

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

Blue Sheet No. 20030322

1. REQUESTED MOTION:

ACTION REQUESTED: Execute Agreement No. C-15438 with the South Florida Water Management District (SFWMD) for Caloosahatchee River Tributaries Maintenance. The total five-year project cost is \$935,000.00 including the District's contribution of \$850,000.00 with a \$85,000.00 cost share by Lee County. Approve Budget Transfer from SFWMD Grant (Project 208534) to Caloosahatchee River Tributaries Maintenance (Project 208581) of \$55,000.00 in expenses and \$50,000.00 in grant revenue for FY03/04 activity and amend the FY02/03-07/08 CIP accordingly.

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

WHAT ACTION ACCOMPLISHES: Provides mechanism to reimburse County for waterway maintenance on Caloosahatchee River tributaries.

2. DEPARTMENTAL CATEGORY:

COMMISSION DISTRICT #: C-W 08

C 8 B

3. MEETING DATE:

04-01-2003

4. AGENDA:

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

5. REQUIREMENT/PURPOSE:

(Specify)

- STATUTE
- ORDINANCE
- ADMIN. CODE
- OTHER Agreement

6. REQUESTOR OF INFORMATION:

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

7. BACKGROUND:

The 1991/1992 Lee County Surface Water Management Master Plan recommended cleaning and snagging of various tributaries of the Caloosahatchee River to allow optimum performance of outfalls and avoid flooding. Through cost share agreements with SFWMD, a large portion of the river and creek systems have been cleaned and snagged; however, maintenance is critical to insure continued integrity of the tributary system. Areas of maintenance include, but are not limited to, Bedman Creek, Bayshore Creek, Billy's Creek, Chapel Branch, Daughtrey's Creek, Hancock Creek, Hickey Creek, Kickapoo Creek, Marsh Point, Orange River, Otter Creek, Owl Creek, Popash Creek, Powell Creek, Stroud Creek, Trout Creek, Yellow Fever Creek, Cypress Creek, Spanish Creek, Miller's Gully, Hall's Creek and Fichter's Creek.

Funding for the project is delineated below:

Fiscal Year:	District	Lee County	Total Project
October 1, 2002 – September 30, 2003	\$50,000.00	\$5,000.00	\$55,000.00
October 1, 2003 – September 30, 2004	\$200,000.00	\$20,000.00	\$220,000.00
October 1, 2004 – September 30, 2005	\$200,000.00	\$20,000.00	\$220,000.00
October 1, 2005 – September 30, 2006	\$200,000.00	\$20,000.00	\$220,000.00
October 1, 2006 – September 30, 2007	\$200,000.00	\$20,000.00	\$220,000.00

Funding in future years is dependent on approval of the annual budget by the South Florida Water Management District Governing Board. Funds will be available in 20858130100.503490 (Capital Projects; Caloosahatchee River Tributaries Maintenance; Capital Improvement Fund; Other Contracted Services).

Attachments: Two (2) Originals of SFWMD Agreement C-15438 and Budget Transfer Document.

8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL:

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
					OA	OM	Risk	GC	
<i>3-13-03</i>	<i>[Signature]</i>	N/A	<i>3/14/03</i>	<i>3/14/03</i>	<i>3/17-03</i>	<i>3/17/03</i>	<i>3/17/03</i>	<i>3-17-03</i>	<i>3-13-03</i>

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

Rec. by CoAtty
Date: *3/14/03*
Time: *1:30*
Forwarded To: *3/14/03*

RECEIVED BY
COUNTY ADMIN.
3-14 3:29
COUNTY ADMIN.
FORWARDED TO:
3/17/03



SOUTH FLORIDA WATER MANAGEMENT DISTRICT AGREEMENT

<p>THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT (hereinafter referred to as DISTRICT) HEREBY ENTERS INTO THIS AGREEMENT WITH: Name: LEE COUNTY</p> <p>Address: 1500 Monroe Street Ft. Myers, FL 33902</p> <p>Project Manager: Roland Ottolini Telephone No: (941) 479-8127 Fax No: (941) 479- 8108 Hereinafter referred to as: COUNTY</p>	<p>This number must appear on all Invoices and Correspondence</p> <p style="font-size: 1.2em; font-weight: bold;">C-15438</p> <p>MBE PARTICIPATION: 0%</p> <p>COST SHARING INFORMATION</p> <p>Total Project Cost: \$ 850,000.00 935,000.00</p> <p>COUNTY Contribution: \$ 5,000.00 85,000.00 \$5,000 FY03 *20,000 FY04, FY05, FY06, FY07</p>
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PROJECT TITLE: CALOOSAHATCHEE RIVER TRIBUTARIES MAINTENANCE with District budget approval.

- The following Exhibits are attached hereto and made a part of this AGREEMENT:**
- | | |
|--|-------------------------------|
| Exhibit "A" - Special Provisions | Exhibit "H" - Not Applicable |
| Exhibit "B" - General Terms and Conditions | Exhibit "I" - Work Order Form |
| Exhibit "C" - Statement of Work | Exhibit "J" - Not Applicable |
| Exhibit "D" - Payment and Deliverable Schedule | Exhibit "K" - Not Applicable |
| Exhibit "E" - Not Applicable | Exhibit "L" - Not Applicable |
| Exhibit "F" - Not Applicable | Exhibit "M" - Not Applicable |
| Exhibit "G" - Not Applicable | |

TOTAL DISTRICT CONSIDERATION: \$850,000.00	AGREEMENT TYPE: Work Order
Multi-Year Funding (If Applicable)	
Fiscal Year: October 1, 2002-September 30, 2003 \$50,000.00	Fiscal Year: October 1, 2005-September 30, 2006 \$200,000.00*
Fiscal Year: October 1, 2003-September 30, 2004 \$200,000.00*	Fiscal Year: October 1, 2006-September 30, 2007 \$200,000.00*
Fiscal Year: October 1, 2004-September 30, 2005 \$200,000.00*	Fiscal Year:
*Subject to District Governing Board Annual Budget Approval	

AGREEMENT TERM: Five (5) Years	EFFECTIVE DATE: Last Date of Execution by the Parties
District Project Manager: Jackie Rippe	District Contract Administrator:
Telephone No: (239) 338-3929	Marilyn Ivory (561) 682-6381
Fax No. (239) 338-2936	Fax No.: (561) 682-5381 or (561) 681-6275

SUBMIT INVOICES AND NOTICES TO THE DISTRICT AT:

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

SUBMIT NOTICES TO THE COUNTY AT:
 LEE COUNTY

1500 Monroe Street
 Ft. Myers, FL 33902
Attention: Roland Ottolini

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

LEE COUNTY

Accepted By: _____
 Signature of Authorized Representative

Title: _____

Date: _____

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

Accepted By: _____
Frank Hayden, Procurement Director

Date: _____

SFWMD OFFICE OF COUNSEL APPROVED
 By: _____ Date: 2/28/03

SFWMD PROCUREMENT APPROVED
 By: *Marilyn Ivory* Date: 2/19/03



SOUTH FLORIDA WATER MANAGEMENT DISTRICT AGREEMENT

EXHIBIT "A" SPECIAL PROVISIONS

The purpose of this Exhibit "A" is to delineate any and all changes, deletions and/or additions to the Exhibit "B" General Terms & Conditions. In the event of any conflict between this Exhibit "A" and any other provision specified in this Agreement, this Exhibit "A" shall take precedence.

Article 1.1.1 and 1.1.2 are hereby added and read as follows:

1.1.1 The actual services required and fixed price consideration for providing such services shall be detailed in individual Work Order(s) to this **AGREEMENT**, a sample of which is attached as Exhibit "I", and made a part of this **AGREEMENT**. As actual services are identified by the **DISTRICT**, the **COUNTY** shall be required to prepare a detailed technical and cost proposal for submission to the **DISTRICT**. Cost proposals shall include a detailed breakdown adequate to substantiate all **COUNTY** costs, including labor and expenses. However, the mutually agreed upon fixed price amount for each authorized Work Order issued hereunder shall be the only basis for consideration by the **DISTRICT**. The **DISTRICT** shall evaluate the technical merit and cost objectives. No work shall commence prior to receipt of an authorized Work Order. The **DISTRICT** does not guarantee or represent that any minimum number of Work Orders for any dollar amount will be issued as a result of this **AGREEMENT**".

1.1.2 In addition to the forgoing, award of Work Orders under this **AGREEMENT** shall be subject to the following:

- (a) Negotiation of a Statement of Work and fixed price most advantageous to the **DISTRICT**.
- (b) Availability of qualified personnel within the required time frames; and
- (c) Satisfactory performance by the **COUNTY** under any previous Work Order(s) issued by the **DISTRICT**."

Article 1.4 is hereby added and shall read as follows: "Should the services provided by the **COUNTY** fail to meet the expectations of the **DISTRICT**'s Project Manager, the **COUNTY** shall have a period of (10) working days from the date notice is given to the **COUNTY** by the **DISTRICT**, to correct all deficiencies in the **COUNTY**'s work. All corrections shall be made to the satisfaction of the **DISTRICT** Project Manager. Inability to correct all deficiencies within the specified ten (10) days shall be good and sufficient cause to immediately terminate the Work Order and/or the **AGREEMENT** without the **DISTRICT** being liable for any and all future obligations either under the Work Order or under this **AGREEMENT**, or both, as determined by the **DISTRICT** at its sole discretion. The **DISTRICT**, in its judgment, may elect to compensate the **COUNTY** for any accepted work product through the date of termination of an authorized Work Order, provided it is in a form that is sufficiently documented and organized to provide for subsequent utilization in completion of the work product".

Article 3.2 is hereby deleted and replaced with the following: "3.2 Invoices shall be submitted not more frequently than monthly or on a completion of deliverable basis in accordance with the Payment and Deliverable Schedule specified in each Work Order".

Article 3.4 is hereby deleted and replaced with the following: "The **DISTRICT** shall not pay for any obligation or expenditure made by the **COUNTY** prior to the commencement date of this **AGREEMENT** or prior to receipt of authorized Work Order(s), unless the **DISTRICT** authorizes such payment in writing".

The first sentence in Article 6.1 is hereby deleted and replaced with following: " 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** or any Work Order by giving written notice of any deficiency".

The first sentence of the second paragraph in Article 6.2 is hereby deleted and replaced with the following: "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 Work Orders issued hereunder".



SOUTH FLORIDA WATER MANAGEMENT DISTRICT AGREEMENT

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The last sentence in Article 6.5 is hereby deleted and replaced with the following: "Upon resumption of work, if deemed appropriate by the **DISTRICT**, the **DISTRICT** may amend this AGREEMENT and/or any Work Order to reflect any changes to Exhibit "C, Statement of Work and/or the project schedule".

The first sentence of the second paragraph in Article 7.2 is hereby deleted and replaced with the following: "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 Exhibit "C", Statement of Work and any specified Work Order issued hereunder (the "Work")."

SFWMD OFFICE OF COUNSEL APPROVED
By: [Signature] Date: 2/24/07

SFWMD PROCUREMENT APPROVED
By: [Signature] Date: 2/19/03



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**.

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 Page 1 of this **AGREEMENT**. Such amount includes all expenses which the **COUNTY** may incur and therefore no additional consideration shall be authorized.

2.2 Notwithstanding the foregoing, the amount expended under this **AGREEMENT** shall be paid in accordance with, and subject to the multi-year funding allocations for each **DISTRICT** fiscal year indicated on Page 1 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 within one (1) year following the expiration or termination of this **AGREEMENT**.

ARTICLE 3 - INVOICING AND 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 Page 1 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, receipts and subcontractor invoices.



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EXHIBIT "B"

GENERAL TERMS AND CONDITIONS

3.3 The **DISTRICT** shall pay the full amount of the invoice within thirty (30) days following **DISTRICT** acceptance of services and/or deliverable(s) required by this **AGREEMENT**. However, failure by the **COUNTY** to follow the foregoing instructions and submit acceptable services and or deliverables(s) may result in an unavoidable delay of payment 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 Page 1 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 Administrator specified on Page 1 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 Page 1 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 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 Page 1 of the **AGREEMENT**.

ARTICLE 5 - INSURANCE

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

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

ARTICLE 6 - TERMINATION/REMEDIES

6.1 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, the non-defaulting party shall have the option to terminate this **AGREEMENT**



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EXHIBIT "B"

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at the expiration of the ten (10) day time period. Should the **DISTRICT** elect to 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 **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 If either party initiates legal action, including appeals, to enforce this **AGREEMENT**, the prevailing party shall be entitled to recover a reasonable attorney's fee, based upon the fair market value of the services provided.

6.4 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.

6.5 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.

6.6 The **DISTRICT** anticipates a total project cost as indicated on Page 1, with the balance of matching funds and/or in-kind services to be obtained from the **COUNTY** in the amount as specified on Page 1 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



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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**.

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

7.5 The **DISTRICT** has acquired the right to use certain software under license from third parties. For purposes of this **AGREEMENT**, the **DISTRICT** may permit the **COUNTY** access to certain third



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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 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, if the **COUNTY** or any affiliate of the **COUNTY** has been convicted of a public entity crime, a period longer than 36 months has passed since that person was placed on the convicted 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, Florida Statutes.

The **DISTRICT**, in the event of such termination, shall not incur any liability to the **COUNTY** for any work or materials furnished.

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

8.6 The **COUNTY** warrants that it has not employed or retained any person, other than a bona fide employee working solely for the **COUNTY**, to solicit or secure this **AGREEMENT**. Further the **COUNTY** warrants that it has not paid or agreed to pay any person, other than a bona fide employee working solely for the **COUNTY**, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the awarding or making of this **AGREEMENT**. For breach of this provision, the **DISTRICT** may terminate this **AGREEMENT** without liability and, at its discretion, deduct or otherwise recover the full amount of such fee, commission, percentage, gift, or other consideration.

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

8.7.1 Pursuant to Sections 119.07(3)(o), and 240.241 Florida Statutes, data processing software obtained by an agency under a license **AGREEMENT** which prohibits its disclosure and which software is a trade secret, as defined in Sections 812.081(c), Florida Statutes is exempt from the disclosure provisions of the Public Records law. However, the parties hereto agree that if a request is made of the **DISTRICT**, pursuant to Chapter 119, Florida Statute, for public disclosure of proprietary property being licensed to the **COUNTY** (Licensee) hereunder, the **DISTRICT** shall advise the **COUNTY** (Licensee) of such request and, as between the **DISTRICT** and the **COUNTY**



SOUTH FLORIDA WATER MANAGEMENT DISTRICT

EXHIBIT "B"

GENERAL TERMS AND CONDITIONS

(Licensee), it shall be the COUNTY's (Licensee's) sole burden and responsibility to immediately seek and obtain such injunctive or other relief from the Courts and to immediately serve notice of the same upon the Licensor to protect the Licensor's claimed exemption under the Statute.

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

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

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

ARTICLE 9 - RELATIONSHIP BETWEEN THE PARTIES

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

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

9.3 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.

9.4 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.

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

ARTICLE 10 - MBE PARTICIPATION

10.1 The COUNTY hereby acknowledges that no Minority Business Enterprises (MBE) participation goal has been established for this AGREEMENT; however, both parties agree to provide the other advance notice of competitive contracts that may result from this AGREEMENT along with timelines



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for public notice and award of such contracts. In the event subsequent competitive contract awards do result in M/WBE participation, such participation shall be reported to the other party. Both the **COUNTY** and the **DISTRICT** will ensure compliance with the provisions of their respective program, laws, ordinances and policies and will support the other's initiatives to the extent allowed by law.

ARTICLE 11 - YEAR 2000 COMPLIANCE

Article 11 is hereby deleted.

ARTICLE 12 - GENERAL PROVISIONS

12.1 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.

12.2 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.

12.3 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.

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

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

12.6 This **AGREEMENT** states the entire understanding and **AGREEMENT** between the parties and supersedes any and all written or oral representations, statements, negotiations, or contracts previously existing between the parties with respect to the subject matter of this **AGREEMENT**. The **COUNTY** 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 13 - SAFETY REQUIREMENTS

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

13.2 The **COUNTY** shall instruct employees required to handle or use toxic materials or other harmful substances regarding their safe handling and use, including instruction on the potential hazards, personal hygiene and required personal protective



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measures. A Material Safety Data Sheet (MSDS) shall be provided by the COUNTY to the DISTRICT on each chemical product used.

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

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

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

13.6 The COUNTY shall erect and maintain, as required by existing conditions and performance of the AGREEMENT, reasonable safeguards for safety and protection, including posting of danger signs and other warnings, against hazards.

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

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

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

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

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

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

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

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

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

EXHIBIT "C"
Caloosahatchee River Tributaries Maintenance
Statement of Work

1.0 INTRODUCTION

During the summer of 1995, much of Lee County became inundated with floodwaters for extended periods of time. Historical sheet flow was toward the Caloosahatchee. When the region's ground became saturated with summer rainfall, water traveled overland blending watersheds as the flow continued to the river. Storm water conveys through the wetland systems into the tributaries of the Caloosahatchee and ultimately outflows into the Caloosahatchee. If the tributaries are not maintained so that water can be released at different locations along the river, the water will continue to stack up and cause extensive flooding in the north and east Fort Myers regions.

In 1991 and 1992 the Lee County Surface Water Management Master Plan recommended that these rivers and creeks be cleaned and snagged of fallen debris and exotic vegetation and reconnected to the Caloosahatchee. These recommendations are partly completed. Now that there are portions of the river and creek systems that have been cleaned and snagged, it is important to maintain them so they do not become overgrown with grasses and exotic vegetation again.

Part of the tributaries were cleaned and snagged in 2001 and 2002 through cost share agreements with Lee County.

2.0 SCOPE OF WORK

The work consists of removal of exotic vegetation, fallen debris and treatment of exotic vegetation, in the tributaries to the Caloosahatchee which include but are not limited to: Bedman Creek, Bayshore Creek, Billy's Creek, Chapel Branch, Daughtrey's Creek, Hancock Creek, Hickey Creek, Kickapoo Creek, Marsh Point, Orange River, Otter Creek, Owl Creek, Popash Creek, Powell Creek, Stroud Creek, Trout Creek, Yellow Fever Creek, Cypress Creek, Spanish Creek, Miller's Gully, Hall's Creek, Fichter's Creek.

District personnel shall identify the work during a site visit with a county representative. The County shall submit a Lump Sum quote for the identified maintenance. The District will then issue a work order for the specified work.

The County shall then remove debris from the river/creek bed, fallen trees, low hanging branches that restrict flow during higher flow periods and the removal and treatment of exotic vegetation from the tributaries.

The County shall be responsible for all site restoration and transportation of debris to appropriate disposal sites.

3.0 PROJECT SCHEDULE

1. The work shall be completed within the time frame specified in the work order issued to the County.

2. The County shall provide to the District Project Manager a written work schedule and proposed methods and materials, including a schedule indicating dates for implementing specific work items prior to the start of any work.
3. The County shall notify, with at least 48 hours notice to the District's Project Manager, the need for periodic inspections of the work for invoice approval and appropriate stages of the work for progress and compliance with specifications and work schedule.

4.0 LOCATION OF THE PROJECT

The work shall be performed in the Caloosahatchee tributaries. At the site specified in the work order issued to the County.

5.0 SCHEDULE OF PAYMENTS AND DELIVERABLES

The work shall have a single deliverable per work order: The County shall provide written certification by the project manager authorized on behalf of Lee County to certify that the work is completed in accordance with the written quote.

Receipt of this deliverable by the District shall be followed by a site visit by the District's Project Manager. Upon satisfactory review by the District's Project Manager, the County may invoice the District for the price specified in the work order. This invoice shall be accompanied by adequate supporting cost documentation as specified in the work order, including copies of invoices paid by the County.

EXHIBIT "D"

PAYM, ENT AND DELIVERABLE SCHEDULE

At a minimum, each Work Order will have a single deliverable consisting of a requirement for the County to provide written certification by the project manager authorized on behalf of the County to certify that the work is completed in accordance with the Statement of Work for each Work Order. No work shall proceed until such time as the District issues a dully-executed Work Order.

Receipt of the above deliverable by the District will be allowed by a site visit by the District's Project Manager. Upon satisfactory review by the District's Project Manager, the County will invoice the District for the fixed price specified in the Work Order. This invoice shall be accompanied by adequate supporting cost documentation as specified in the Work Order, including copies of invoices paid by the County to any subcontractor(s). The District reserves the right to include other deliverables in each work Order depending upon the nature of the work being performed.

Lees County Contractual Insurance / Indemnification Guidelines

PURPOSE

These insurance guidelines have been established to insure that the assets and financial resources of Lee County receive maximum protection when using service agreements and/or contracts with the vendors, artisan contractors and/or general contractors.

These guidelines will act to standardize insurance requirements in areas where exposure to loss is similar. The guidelines will also assist individual departments in selecting the proper insurance provisions to be included in contracts, memorandum of understanding, and facility use agreements.

These guidelines establish generally acceptable standards. It should be noted, however, that these standards are subject to review and modification by the Risk Manager and/or the County Attorney who will assist departments in addressing exposures as conditions warrant. As a result of the review, requirements may be decreased or increased in response to specific exposures.

To aid in identification of loss exposures, all Standard and Major Contracts for Service, as identified by this document, bid documents, contracts, franchises, leases, memorandum of understanding, facility use agreements, etc., must to be forwarded to the Risk Manager and County Attorney for review prior to bid and/or execution.

When Insurance is required the vendor/contractor shall procure and maintain during the life of this project, or as outlined in the request for proposal, the insurance coverage listed below. The policies of insurance shall be primary and written on forms acceptable to the County Risk Manager. The insurance carrier must be approved and licensed by the Insurance Department in the State of Florida and meet a minimum financial rating of not less than A:V with A. M. Best & Company.

MINOR CONTRACT - Contracts that will not exceed ninety (90) calendar days; or where the contract price will not exceed \$50,000; and/or there are no unusual hazards present:

1. Insurance Requirements:

- a. Workers' Compensation - Statutory benefits as defined by FS 440 encompassing all operations contemplated by this contract or agreement to apply to all owners, officers, and employees regardless of the number of employees. Individual employees may be exempted per State Law. Employers' liability will have minimum limits of:

\$100,000 per accident
\$500,000 disease limit
\$100,000 disease limit per employee

- b. Commercial General Liability - Coverage shall apply to premises and/or operations, products and/or completed operations, independent contractors, contractual liability, and broad form property damage exposures with minimum limits of:

\$100,000 bodily injury per person (BI)
\$300,000 bodily injury per occurrence (BI)
\$100,000 property damage (PD) or
\$300,000 combined single limit (CSL) of BI and PD

- c. Business Auto Liability - The following Automobile Liability will be required and coverage shall apply to all owned, hired and non-owned vehicles use with minimum limits of:

\$100,000 bodily injury per person (BI)
\$300,000 bodily injury per occurrence (BI)
\$100,000 property damage (PD) or
\$300,000 combined single limit (CSL) of BI and PD

2. Special Requirements:

- a. Ten (10) days prior to the commencement of any work under this contract a certificate of insurance will be provided to the Risk Manager for review and approval. The certificate shall provide for the following:

1. **"Lee County, a political subdivision and Charter County of the State of Florida, its agents, employees, and public officials"** will be named as an "Additional Insured" on the

General Liability policy.

2. Lee County will be given thirty (30) days notice prior to cancellation or modification of any stipulated insurance. Such notification will be in writing by registered mail, return receipt requested and addressed to the Risk Manager (P.O. BOX 398 Ft. Myers, FL 33902).
 - b. An appropriate "Indemnification" clause shall be made a provision of the contract.
 - c. It is the responsibility of the general contractor to insure that all subcontractors comply with all insurance requirements.
 - d. It should be remembered that these are minimum insurance requirements, which are subject to modification in response to high hazard operations.

STANDARD CONTRACT - Contracts that will not exceed three hundred and sixty five (365) calendar days; or where costs will not exceed \$500,000; and/or there are no unusual hazards present.

1. Insurance Requirements:

- a. Workers' Compensation - Statutory benefits as defined by FS 440 encompassing all operations contemplated by this contract or agreement to apply to all owners, officers, and employees regardless of the number of employees. Individual employees may be exempted per State Law. Employers' liability will have minimum limits of:

\$500,000 per accident
\$500,000 disease limit
\$500,000 disease limit per employee

- b. Commercial General Liability - Coverage shall apply to premises and/or operations, products and/or completed operations, independent contractors, contractual liability, and broad form property damage exposures with minimum limits of:

\$500,000 bodily injury per person (BI)
\$1,000,000 bodily injury per occurrence (BI)
\$500,000 property damage (PD) or
\$1,000,000 combined single limit (CSL) of BI and PD

- c. Business Auto Liability - The following Automobile Liability will be required and coverage shall apply to all owned, hired and non-owned vehicles use with minimum limits of:

\$500,000 bodily injury per person (BI)
\$1,000,000 bodily injury per occurrence (BI)
\$100,000 property damage (PD) or
\$1,000,000 combined single limit (CSL) of BI and PD

****The required limit of liability shown in Standard Contract: 1.a; 1.b; 1.c; may be provided in the form of "Excess Insurance" or "Commercial Umbrella Policies." In which case, a "Following Form Endorsement" will be required on the "Excess Insurance Policy" or "Commercial Umbrella Policy."***

2. Special Requirements:

- a. Ten (10) days prior to the commencement of any work under this

contract a certificate of insurance will be provided to the Risk Manager for review and approval. The certificate shall provide for the following:

1. **“Lee County, a political subdivision and Charter County of the State of Florida, its agents, employees, and public officials”** will be named as an “Additional Insured” on the General Liability policy.
 2. Lee County will be given thirty (30) days notice prior to cancellation or modification of any stipulated insurance. Such notification will be in writing by registered mail, return receipt requested and addressed to the Risk Manager (P.O. BOX 398 Ft. Myers, FL 33902).
- b. An appropriate “Indemnification” clause shall be made a provision of the contract.
 - c. It is the responsibility of the contractor to insure that all subcontractors comply with all insurance requirements.
 - d. It should be remembered that these are minimum insurance requirements, which are subject to modification in response to hazardous operations.

MAJOR CONTRACT - where unusual hazards exist, or where contracts which exceed three-hundred-sixty-five (365) calendar days in duration, or where the project costs exceed \$500,000.

1. Insurance Requirements:

- a. Workers' Compensation - Statutory benefits as defined by FS 440 encompassing all operations contemplated by this contract or agreement to apply to all owners, officers, and employees regardless of the number of employees. Individual employees may be exempted per State Law. Employers' liability will have minimum limits of:

\$1,000,000 per accident
\$1,000,000 disease limit
\$1,000,000 disease limit per employee

- b. Commercial General Liability - Coverage shall apply to premises and/or operations, products and/or completed operations, independent contractors, contractual liability, and broad form property damage exposures with minimum limits of:

\$1,000,000 bodily injury per person (BI)
\$3,000,000 bodily injury per occurrence (BI)
\$1,000,000 property damage (PD) or
\$3,000,000 combined single limit (CSL) of BI and PD

- c. Business Auto Liability - The following Automobile Liability will be required and coverage shall apply to all owned, hired and non-owned vehicles use with minimum limits of:

\$1,000,000 bodily injury per person (BI)
\$3,000,000 bodily injury per occurrence (BI)
\$1,000,000 property damage (PD) or
\$3,000,000 combined single limit (CSL) of BI and PD

****The required limit of liability shown in Major Contracts: 1.a; 1.b; 1.c; may be provided in the form of "Excess" or "Commercial Umbrella Insurance Policies." In which case, a "Following Form Endorsement" will be required on the "Excess Insurance Policy" or "Commercial Umbrella Policy."***

2. Special Requirements

- a. Ten (10) days prior to the commencement of any work under the

contract a certificate of insurance will be provided to the Risk Manager for review and approval. The certificate shall provide for the following:

1. **"Lee County, a political subdivision and Charter County of the State of Florida, its agents, employees, and public officials"** will be named as an "Additional Insured" on the General Liability policies.
2. Lee County will be given thirty (30) days notice prior to cancellation or modification of any stipulated insurance. Such notification will be in writing by registered mail, return receipt requested and addressed to the Risk Manager (P.O. BOX 398 Ft. Myers, FL 33902).
 - b. An appropriate "Hold Harmless/Indemnification" clause will be made a provision of the contract.
 - c. It is the responsibility of the contractor to insure that all subcontractors comply with all insurance requirements.
 - d. These are minimum requirements, which are subject to modification in response to operations involving a higher level of loss exposure.

BUILDERS RISK INSURANCE - This coverage will be provided by all contractors involved in the construction of a new building, or the improvement, alteration or renovation of an existing structure with project value of \$500,000 or more. This coverage should be considered automatic on projects involving new construction or major additions to existing structures and in addition to the general liability and workers' compensation requirements found in this manual.

1. Insurance Requirements:

- a. Builders Risk – The general contractor shall provide a Builders Risk policy. Coverage shall be "All Risk" with limits equal to 100% of the completed value of the structure(s), building(s) or addition(s).
- b. Waiver of Occupancy Endorsement - to enable the County to occupy the facility under construction/renovation during such activity.
- c. Machinery/Equipment Endorsement - when the contract calls for the installation of machinery or equipment, the policy must be endorsed to provide coverage during transit and installation.
- d. Deductible Clause - the maximum deductible allowable under this coverage is \$5,000 per claim.

2. Special Requirements:

- a. Ten (10) days prior to the commencement of any work a certificate of insurance will be provided to the Risk Manager for review and approval.

The certificate shall provide for the following:

1. "Lee County" will be included as a "Named Insured" to the **Contractor's Builders Risk Policy**.
2. Lee County will be given, thirty (30) days notice prior to cancellation or modification of any stipulated insurance. Such notification will be in writing by registered mail, return receipt requested and addressed to the Risk Manager (P.O. BOX 398 Ft. Myers, FL 33902).
3. In the event the insurance coverage expires prior to the completion of the project, a renewal certificate shall be issued thirty days to the expiration date.

- b. An appropriate "Indemnification" clause shall be made a provision of the contract.
- c. It is the responsibility of the contractor to insure that all subcontracts comply with all insurance requirements.
- d. These are minimum requirements, which are subject to modification in response to operations involving a higher level of loss exposure.

INSURANCE REQUIREMENTS FOR FACILITY USE AGREEMENTS -

operations involving the temporary use/rental of County facilities or operations in or on Lee County public right of way requires the following:

1. Insurance Requirements - for Commercial / Not-For-Profit Organizations. Example: Home Shows, Boxing Match, Wild Animal Displays, Concerts, and Dances.
 - a. Workers' Compensation - Statutory benefits as defined by FS 440 encompassing all operations contemplated by this contract or agreement to apply to all owners, officers, and employees regardless of the number of employees. Individual employees may be exempted per State Law. Employers' liability will have minimum limits of:

\$100,000 per accident;
\$500,000 disease limit;
\$100,000 disease limit per employee:
 - b. Commercial General Liability (CGL) - Coverage shall apply to premises, operations and products liability damage exposures, and Liquor Liability (if served) with minimum limits of:

\$500,000 bodily injury per person (BI);
\$1,000,000 bodily injury per occurrence (BI);
\$100,000 property damage (PD); or
\$1,000,000 combined single limit (CSL) of BI and PD:
2. Special Requirements:
 - a. Ten (10) days prior to the commencement of operations under any agreement a certificate of insurance will be provided to the Risk Manager for review and approval. The certificate shall provide for the following:
 1. **"Lee County, a political subdivision and Charter County of the State of Florida, its agents, employees, and public officials"** shall be named as an "Additional Insured" on the General Liability policy.
 2. Lee County will be given, thirty (30) days notice prior to cancellation or modification of any stipulated insurance. Such notice will be in writing by registered mail, (P.O. Box 398 Ft. Myers, FL 33902) return receipt requested and addressed to the Risk Manager.

3. An appropriate "Indemnification" clause shall be made a part of the agreement.
- b. These are minimum requirements, which are subject to modification in response to operations involving a higher level of loss exposure.