

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

Blue Sheet No. 20040735

1. REQUESTED MOTION:

ACTION REQUESTED: Execute Contract OT040966 with the South Florida Water Management District (SFWMD) for East Lee County Creek Restoration. The total project cost is \$250,000 including the District's contribution of \$200,000 with a \$50,000 cost share by Lee County. Approve Budget Transfer from SFWMD Grant Projects (Project 208534) to East Lee County Creek Restoration (Project 208586) of \$50,000 in expenses establishing Lee County's contribution. Approve budget amendment in the amount of \$200,000 reflecting the SFWMD expenses and revenues for FY03/04 and amend the FY03/04-07/08 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 activities relating to exotic vegetation removal, debris removal and replanting of native vegetation in tributaries of the Caloosahatchee River east of the W.P. Franklin Locks.

2. DEPARTMENTAL CATEGORY:

COMMISSION DISTRICT #: 5 08 *C8A*

3. MEETING DATE:

07-27-2004

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, numerous creek and river systems have been restored. In a continuation of this successful program, numerous tributaries flowing into the Caloosahatchee River east of the W.P. Franklin Locks are in danger of serious exotic vegetation infestation. These tributaries include Bedman Creek and Hickey Creek, critical outfalls for the Lehigh Acres canal system. Other tributaries east of the locks in need of cleaning, include, but are not limited to, Cypress, Fichter, and Edwards Creeks. The purpose of the project is to remove exotic vegetation and debris from natural creeks east of the Locks. The project also includes replanting of native vegetation where removal of exotics exposes the creek banks to erosion. This work will improve flood protection, water quality, and wildlife habitat.

Total estimated project cost is \$250,000 with SFWMD contributing \$200,000 and Lee County providing the balance of \$50,000. Two (2) original agreements are attached requiring SFWMD Governing Board approval.

Funds will be available in 20858630100 (Capital Projects; East Lee County Creek Restoration, Capital Improvement Fund).

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>Jammy</i> <i>6-24-04</i>	<i>[Signature]</i>	<i>N/A</i>	<i>[Signature]</i> <i>6/28/04</i>	<i>[Signature]</i> <i>6/28/04</i>	<i>[Signature]</i>	<i>[Signature]</i> <i>7/6/04</i>	<i>[Signature]</i> <i>7/1/04</i>	<i>[Signature]</i> <i>7/1/04</i>	<i>Jammy</i> <i>6-24-04</i>

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

Rec. by CoAtty
Date: *6/29/04*
Time: *4:20*
Forwarded To: *[Signature]*
6/30/04

RECEIVED BY
COUNTY ADMIN: *[Signature]*
6/30/04
10:55 AM '04
COUNTY ADMIN
FORWARDED TO: *[Signature]*
7/6/04
3:30 PM

RESOLUTION

Amending the Budget of Capital Improvements-Fund 30100 to incorporate the unanticipated receipts into Estimated Revenues and Appropriations for the fiscal year 2003-2004.

WHEREAS, in compliance with the Florida Statutes 129.06(2), it is the desire of the Board of County Commissioners of Lee County, Florida, to amend the Capital Improvements-Fund 30100 budget for \$200,000 of the unanticipated revenue from the South Florida Water Management and an appropriation of a like amount for construction costs and;

WHEREAS, the Capital Improvements-Fund 30100 budget shall be amended to include the following amounts which were previously not included.

ESTIMATED REVENUES

Prior Total:		\$87,667,641
Additions		
20858630100.337300.9006	SFWM Grants	200,000
Amended Total Estimated Revenues		\$87,867,641

APPROPRIATIONS

Prior Total:		\$87,667,641
Additions		
20858630100.503490	Other Contracted Services	200,000
Amended Total Appropriations		\$87,867,641

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Lee County, Florida, that the Capital Improvements-Fund 30100 budget is hereby amended to show the above additions to its Estimated Revenue and Appropriation accounts.

Duly voted upon and adopted in Chambers at a regular Public Hearing by the Board of County Commissioners on this ____ day of _____, 2004.

ATTEST:
CHARLIE GREEN, EX-OFFICIO CLERK

BOARD OF COUNTY COMMISSIONERS
LEE COUNTY, FLORIDA

BY: _____
DEPUTY CLERK

CHAIRMAN

APPROVED AS TO FORM

OFFICE OF COUNTY ATTORNEY

DOC TYPE YA
LEDGER TYPE BA



SOUTH FLORIDA WATER MANAGEMENT DISTRICT

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ARTICLE 1 - STATEMENT OF WORK

1.1 The COUNTY shall, to the satisfaction of the DISTRICT, fully and timely perform all work items described in the "Statement of Work," attached hereto as Exhibit "C" and made a part of this AGREEMENT.

1.2 As part of the services to be provided by the COUNTY under this AGREEMENT, the COUNTY shall substantiate, in whatever forum reasonably requested by the DISTRICT, the methodology, lab analytical examinations, scientific theories, data, reference materials, and research notes. The COUNTY shall also be required to substantiate any and all work completed, including but not limited to, work completed by subcontractors, assistants, models, concepts, analytical theories, computer programs and conclusions utilized as the basis for the final work product required by the AGREEMENT. This paragraph shall survive the expiration or termination of this AGREEMENT.

1.3 The parties agree that time is of the essence in the performance of each and every obligation under this AGREEMENT.

1.4 In the event COUNTY employees or hired workers are authorized by Exhibit "C" to perform services on-site at DISTRICT facilities, the COUNTY hereby agrees to be bound by all applicable DISTRICT policies and standards of conduct listed in Attachment 1, "Contractor Policy Code Acknowledgement" to Exhibit "C" and shall require each individual performing such on-site work to execute the Attachment 1 form. It is the COUNTY's responsibility to advise its employees or hired workers of the nature of the project, as described in Exhibit "C". The COUNTY shall determine the method, details and means of performing the services, within the parameters established by Exhibit "C". The DISTRICT shall provide additional guidance and instructions to COUNTY's employees or hired workers where necessary or appropriate as determined by the DISTRICT.

ARTICLE 2 - COMPENSATION/ CONSIDERATION

2.1 The total consideration for all work required by the DISTRICT pursuant to this AGREEMENT shall not exceed the amount as indicated on the cover/signature page of this AGREEMENT. Such amount includes all expenses which the COUNTY may incur and therefore no additional consideration shall be authorized.

2.2 Notwithstanding the foregoing, the amount expended under this AGREEMENT shall be paid in accordance with, and subject to the multi-year funding allocations for each DISTRICT fiscal year indicated on the cover/signature page of this AGREEMENT. Funding for each applicable fiscal year of this AGREEMENT is subject to DISTRICT Governing Board budgetary appropriation. In the event the DISTRICT does not approve funding for any subsequent fiscal year, this AGREEMENT shall terminate upon expenditure of the current funding, notwithstanding other provisions in this AGREEMENT to the contrary. The DISTRICT will notify the COUNTY in writing after the adoption of the final DISTRICT budget for each subsequent fiscal year if funding is not approved for this AGREEMENT.

2.3 The COUNTY assumes sole responsibility for all work which is performed pursuant to the Statement of Work, Exhibit "C". By providing funding hereunder, the DISTRICT does not make any warranty, guaranty, or any representation whatsoever regarding the correctness, accuracy, or reliability of any of the work performed hereunder.

2.4 The COUNTY by executing this AGREEMENT, certifies to truth-in-negotiation, specifically, that wage rates and other factual unit costs supporting the consideration are accurate, complete, and current at the time of contracting. The COUNTY agrees that the DISTRICT may adjust the consideration for this AGREEMENT to exclude any significant sums by which the consideration was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs.



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The **DISTRICT** shall make any such adjustment within one (1) year following the expiration or termination of this **AGREEMENT**.

ARTICLE 3 - INVOICING AND PROMPT PAYMENT

3.1 *The COUNTY's invoices shall reference the **DISTRICT's Contract Number** and shall be sent to the **DISTRICT's address** specified on the cover/signature page of this **AGREEMENT**.* The **COUNTY** shall not submit invoices to any other address at the **DISTRICT**.

3.2 The **COUNTY** shall submit the invoices on a completion of deliverable basis, pursuant to the schedule outlined in the Payment and Deliverable Schedule, attached hereto as Exhibit "D" and made a part of this **AGREEMENT**. In the event the schedule does not specify payment on a completion of deliverable basis, all invoices shall be substantiated by adequate supporting documentation to justify hours expended and expenses incurred within the not-to-exceed budget, including but not limited to, copies of approved timesheets, payment vouchers, expense reports (including approved travel costs, if applicable), receipts and subcontractor invoices. Any authorized travel shall be reimbursed in accordance with Chapter 112, Florida Statutes.

3.3 It is the policy of the **DISTRICT** that payment for all goods and services shall be made in a timely manner and that interest payments are made on late payments. In accordance with Florida Statutes, Section 218.70, Florida Prompt Payment Act, a "proper" invoice is defined as an invoice that conforms to all statutory requirements and all **DISTRICT** requirements as specified in the **AGREEMENT** for invoice submission. The time at which payment shall be due from the **DISTRICT** shall be forty-five (45) days from receipt of a proper invoice and acceptance of services and/or deliverables, based on compliance with the statutory requirements set forth in Section 218.70, F.S. and upon satisfaction of the **DISTRICT** conditions as detailed in the **AGREEMENT**.

Failure of the **COUNTY** to follow the instructions set forth in the **AGREEMENT** regarding a proper invoice and acceptable services and/or deliverables may result in an unavoidable delay in payment by the **DISTRICT**. All payments due from the **DISTRICT** for a proper invoice and acceptable services and/or deliverables and not made within the time specified in this section shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance. The **COUNTY** shall invoice the **DISTRICT** for payment of any accrued unpaid interest.

Any disputes regarding invoice payments which cannot be resolved by the appropriate department of the **DISTRICT** shall be concluded by final written decision of the **DISTRICT** Leadership Team not later than sixty (60) days after the date on which the proper invoice was received by the **DISTRICT**.

3.4 Unless otherwise stated herein, the **DISTRICT** shall not pay for any obligation or expenditure made by the **COUNTY** prior to the commencement date of this **AGREEMENT**.

ARTICLE 4 - PROJECT MANAGEMENT/ NOTICE

4.1 The parties shall direct all technical matters arising in connection with the performance of this **AGREEMENT**, other than invoices and notices, to the attention of the respective Project Managers specified on the cover/signature page of the **AGREEMENT** for attempted resolution or action. The Project Managers shall be responsible for overall coordination and oversight relating to the performance of this **AGREEMENT**. The **COUNTY** shall direct all administrative matters, including invoices and notices, to the attention of the **DISTRICT's** Contract Specialist specified on the cover/signature page of the **AGREEMENT**.

All formal notices between the parties under this **AGREEMENT** shall be in writing and shall be deemed received if sent by certified mail, return receipt requested, to the respective addresses specified on the cover/signature page of the **AGREEMENT**. The **COUNTY** shall also provide a copy of all notices to



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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 the cover/signature page of the **AGREEMENT**.

ARTICLE 5 - INSURANCE

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

5.2 In the event the **COUNTY** subcontracts any part or all of the work hereunder to any third party, the **COUNTY** shall require each and every subcontractor to identify the **DISTRICT** as an additional insured on all insurance policies as required by the **COUNTY**. Any contract awarded by the **COUNTY** for work under this **AGREEMENT** shall include a provision whereby the **COUNTY's** subcontractor agrees to 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 It is the policy of the **DISTRICT** to encourage good business practices by requiring contractors to materially perform in accordance with the terms and conditions of the **DISTRICT AGREEMENT**. In accordance with **DISTRICT** Rule 40E-7, Part II, F.A.C., "material breach" is defined as any substantial, unexcused non-performance by failing to perform an act that is an important part of the transaction or performing an act inconsistent with the terms and conditions of the **AGREEMENT**.

If the **COUNTY** materially fails to fulfill its obligations under this **AGREEMENT**, the **DISTRICT** will provide written notice of the deficiency by forwarding a Cure Notice citing the specific nature of the material breach. The **COUNTY** shall have thirty (30) days to cure the breach. If the **COUNTY** fails to cure the breach within the thirty (30) day period, the **DISTRICT** shall issue a Termination for Default Notice. Once the **DISTRICT** has notified the **COUNTY** that it has materially breached its contract with the **DISTRICT**, by sending a Termination for Default Notice, the **DISTRICT's** Governing Board shall determine whether the **COUNTY** should be suspended from doing future work with the **DISTRICT**, and if so, for what period of time. The **DISTRICT's** Governing Board will consider the factors detailed in Rule 40E-7, Part II, F.A.C. in making a determination as to whether a **COUNTY** should be suspended, and if so, for what period of time. Should the **DISTRICT** terminate for default in accordance with this provision, the **DISTRICT** shall be entitled to recover procurement costs in addition to all other remedies under law and/or equity.

6.2 The **DISTRICT** may terminate this **AGREEMENT** with or without cause at any time for convenience upon thirty (30) calendar days prior written notice to the **COUNTY**. The performance of work under this **AGREEMENT** may be terminated by the **DISTRICT** in accordance with this clause in whole, or from time to time in part, whenever the **DISTRICT** shall determine that such termination is in the best interest of the **DISTRICT**. Any such



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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 In the event a dispute arises which the project managers cannot resolve between themselves, the parties shall have the option to submit to non-binding mediation. The mediator or mediators shall be impartial, shall be selected by the parties, and the cost of the mediation shall be borne equally by the parties. The mediation process shall be confidential to the extent permitted by law.

6.4 The DISTRICT may order that all or part of the work stop if circumstances dictate that this action is in the DISTRICT's best interest. Such circumstances may include, but are not limited to, unexpected technical developments, direction given by the DISTRICT's Governing Board, a condition of immediate danger to DISTRICT employees, or the possibility of damage to equipment or property. This provision shall not shift responsibility for loss or damage, including but not limited to, lost profits or consequential damages sustained as a result of such delay, from the COUNTY to the DISTRICT. If this provision is invoked, the DISTRICT shall notify the COUNTY in writing to stop work as of a certain date and specify the reasons for the action, which shall not be arbitrary or capricious. The COUNTY shall then be obligated to suspend all work efforts as of the effective date of the notice and until further written direction from the DISTRICT is received. Upon resumption of work, if deemed appropriate by the DISTRICT, the

DISTRICT shall initiate an amendment to this AGREEMENT to reflect any changes to Exhibit "C", Statement of Work and/or the project schedule.

6.5 The DISTRICT anticipates a total project cost as indicated on the cover/signature page, with the balance of matching funds and/or in-kind services to be obtained from the COUNTY in the amount as specified on the cover/signature page of this AGREEMENT. In the event such COUNTY matching funding and/or in-kind services becomes unavailable, that shall be good and sufficient cause for the DISTRICT to terminate the AGREEMENT pursuant to Paragraph 6.2 above.

ARTICLE 7 - RECORDS RETENTION/ OWNERSHIP

7.1 The COUNTY shall maintain records and the DISTRICT shall have inspection and audit rights as follows:

A. Maintenance of Records: The COUNTY shall maintain all financial and non-financial records and reports directly or indirectly related to the negotiation or performance of this AGREEMENT including supporting documentation for any service rates, expenses, research or reports. Such records shall be maintained and made available for inspection for a period of five years from completing performance and receiving final payment under this AGREEMENT.

B. Examination of Records: The DISTRICT or its designated agent shall have the right to examine in accordance with generally accepted governmental auditing standards all records directly or indirectly related to this AGREEMENT. Such examination may be made only within five years from the date of final payment under this AGREEMENT and upon reasonable notice, time and place.

C. Extended Availability of Records for Legal Disputes: In the event that the DISTRICT should become involved in a legal dispute with a third party arising from performance under this AGREEMENT, the COUNTY shall extend the period of maintenance for all records relating to the AGREEMENT until the final disposition of the legal dispute, and all such



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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 **AGREEMENT** shall be returned and title transferred from the **COUNTY** to the **DISTRICT** immediately upon termination or expiration of this **AGREEMENT** upon the written request of the **DISTRICT** not less than thirty (30) days prior to **AGREEMENT** expiration or termination. Equipment is hereby defined as any non-consumable items purchased by the **DISTRICT** with a value equal to or greater than \$750.00 and with a normal expected life of one (1) year or more. The **COUNTY** will maintain any such equipment in good working condition while in its possession and will return the equipment to the **DISTRICT** in good condition, less normal wear and tear. The **COUNTY** will use its best efforts to safeguard the equipment throughout the period of performance of this **AGREEMENT**. However the **DISTRICT** will not hold the **COUNTY** liable for loss or damage due to causes beyond the **COUNTY**'s reasonable control. In the event of loss or damage, the **COUNTY** shall notify the **DISTRICT** in writing within five (5) working days of such occurrence.

7.5 The **DISTRICT** has acquired the right to use certain software under license from third parties. For purposes of this **AGREEMENT**, the **DISTRICT** may permit the **COUNTY** access to certain third party owned software on **DISTRICT** computer systems. The **COUNTY** acknowledges the proprietary nature of such software and agrees not to reproduce, distribute or disclose such software to any third party. Use of or access to such software shall be restricted to designated **DISTRICT** owned systems or equipment. Removal of any copy of licensed software is prohibited.

ARTICLE 8 - STANDARDS OF COMPLIANCE

8.1 The **COUNTY**, its employees, subcontractors or assigns, shall comply with all applicable federal, state, and local laws and regulations relating to the performance of this **AGREEMENT**. The **DISTRICT** undertakes no duty to ensure such compliance, but will attempt to advise the **COUNTY**, upon request, as to any such laws of which it has present knowledge.



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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 has been placed on the discriminatory vendor list. If the COUNTY or any affiliate of the COUNTY has been convicted of a public entity crime or has been placed on the discriminatory vendor list, a period longer than 36 months has passed since that person was placed on the convicted vendor or discriminatory vendor list. The COUNTY further understands and accepts that this AGREEMENT shall be either void by the DISTRICT or subject to immediate termination by the DISTRICT, in the event there is any misrepresentation or lack of compliance with the mandates of Section 287.133 or Section 287.134, respectively, Florida Statutes. The DISTRICT, in the event of such termination, shall not incur any liability to the COUNTY for any work or materials furnished.

8.5 The COUNTY 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 (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



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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, the **COUNTY** assures the **DISTRICT** that the **COUNTY**, its employees, subcontractors and assigns will refrain from acting adverse to the **DISTRICT'S** legitimate interest in promoting the goals and objectives of this project. The **COUNTY** agrees to take all reasonable measures necessary to effectuate these assurances. In the event the **COUNTY** determines it is unable to meet or promote the goals and objectives of the project, it shall have the duty to immediately notify the **DISTRICT**. Upon such notification the **DISTRICT**, in its discretion, may terminate this **AGREEMENT**.

ARTICLE 9 - RELATIONSHIP BETWEEN THE PARTIES

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

9.2 In the event that the **COUNTY** is providing staff who will be working on-site at **DISTRICT** facilities, it is further understood that the **COUNTY** shall be the

employer of the staff provided pursuant to the **AGREEMENT** for all purposes under state and federal law and that the **COUNTY'S** staff shall not be eligible for any benefit programs the **DISTRICT** offers to its employees. All benefits available to the **COUNTY'S** staff shall be exclusively provided by the **COUNTY** or by the **COUNTY'S** employee.

The **COUNTY** is solely responsible for compliance with all labor and tax laws pertaining to officers, agents and **COUNTY** employees and shall indemnify and hold the **DISTRICT** harmless from any failure by the **COUNTY** to comply with such laws. The **COUNTY'S** duties with respect to such personnel shall include, but are not limited to, the following:

9.2.1 Billing, collection, payroll services and tax withholding, and any other related services

9.2.2 Providing insurance coverage pursuant to Article 5 of this **AGREEMENT**.

9.2.3 Providing any and all employment benefits, including, but not limited to, annual leave, sick leave, paid holidays, health insurance, retirement benefits and disability insurance.

9.2.4 Complying with the Fair Labor Standards Act, 29 U.S.C. 201, et.seq., including payment of overtime in accordance with the Act.

9.2.5 Providing employee training for all activities necessary for job performance, except those functions that are unique to the **DISTRICT**, in which event, the **DISTRICT**, in its sole judgment and discretion, may provide training.

9.3 It is the intent and understanding of the Parties that this **AGREEMENT** is solely for the benefit of the **COUNTY** and the **DISTRICT**. No person or 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.

9.4 The **COUNTY** shall not assign, delegate, or otherwise transfer its rights and obligations as set forth in this **AGREEMENT** without the prior written



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consent of the **DISTRICT**. Any attempted assignment in violation of this provision shall be void.

9.5 The **COUNTY** shall not pledge the **DISTRICT's** credit or make the **DISTRICT** a guarantor of payment or surety for any **AGREEMENT**, debt, obligation, judgement, lien, or any form of indebtedness.

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

ARTICLE 10 - MBE PARTICIPATION

10.1 The **COUNTY** hereby acknowledges that no Minority Business Enterprises (MBE) participation level 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 for public notice and award of such contracts. In the event subsequent competitive contract awards do result in MBE 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 - GENERAL PROVISIONS

11.1 Notwithstanding any provisions of this **AGREEMENT** to the contrary, the parties shall not be held liable for any failure or delay in the performance of this **AGREEMENT** that arises from fires, floods, strikes, embargoes, acts of the public enemy, unusually severe weather, outbreak of war, restraint of Government, riots, civil commotion, force majeure, act of God, or for any other cause of the same character which is unavoidable through the exercise of due care and beyond the control of the parties. Failure to perform shall be excused during the continuance of such circumstances, but this **AGREEMENT** shall otherwise remain in effect. This provision shall not apply if the "Statement of Work" of this

AGREEMENT specifies that performance by **COUNTY** is specifically required during the occurrence of any of the events herein mentioned.

11.2 Any inconsistency in this **AGREEMENT** shall be resolved by giving precedence in the following order:

- (a) Exhibit "A" Special Provisions, if applicable
- (b) Exhibit "B" General Terms and Conditions
- (c) Exhibit "C" Statement of Work
- (d) all other exhibits, attachments and documents specifically incorporated herein by reference

11.3 Failures or waivers to insist on strict performance of any covenant, condition, or provision of this **AGREEMENT** by the parties, their successors and assigns shall not be deemed a waiver of any of its rights or remedies, nor shall it relieve the other party from performing any subsequent obligations strictly in accordance with the terms of this **AGREEMENT**. No waiver shall be effective unless in writing and signed by the party against whom enforcement is sought. Such waiver shall be limited to provisions of this **AGREEMENT** specifically referred to therein and shall not be deemed a waiver of any other provision. No waiver shall constitute a continuing waiver unless the writing states otherwise.

11.4 Should any term or provision of this **AGREEMENT** be held, to any extent, invalid or unenforceable, as against any person, 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.

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

11.6 This **AGREEMENT** states the entire understanding and **AGREEMENT** between the parties and supersedes any and all written or oral representations, 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



SOUTH FLORIDA WATER MANAGEMENT DISTRICT

EXHIBIT "B"

GENERAL TERMS AND CONDITIONS

negotiations made by **DISTRICT** staff do not suffice to legally bind the **DISTRICT** in a contractual relationship unless they have been reduced to writing and signed by an authorized **DISTRICT** representative. This **AGREEMENT** shall inure to the benefit of and shall be binding upon the parties, their respective assigns, and successors in interest.

ARTICLE 12 – SAFETY REQUIREMENTS

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

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

12.3 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.

12.4 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.

12.5 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.

12.6 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.

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

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

12.7.2 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

12.7.3 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.

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

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

12.10 *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.

12.11 *Environmental:* When the **COUNTY**, **COUNTY's** contractors, 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.



SOUTH FLORIDA WATER MANAGEMENT DISTRICT

EXHIBIT "B"

GENERAL TERMS AND CONDITIONS

12.12 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 "A"
East Lee County Creek Restoration
Statement of Work

A. INTRODUCTION

The Lee County Surface Water Master Plan recommends that the county's rivers and creeks be cleaned of fallen debris and exotic vegetation to allow optimum performance of outfalls and avoid flooding while still maintaining good quality aquatic habitat. Lee County and the South Florida Water Management District (District) have worked together in a cost sharing arrangement for the cleaning of numerous creeks and rivers throughout the County and recognize the benefits of working together to accomplish this task. As part of this continuing cooperative effort, the County and the District have agreed that numerous tributaries flowing into the Caloosahatchee River east of the W.P. Franklin Locks are in danger of becoming seriously infested with exotic vegetation. These tributaries include Bedman Creek and Hickey Creek, both critical outfalls for the extensive canal system that drains the Lehigh Acres area. Other tributaries east of the Locks in need of cleaning include, but are not limited to, Cypress, Fichter, and Edwards Creeks. While the removal of exotic vegetation is considered necessary to improve drainage, it is also acknowledged that removal of the vegetative growth from the banks may leave them susceptible to erosion. Replanting those areas with desirable native vegetation is now an important consideration. In addition to bank stabilization, replanting is important for maintaining or improving water quality, as well as reestablishing habitat for the native wildlife.

B. OBJECTIVES

The purpose of this work is to remove exotic vegetation and debris from natural creeks that outfall into the Caloosahatchee River east of the W.P. Franklin Locks. In addition, the project will also include replanting native vegetation in areas where removal of the exotic vegetation leaves the banks susceptible to erosion. This will improve flood protection, water quality, and wildlife habitat.

C. SCOPE OF WORK

Lee County shall remove exotic vegetation and treat it with herbicides; remove debris, fallen trees not providing essential aquatic habitat, and low hanging branches that restrict flow during higher flow periods; and replant native vegetation in impacted areas of the tributaries to the Caloosahatchee River east of the W.P. Franklin Locks. These tributaries include, but are not limited to, Bedman Creek, Hickey Creek, Cypress Creek, Fichter Creek and Edwards Creek.

D. WORK BREAKDOWN STRUCTURE

Task 1: District personnel shall identify the work during a site visit with a county representative.

Task 2: The County shall remove debris, fallen trees, and overhanging branches and transport debris to appropriate disposal sites.

Task 3: The County shall restore sites by re-planting with native vegetation.

EXHIBIT "D"
PAYMENT AND DELIVERABLE SCHEDULE

This is a cost-share project with funding coming from the District and Lee County. The project is expected to cost approximately \$250,000. The District's share will be \$200,000. Lee County's share will be \$50,000 to include project management time (not to exceed \$10,000).

- A summary deliverable schedule for each task associated with this project is set forth below.
- All deliverables submitted hereunder are subject to review by the District. The District shall maintain full responsibility and ultimate authority for providing all project direction to the Contractor, including final approval of all project deliverables.
- Acceptability of all work will be based on the judgment of the District that the work is technically credible, accurate, precise and timely.
- Due dates for all deliverables are based on the number of weeks from the date of contract execution.
- Payment shall be made to Lee County upon receipt and acceptance of the contract deliverables.

Task No.	Deliverables	Due Date (From notice to proceed)	Payment (Upon contract execution)
1	Identify the work to be performed.	2 weeks	\$ 50,000
2	Written report on removal and transport of debris.	20 weeks	\$ 100,000
3	Written report on re-planting of sites	40 weeks	\$ 50,000
TOTAL			\$ 200,000