

Lee County Board Of County Commissioners

Agenda Item Summary

Blue Sheet No. 20030494

1. **REQUESTED MOTION:**

ACTION REQUESTED: Execute Agreement No. C-15432 with the South Florida Water Management District (SFWMD) for Water Table Monitoring Network Improvement. The total two-year project cost is \$540,000.00 including the District's contribution of \$240,000.00 with a \$300,000.00 cost share by Lee County. Approve Budget Transfer from SFWMD Grant (Project 208534) to Water Table Monitoring Network Improvement (Project 208582) of \$200,000.00 in expenses and \$100,000.00 in grant revenue for the current fiscal year and amend the FY02/03-06/07 CIP accordingly.

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

WHAT ACTION ACCOMPLISHES: Provides cost sharing mechanism to update the ground water monitoring network in Lee County.

2. **DEPARTMENTAL CATEGORY:**

COMMISSION DISTRICT #: C-W 08 -- **C8A**

3. **MEETING DATE:**

05-06-2003

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:**

Lee County has a network of groundwater wells used primarily to monitor groundwater elevation developed as part of the Surface Water Master Plan recommendations. The need for water related data has grown as development continues and efforts are made to quantify the impacts and to identify opportunities for water conservation. Most of the wells were installed to monitor the wet season water table and are at an insufficient depth to provide data through the dry season. This project proposes to deepen and improve these wells and thereby improve data quality. This information is useful to Lee County and the South Florida Water Management District and cost sharing is an efficient means to complete the project. Lee County is responsible for all of the work under this contract with financial participation by the South Florida Water Management District.

Funding for the project is delineated below:	District	Lee County	Total Project
Fiscal Year: October 1, 2002 – September 30, 2003	\$100,000.00	\$100,000.00	\$200,000.00
October 1, 2003 – September 30, 2004	\$140,000.00	\$200,000.00	\$340,000.00

Funding for next years is dependent on approval of the annual budget by the South Florida Water Management District Governing Board. Funds will be available in 20858230100.503490 (Capital Projects; Water Table Monitoring Network Improvement; Capital Improvement Fund; Other Contracted Services).

Attachments: Two (2) Originals of SFWMD Agreement C-15432 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>4/21/03</i>	<i>[Signature]</i>	N/A	<i>4/21/03</i>	<i>[Signature]</i>	<i>4/23/03</i>	<i>4/23/03</i>	<i>4/23/03</i>	<i>4-22-03</i>	<i>4/21/03</i>

10. **COMMISSION ACTION:**

- APPROVED
- DENIED
- DEFERRED
- OTHER

Rec. by CoAtty
Date: *4/22/03*
Time: *9:00 am*
Forwarded To:
City Admin
4/22/03

RECEIVED BY
COUNTY ADMIN. *EW*
4/22 3:00
COUNTY ADMIN.
FORWARDED TO:
4/23 100

C



ORIGINAL

SOUTH FLORIDA WATER MANAGEMENT DISTRICT AGREEMENT

THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT (hereinafter referred to as DISTRICT) HEREBY ENTERS INTO THIS AGREEMENT WITH: Name: LEE COUNTY Address: 1500 Monroe Street Ft. Myers, FL 33902 Project Manager: Anura Karuna-Muni Telephone No: (239) 479-8131 Fax No: () - Hereinafter referred to as: COUNTY	This number must appear on all Invoices and Correspondence C-15432
	MBE PARTICIPATION: %
	COST SHARING INFORMATION Total Project Cost: \$ 540,000.00 CONTRACTOR Contribution: \$ 300,000.00

PROJECT TITLE: WATER TABLE MONITORING NETWORK IMPROVEMENT

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

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

TOTAL DISTRICT CONSIDERATION: \$240,000.00 Multi-Year Funding (If Applicable) Fiscal Year: October 1, 2002-September 30, 2003 \$100,000.00 Fiscal Year: October 1, 2003-September 30, 2004 \$140,000.00* Fiscal Year: *Subject to District Governing Board Annual Budget Approval	AGREEMENT TYPE: Not-to-Exceed Fiscal Year: Fiscal Year: Fiscal Year:
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AGREEMENT TERM: Thirty Months District Project Manager: Akintunde Owosina Telephone No: (239) 338-2929 Fax No. (239) 338-2936	EFFECTIVE DATE: Last Date of Execution by the Parties District Contract Administrator: Marilyn Ivory (561) 682-6381 Fax No.: (561) 682-5381 or (561) 681-6275
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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: Anura Karuna-Muni
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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: _____	SOUTH FLORIDA WATER MANAGEMENT DISTRICT BY ITS GOVERNING BOARD Accepted By: _____ Frank Hayden, Procurement Director Date: _____ SFWMD PROCUREMENT APPROVED By: <i>Marilyn Ivory</i> Date: <i>7-17-03</i>
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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, data, analytical examinations, scientific theories, lab 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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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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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 reprocurement 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**



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(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



SOUTH FLORIDA WATER MANAGEMENT DISTRICT

EXHIBIT "B"

GENERAL TERMS AND CONDITIONS

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.

**WATER TABLE MONITORING NETWORK IMPROVEMENT
LEE COUNTY**

STATEMENT OF WORK

1.0. INTRODUCTION

Lee County has a network of 139 groundwater wells that are primarily used to monitor groundwater elevation the water table aquifer all over the County. The network was originally installed and monitored as part of the development of Lee County's Surface Water Management Plan. In an effort to develop an historical record of the water table as well as to determine a mean wet-season water table, Lee County has continued to monitor the levels in these wells. The need for water related data in Lee County has grown as development continues and efforts are made to quantify the impacts and to identify opportunities for water conservation.

Approximately 80% of these wells have been found to be of insufficient depth to provide groundwater level data throughout the year. This is because the wells are so shallow that in the dry season they are dry when the water table falls below the well bottom. The resulting data has limited information and use, which could be greatly enhanced if the wells were deepened. Currently, well statistics such as mean groundwater level, especially in the dry season are misleading at best because many of the wells report depth-to-bottom of well or no record. This project proposes to deepen and otherwise improve these wells and thereby improve the quality of the data gathered from the wells. This information is useful to the District and may be crucial to the implementation of the Water Table MFL due to be developed by 2004. The information is also important for monitoring resource conditions and for overall watershed management.

2.0 OBJECTIVES

To primary objective of this project is to improve the Water Table Aquifer monitoring network in Lee County, by jointly funding (SFWMD and Lee County) a project to upgrade the existing water table monitoring well network.

3.0 SCOPE OF WORK

Lee County shall be responsible for the satisfactory completion of all work under this project. Lee County shall initiate and manage the "Water Table Network" improvement project from selection of contractor through construction, equipment installation, start-off of monitoring in the upgraded network. The District shall participate in the project financially to an amount not to exceed \$100,000 in the first year of the project (FY03) and \$140,000 in the second year of the project (FY04), subject to funding and Governing Board approval.

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

The Project Manager for Lee County is Anura Karuna-Muni, telephone (239) 479 8131. The SFWMD's Project Manager is Akin Owosina, telephone (800) 432-2045, and extension 7733. All matters shall be coordinated with or directed to the Project Managers for action or disposition.

4.0 WORK BREAKDOWN STRUCTURE

The project involves the upgrade the existing water table monitoring well network. The improvements to the network will include deepening of wells to a sufficient depth to record water level throughout the year, relocation of wells or constructions of new wells to expand the network on publicly owned lands that provide safe and secure accessible location within areas of deficient coverage. Upgrade will also include improvement of wells to a standard suitable for monitoring water quality in addition to water level. The entire contract would be completed in two phases, the first phase will include well construction and improvement of the network, while the second phase will focus on installation of monitoring equipment in selected wells.

PHASE I: Network Improvements

Task 1 Project Kickoff:

Within two weeks of the execution of the contract, Lee County will meet with District staff to discuss the project and make sure that both the County's Project Manager and the District Project Manager are in agreement as to the expectation of the project and scope of the work to be conducted. Lee County will submit minutes of this meeting to the District. The deliverable is due within two weeks of the kick off meeting.

Task 2. Project Work Plan:

Lee County will develop and submit to the District a Project Work Plan (PWP). The PWP shall document the Lee County's understanding of the project and shall describe the proposed expansion of the monitoring well network. The PWP shall also include a schedule of project activities, and deliverables. District approval of the PWP is required before additional tasks are performed. The PWP is due to the District within one (1) month of execution of the contract.

Task 3 Pre-construction activities:

Pre-construction activities will include but are not limited to activities necessary to prepare and submit permit applications, activities necessary to prepare bid documents and secure the services of a licensed driller. Pre-construction activities will be considered

complete when all necessary permits have been issued and notice to proceed issued for well construction or improvement.

Task 4 Construction Activities:

Construction activities will include all activities necessary to prepare monitoring well sites and complete well construction or improvement. The deliverables from these activities will be submitted to the District as a monthly progress report or on completion of the activities. Lee County will provide a completion report and other supporting documents indicating completion of the construction activities, including invoices from contractor(s) to the District.

Task 5 Final Phase I Report:

On completion of the project, Lee County shall prepare a final report summarizing location of and improvements to the Water Table monitoring network completed under this contract. The report shall include the coordinates, depths and other attributes of each well in the network. The report shall also include recommendations on Phase II of the project including, number and location of wells to instrument for continuous data collection. Electronic database of the wells and a GIS coverage with attributes including location, well description, depth, land elevation, measuring point and so on, will be submitted along with the final report.

PHASE II: Instrumentation

Task 6 Equipment Installation:

Lee County in cooperation with District staff will select representative wells from within the Water Table Aquifer monitoring network for continuous monitoring. The selected wells will be instrumented with dataloggers and other equipment necessary for continuous water level data collection. Lee County and the SFWMD will jointly fund the installation of monitoring equipment on those wells that meet the Districts needs for MFL development and implementation in the Water Table Aquifer. Lee County shall be responsible for maintenance of the equipment for a period of no less than 3 years following installation. The data collected shall be stored by Lee County and provided to the District in Electronic form on request.

The deliverable for this task shall be the installation report that describes the equipment at each site, a photograph of each site and directions to each site including road intersections or major landmarks. The database of monitoring wells developed in phase I will be modified to incorporate the information in the installation report.

5.0 SUMMARY OF DELIVERABLES AND PAYMENT SCHEDULE

The deliverables from this contract are listed with due dates in Attachment "A" and correlate to Tasks in the Work Breakdown section. The due dates are defined as the number of months from the date of contract execution (start-up).

ATTACHMENT "A"
COST PROPOSAL SUMMARY FORM

TASK*	DUE DATE**	DISTRICT COST SHARE	COUNTY COST SHARE	TOTAL PROJECT COST(\$)
Task 1: Project kick-off meeting. Deliverable: Minutes of kick off meeting.	0.5 Month	\$500	\$90,000	\$190,000
Task 2: Project Work Plan. Deliverable: Project Work Plan	1 Month	\$2,500		
Task 3: Pre-construction activities Deliverable: Notice to Proceed to Driller.	2 - 4 Month	\$10,000		
Task 4: Construction activities Deliverables: Progress Report + Updated PWP.	3 - 8 Months	\$82,000		
Task 5: Phase I, Final Report. Deliverable: Final report.	12 Months	\$5,000		
Task 0: Project Management. Deliverable: None.	-	\$0	\$10,000	\$10,000
Total Phase I Cost:		\$100,000	\$100,000	\$200,000
Task 6: Instrumentation Deliverable: Installation report	24 Months	\$140,000	\$200,000	\$340,000
Total Phase II Cost: ***		\$140,000	\$200,000	\$340,000
Total Project Cost: ***		\$240,000	\$300,000	\$540,000

* Tasks include submission of all required deliverables by the specified due date.

** Due Dates are the number of months following the date of Agreement execution.

*** Phase II Cost is "not to exceed" actual cost would depend on number of stations considered beneficial to District. County cost is an estimate reflecting additional stations not required by District.

EXHIBIT "D"

PAYMENT AND DELIVERABLE SCHEDULE

TASK*	DUE DATE**	DISTRICT COST SHARE	COUNTY COST SHARE	TOTAL PROJECT COST(\$)
Task 1: Project kick-off meeting. Deliverable: Minutes of kick off meeting.	0.5 Month	\$500	\$90,000	\$190,000
Task 2: Project Work Plan. Deliverable: Project Work Plan	1 Month	\$2,500		
Task 3: Pre-construction activities Deliverable: Notice to Proceed to Driller.	2 - 4 Month	\$10,000		
Task 4: Construction activities Deliverables: Progress Report + Updated PWP.	3 - 8 Months	\$82,000		
Task 5: Phase I, Final Report. Deliverable: Final report.	12 Months	\$5,000		
Task 0: Project Management. Deliverable: None.	-	\$0	\$10,000	\$10,000
Total Phase I Cost:		\$100,000	\$100,000	\$200,000
Task 6: Instrumentation Deliverable: Installation report	24 Months	\$140,000	\$200,000	\$340,000
Total Phase II Cost: ***		\$140,000	\$200,000	\$340,000
Total Project Cost: ***		\$240,000	\$300,000	\$540,000

- * Tasks include submission of all required deliverables by the specified due date.
- ** Due Dates are the number of months following the date of Agreement execution.
- *** Phase II Cost is "not to exceed" actual cost would depend on number of stations considered beneficial to District. County cost is an estimate reflecting additional stations not required by District.

The County shall submit invoices on a completion of deliverable basis. Partial payment on Task 4, Construction Activities is allowed. Invoicing for partial payment must be accompanied by written certification by the Project Manager authorized on

behalf of the County to certify that work invoiced is completed. .

The County shall invoice the District in accordance with this Payment and Deliverable Schedule. Upon receipt and acceptance of deliverables by the District, the District agrees to pay the County as specified above. The invoices shall be accompanied by adequate supporting, including, where applicable, copies of invoices paid to the contractor by the County.