invoice within sixty (60) days of receipt of the invoice from the District.

8. In the event a culvert may be eliminated and a road closed, the County agrees to provide the traffic control, signage, and detour equipment necessary to close the road. The District agrees to remove the culvert and establish the canal slopes and maintenance of the new canal section subsequent to the roadway removal all at the District's expense.

9. In the event a culvert may be eliminated, the District agrees to fill the existing culverts with flowable fill and enclose the ends parallel to the roadway slope at District expense. Thereafter, the County agrees to maintain the roadway at County expense.

10. The County agrees to provide traffic control signage and detour layouts for culvert replacements at the County's cost which shall be in addition to the agreed upon cost percentages outlined herein. In the event active traffic control, such as flag personnel is necessary, the District will hold the Contractor responsible for coordinating said flag personnel and the cost thereof shall be borne at the same rate as provided in paragraph 5 above, thirty-three percent (33%) to the County and sixty-seven (67%) to the District.

11. The County acknowledges that any failure to make timely payment of consideration to the District, as required under the terms of this Agreement, shall constitute a material default of this Agreement for which the District may exercise such rights, including termination of the Agreement, as provided herein.

12. The Project Manager for the District is Aim Engineering & Surveying, Inc., at 5300 Lee for the County is Department of Transportation Director, P.O. Box 398, Fort Myers, FL 33902. The parties shall direct all matters arising in connection with the performance of this Agreement, invoices and notices, to the attention of the Project managers for attempted resolution or action. The Project Managers shall be responsible for overall coordination and oversight relating to the performance of this Agreement.

13. All notices, demands, or other communications to the District shall be in writing and shall be deemed received if sent by certified mail, return receipt requested, to: The Project Manager, East County Water Control District, 601 East County Lane, Lehigh Acres, FL 33936.

All notices to the County under this Agreement shall be in writing and sent by certified mail, return receipt requested, to: Lee County, Florida P.O. Box 398, Fort Myers, FL 33902-0398.

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 delivered upon receipt. Should either party change its address, written notice of such new address shall be promptly sent to the other party.

14. The Parties assume any and all risks of personal injury, bodily injury and property damage, including expenses, costs, and attorney's fees, attributable to the negligent acts or omissions of the respective parties and the officers, employees, servants, and agents thereof. The Parties warrant and represent that they are self-funded for liability insurance, or have liability insurance, both public and property, with such protection being applicable to the Parties respective officers, employees, servants and agents while acting within the scope of their employment with the Parties. The Parties 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.

15. If either party fails to fulfill its obligations under this Agreement in a timely and proper manner, the other party shall have the right to terminate this Agreement by giving written notice of any deficiency. The party in default shall then have ten (10) calendar days from receipt of notice to correct the deficiency. If the defaulting party fails to correct the deficiency within this time, this Agreement shall terminate at the expiration of the ten (10) day time period.

16. If either party initiates legal action, including appeals, to enforce this Agreement the prevailing party shall be entitled to recover reasonable attorneys' fee and costs associated with bringing legal action.

17. The District shall maintain records and the County shall have inspection and audit rights as follows:

A. Maintenance of Records. The District shall maintain all financial and nonfinancial records and reports directly or indirectly related to the negotiation or the 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 County 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 County should become involved in a legal dispute with a third party arising from performance under this Agreement, the District 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 County.

18. The Parties, their employees, subcontractors or assigns, shall comply with all applicable federal, state, and local laws and regulations relating to the performance of this Agreement.

19. The Parties hereby assure that no person shall be excluded on the grounds of race, color, creed, national origin, handicap, age, or sex, from participation in, denied the benefits of, or be otherwise subjected to discrimination in any activity under this Agreement. The Parties shall take all measures necessary to effectuate these assurances.

20. 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 Twentieth Judicial Circuit for claims under State Law and in the Middle District to Florida for any claims which are justiciable in federal court.

21. The parties shall allow public access to all project documents and materials in accordance with the provisions of Chapter 119, Florida Statutes.

22. The County and the District shall not assign, delegate, or otherwise transfer its rights and obligations as set forth in this Agreement without the prior written consent of the other party. Any attempted assignment in violation of this provision shall be void; provided however, the parties acknowledge their respective rights to subcontract with contractors with regard to the performance of work necessary to complete this agreement.

23. 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.

24 In the event any provisions of this Agreement shall conflict, or appear to conflict, the Agreement, including all exhibits, attachments and all documents specifically incorporated by reference, shall be interpreted as a whole to resolve any inconsistency.

25. 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.

26 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.

27. This Agreement may be amended only with the written approval of the parties hereto.

28. This Agreement states the entire understanding and Agreement between the parties and supersedes any and all written or oral representations, statements, negotiations, or agreements 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 the 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.

IN WITNESS WHEREOF, the parties or their duly authorized representative hereby execute this Agreement.

Approved as to form:
Date: _____

Date: _____

By: _____
Lee County Attorney's Office

ATTEST:
Date: _____

By: _____
Title: _____
LEE COUNTY, FLORIDA, BY ITS BY
BOARD OF COUNTY COMMISSIONERS

By: _____
Title: _____

Approved as to form:
Date: 5-01-02

Date: 5-01-02

By: Angela M. Hall
General Counsel for the District

By: J. Nathan Stout
Title: CHAIRMAN
EAST COUNTY WATER CONTROL DISTRICT
BOARD OF SUPERVISORS

ATTEST:
Date: May 1, 2002
By: Paula Hinger
Title: Deputy Secretary

Exhibit A									
East County Water Control District									
Condition 5 Culverts									
SITE	RD WIDTH	PIPE LGT	NUM	HT/D IA	WIDTH	CANAL NAME	SEC.	TOWN.	RANGE
1	18	74	2	36		MULTON @ 68TH ST. W.	2	44S	26E
2	0	74	1	24		RED SNAPPER @ 73RD ST. W.	2	44S	26E
3	18	75	3	42	54	JACKFISH @ QUEEN	11	44S	26E
4	19	86	2	42		38TH ST. @ PILOT	13	44S	26E
5	20	116	1	50	60	CENTENNIAL @ 46-20-1	20	44S	26E
6	20	106	2	60		SUNSET @ 46-22-1	22	44S	26E
7	20	59	2	48		8TH ST. SW. @ FLOUNDER	33	44S	26E
8	20	99	1	24		SUNRISE BLVD. @ 57-2-1	2	45S	27E
9	18	90	2	36		ASHLAND ST. @ 57-3-5	3	45S	27E
10	35	80	1	36		PARKSIDE @ 57-4-4	4	45S	27E
11	20	107	2	40	57	PALM BLVD. @ "A"	5	45S	27E
12	18	94	1	37		HAWTHORNE AVE.S. @ 57-15-5	15	45S	27E
13	18	105	1	42		THEODORE VAIL ST.E. @ 57-15-6	15	45S	27E
14	17	295	2	42	48	ALETHA AVE. @ 57-21-3	21	45S	27E
15	27	100	3	42	64	JAGUAR BLVD. @ 57-21-4	21	45S	27E
16	18	110	1	24		NIMITZ BLVD. @ 57-25-1	25	45S	27E
17	18	80	2	24		ALDEN ST. E. @ 57-27-10	27	45S	27E
18	18	82	2	36	48	OWEN AVE. @ GUITA	31	44S	26E
19	18	180	1	18		CAUSEWAY @ LK. DENISE	26	44S	27E
20	18	72	1	72		W 5TH ST. @ 47-30-2	30	44S	27E
21	20	92	2	42	68	LINCOLN BLVD. @ JIG	33	44S	27E
22	20	95	1	32		BEAR ST @ BEAR LK.	33	44S	27E
23	29	122	2	36	52	COUNTRY CLUB PKWY @ 47-34-2	34	44S	27E
24	20	89	2	36		ARCHER ST. @ 47-34-3	34	44S	27E
25	18	85	2	30	42	HAVILAND AVE @ WAHOO	4	45S	26E
26	18	80	1	30		MEADOW RD. @ WAHOO	13	45S	26E
27	18	75	1	18		HANSEN ST.E. @ 57-14-5	14	45S	27E

EAST COUNTY WATER CONTROL DISTRICT PROPOSED FACILITIES FOR USDA LOAN AUGUST 2000

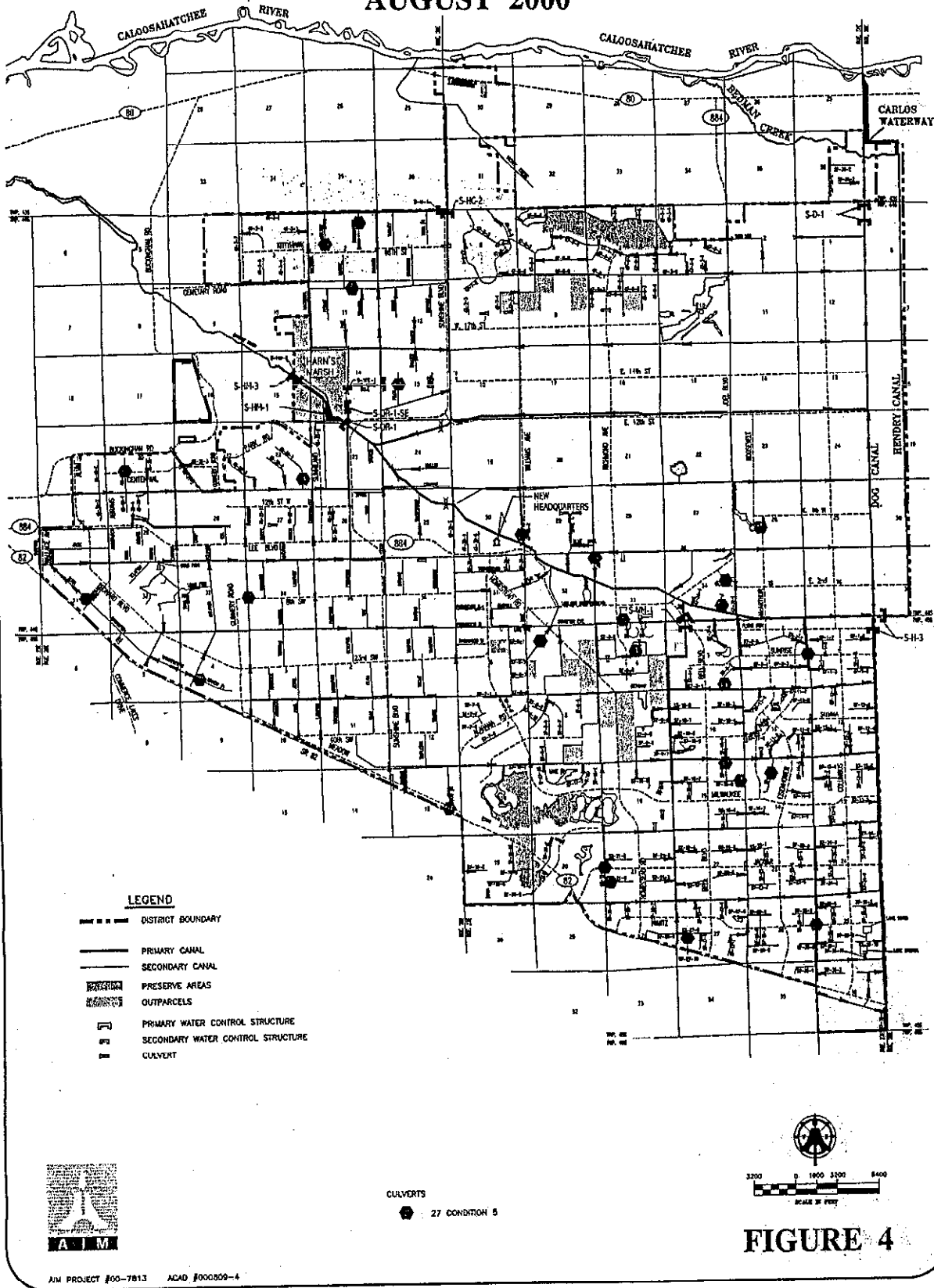


EXHIBIT "B"