

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

Blue Sheet No. 20060422

1. ACTION REQUESTED/PURPOSE: Execute Contract No. OT061239, Water Table Monitoring Improvements, with the South Florida Water Management District. This contract completes work originally planned under Agreement No. C-15432 which has expired. Sufficient funding is available under Project 208582, Water Table Monitoring Network, to complete this contract.

2. WHAT ACTION ACCOMPLISHES: Provides District cost share to complete Water Table Monitoring Improvements project.

3. MANAGEMENT RECOMMENDATION: Staff recommends approval.

4. Departmental Category: 08 C8A		5. Meeting Date: 04-18-2006
6. Agenda: <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Administrative <input type="checkbox"/> Appeals <input type="checkbox"/> Public <input type="checkbox"/> Walk-On	7. Requirement/Purpose: (specify)	
	<input type="checkbox"/> Statute	8. Request Initiated: Commissioner _____ Department Public Works Division Natural Resources By: <u>Roland E. Ottolini, P.E.</u>
	<input type="checkbox"/> Ordinance	
	<input type="checkbox"/> Admin. Code	
	<input checked="" type="checkbox"/> Other	
<input type="checkbox"/> Agreement		

9. Background:

On May 6, 2003, the Board of County Commissioners executed South Florida Water Management District Agreement No. C-15432, Water Table Monitoring Network Improvement. This project was initiated to improve the network of groundwater wells primarily used to monitor the groundwater elevation in the water table aquifer throughout Lee County. The contract expired with the completion of Phase I, installation of thirty-five monitoring wells. The District has determined that completion of the balance of monitoring stations is beneficial and has provided this contract for that purpose.

Total project cost has been estimated at \$340,000 with the District to provide \$140,000. The District has budgeted \$135,000 for this purpose with the \$5,000 balance to be subject to Governing Board approval of the Fiscal Year 2007 budget. Sufficient funds are available under Project 208582 to complete this scope of work. No additional funding is required.

Attachments: South Florida Water Management District Contract OT061239 (2 Originals).

10. Review for Scheduling:

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
 4-9-06	N/A	N/A	AD 4/3	 4/5/06	Analyst 4-6-06	Risk 4/6/06	Grants 4/6/06	Mgr. 4/6/06	 4-9-06

11. Commission Action:

- Approved
- Deferred
- Denied
- Other

TO FR, 4/6/06

RECEIVED BY COUNTY ADMIN 4-5-06 3:30
COUNTY ADMIN FORWARDED TO: 4-5-06 P.M. 4:30

Rec. by CoAtty Date: 4/6/06 Time: 11:55 AM Forwarded To: Co Mgr. 4/5/06
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ORIGINAL

**SOUTH FLORIDA WATER MANAGEMENT DISTRICT
LOCAL GOVERNMENTAL AGREEMENT**

AGREEMENT NO. OT061239

BETWEEN THE

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

AND

LEE COUNTY

THIS AGREEMENT is entered into as of _____ by and between the South Florida Water Management District (**DISTRICT**) and Lee County (**COUNTY**).

WHEREAS, the **DISTRICT** is a public corporation of the State of Florida, created by the Florida Legislature and given those powers and responsibilities enumerated in Chapter 373, Florida Statutes, to include entering into contracts with public agencies, private corporations or other persons; and

WHEREAS, the **DISTRICT** desires to provide financial assistance to the **COUNTY** for the Lee County Water Table Monitoring Network Improvement; and

WHEREAS, the **COUNTY** warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms and conditions of this **AGREEMENT**; and

NOW, THEREFORE, in consideration of the covenants and representations set forth herein and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

1. The **DISTRICT** agrees to contribute funds and the **COUNTY** agrees to perform the work set forth in Exhibit "A" attached hereto and made a part hereof, subject to availability of funds and in accordance with their respective authorities for the upgrade of the existing water table monitoring well network.
2. The period of performance of this **AGREEMENT** shall commence on the date of execution of this **AGREEMENT** and shall continue for a period of one (1) year.
3. The total **DISTRICT** contribution shall not exceed the amount of One Hundred Forty Thousand Dollars and No Cents (\$140,000.00). The **DISTRICT** will provide the full amount based on the Payment and Deliverable Schedule set forth in Exhibit "B", which is attached hereto and made a part of this **AGREEMENT**. The **DISTRICT**'s contribution is subject to adequate documentation to support actual expenditures within the not-to-exceed **AGREEMENT** funding limitation of \$140,000.00. In no event shall the **DISTRICT** be liable for any contribution hereunder in excess of this amount. If the total consideration for this **AGREEMENT** is subject to multi-year funding allocations, funding for each applicable fiscal year of this **AGREEMENT** will be subject to 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**.

4. The **COUNTY** shall submit quarterly financial reports to the **DISTRICT** providing a detailed accounting of all expenditures incurred hereunder throughout the term of this **AGREEMENT**. The **COUNTY** shall report and document the amount of funds expended per month during the quarterly reporting period and the **AGREEMENT** expenditures to date within the maximum not-to-exceed **AGREEMENT** funding limitation.
5. The **COUNTY** is responsible for any additional funds either through local revenues, grants, other appropriations, and/or other funding sources in conformity with the laws and regulations governing the **COUNTY**.
6. All work to be performed under this **AGREEMENT** is set forth in Exhibit "A", Statement of Work, which is attached hereto and made a part of this **AGREEMENT**. The **COUNTY** shall submit quarterly progress reports detailing the status of work to date for each task. The work specified in Exhibit "A" shall be under the direction of the **COUNTY** but shall be open to periodic review and inspection by either party. No work set forth in Exhibit "A" shall be performed beyond the expiration date, unless authorized through execution of an amendment to cover succeeding periods.
7. The **COUNTY** is hereby authorized to contract with third parties (subcontracts) for services awarded through a competitive process required by Florida Statutes. The **COUNTY** shall not subcontract, assign or transfer any other work under this **AGREEMENT** without the prior written consent of the **DISTRICT's** Project Manager. The **COUNTY** agrees to be responsible for the fulfillment of all work elements included in any subcontract and agrees to be responsible for the payment of all monies due under any subcontract. It is understood and agreed by the **COUNTY** that the **DISTRICT** shall not be liable to any subcontractor for any expenses or liabilities incurred under the subcontract(s).
8. Both the **DISTRICT** and the **COUNTY** shall have joint ownership rights to 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 other party, its subcontractor(s), assign(s), agent(s) and/or successor(s) as required by the Exhibit "A", Statement of Work. Both parties' rights to deliverables received under this **AGREEMENT** shall include the unrestricted and perpetual right to use, reproduce, modify and distribute such deliverables at no additional cost to the other party. Notwithstanding the foregoing, ownership of all equipment and hardware purchased by the **COUNTY** under this **AGREEMENT** shall be deemed to be the property of the **COUNTY** upon completion of this **AGREEMENT**. The **COUNTY** shall retain all ownership to tangible property.
9. The **COUNTY**, to the extent permitted by law, assumes any and all risks of personal injury, bodily injury and property damage attributable to negligent acts or omissions of the **COUNTY** and the officers, employees, servants and agents thereof. The **COUNTY** represents that it is self-funded for Worker's Compensation and liability insurance, covering bodily injury, personal injury and property damage, with such protection being applicable to the **COUNTY**, its officers and employees while acting within the scope of their employment during performance of under this **AGREEMENT**. In the event that 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** shall include a provision whereby the **COUNTY's** subcontractor agrees to indemnify, pay on behalf, and hold the **DISTRICT** harmless from all damages arising in connection with the **COUNTY's** subcontract.
10. 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.
11. The parties to this **AGREEMENT** are independent entities and are not employees or agents of the other parties. Nothing in this **AGREEMENT** shall be interpreted to establish any relationship other than that of independent entities, between the **DISTRICT**, the **COUNTY**, their employees, agents, subcontractors or assigns, during or after the term of this **AGREEMENT**. The parties to this **AGREEMENT** shall not assign, delegate or otherwise transfer their rights and obligations as set forth in this **AGREEMENT**

without the prior written consent of the other parties. Any attempted assignment in violation of this provision shall be void.

12. The parties to this **AGREEMENT** assure that no person shall be excluded on the grounds of race, color, creed, national origin, handicap, age or sex, from participation in, denied the benefits of, or be otherwise subjected to discrimination in any activity under this **AGREEMENT**.
13. 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.
14. Either party may terminate this **AGREEMENT** at any time for convenience upon thirty (30) calendar days prior written notice to the other party. In the event of termination, all funds not expended by the **COUNTY** for authorized work performed through the termination date shall be returned to the **DISTRICT** within sixty (60) days of termination.
15. 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**.
16. The **COUNTY** shall maintain records and the **DISTRICT** shall have inspection and audit rights below. The **COUNTY** shall similarly require each subcontractor to maintain and allow access to such records for audit purposes:

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 (5) years from the expiration date of this **AGREEMENT**.

B. Examination of Records: The **DISTRICT** or 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 (5) years from the expiration date of this **AGREEMENT**.

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. All such records shall be made readily available to the **DISTRICT**.

17. Whenever the **DISTRICT's** contribution includes state or federal appropriated funds, the **COUNTY** shall, in addition to the inspection and audit rights set forth in paragraph #16 above, maintain records and similarly require each subcontractor to maintain and allow access to such records in compliance with the requirements of the Florida State Single Audit Act and the Federal Single Audit Act, as follows:

A. Maintenance of Records: The **DISTRICT** shall provide the necessary information to the **COUNTY** as set forth in Exhibit "C". The **COUNTY** shall maintain all financial/non-financial records through:

- (1) Identification of the state or federal awarding agency, as applicable
- (2) Project identification information included in the Catalog of State Financial Assistance (CSFA) or the Catalog of Federal Financial Assistance (CFDA), as applicable
- (3) Audit and accountability requirements for state projects as stated in the Single Audit Act and applicable rules of the Executive Office of Governor, rules of the Chief Financial Officer and rules of the Auditor General and the State Projects Compliance Supplement
- (4) Audit/accountability requirements for federal projects as imposed by federal laws and regulations
- (5) Submission of the applicable single audit report to the **DISTRICT**, as completed per fiscal year

B. Examination of Records: The **DISTRICT** or designated agent, the state awarding agency, the state's

Chief Financial Officer and the state's Auditor General and/or federal awarding agency shall have the right to examine the COUNTY's financial and non-financial records to the extent necessary to monitor the COUNTY's use of state or federal financial assistance and to determine whether timely and appropriate corrective actions have been taken with respect to audit findings and recommendations which may include onsite visits and limited scope audits.

18. All notices or other communication regarding this AGREEMENT shall be in writing and forwarded to the attention of the following individuals:

South Florida Water Management District

Lee County

Attn: Clyde Dabbs, Project Manager
Telephone No. (239) 338-2929 ext. 7759

Attn: Anura-Karuna-Muni, Project Manager
Telephone No. (239) 479-8131

Attn: Patrick Wiener, Contract Specialist
Telephone No. (561) 682-6220

Address:
P.O. Box 398
Ft Myers, FL 33908

Address:
P.O. Box 24680
3301 Gun Club Road
West Palm Beach, FL 33416-4680

19. COUNTY recognizes that any representations, statements or negotiations made by DISTRICT staff do not suffice to legally bind 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.
20. This AGREEMENT may be amended, extended or renewed only with the written approval of the parties. The DISTRICT shall be responsible for initiating any amendments to this AGREEMENT, if required.
21. This AGREEMENT, and any work performed hereunder, is subject to the Laws of the State of Florida. Nothing in this AGREEMENT will bind any of the parties to perform beyond their respective authority, nor does this AGREEMENT alter the legal rights and remedies which the respective parties would otherwise have, under law or at equity.
22. Should any term or provision of this AGREEMENT be held, to any extent, invalid or unenforceable, as against any person, COUNTY 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.
23. Failures or waivers to insist on strict performance of any covenant, condition, or provision of this AGREEMENT by the parties 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.
24. Any dispute arising under this AGREEMENT which cannot be readily resolved shall be submitted jointly to the signatories of this AGREEMENT with each party agreeing to seek in good faith to resolve the issue through negotiation or other forms of non-binding alternative dispute resolution mutually acceptable to the parties. A joint decision of the signatories, or their designees, shall be the disposition of such dispute.
25. This AGREEMENT states the entire understanding and agreement between the parties and supersedes any and all written or oral representations, statements, negotiations, or agreements previously existing between the parties with respect to the subject matter of this AGREEMENT.

26. Any inconsistency in this **AGREEMENT** shall be resolved by giving precedence in the following order:
- (a) Terms and Conditions outlined in preceding paragraphs 1 – 24
 - (b) Exhibit "A" Statement of Work
 - (c) all other exhibits, attachments and documents specifically incorporated herein by reference

IN WITNESS WHEREOF, the parties or their duly authorized representatives hereby execute this **AGREEMENT** on the date first written above.

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

By: _____

Carrie Hill, Interim Procurement Director

SFWMD Procurement Approved

By: Patricia Weiner

Date: 3-21-06 omz

LEE COUNTY

By: _____

Title _____

EXHIBIT "A"
LEE COUNTY WATER TABLE MONITORING NETWORK IMPROVEMENT

1.0. INTRODUCTION

Lee County has a network of groundwater wells that are primarily used to monitor the groundwater elevation in the Water Table aquifer throughout 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 elevation as well as to determine the mean wet-season water table elevation, Lee County has continued to monitor the water 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.

As of 2003, approximately 80% of these wells had been found to be of insufficient depth to provide groundwater level data throughout the year. In May 2003, the District initiated a project with Lee County to deepen and otherwise improve these wells and thereby improve the quality of the data gathered from the wells. For various reasons, the project incurred delays and the original contract (C-15432) has expired. The issues that delayed the original contract have been resolved, and this contract proposes to complete the project. This project is a cost share agreement. The total project cost is \$340,000.00, the District cost is \$140,000.00, the balance of \$200,000.00 will be funded by Lee County.

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, and start-off of monitoring in the upgraded network. 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 participate in the project financially to an amount not to exceed \$240,000, \$100,000 of which has been expended against the original contract (C-15432), \$135,000 is budgeted, and the remaining \$5,000 is subject to Governing Board approval of the fiscal year 2007 budget. 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 Clyde Dabbs, telephone (239) 338-2929, extension 7759. 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 of 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 construction 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.

Under C-15432, a total of 35 monitoring wells in the Water Table aquifer were installed. Based on the county monitoring well network, originally being comprised of 139 wells, additional replacement Water Table aquifer monitoring wells are required to complete the network upgrade. This work breakdown structure provides for installation of the additional monitoring wells and equipment pilot testing, selection, acquisition and installation.

PHASE II: Network Improvements

Task 1 Project Work Plan:

Lee County will develop and submit to the District a Project Work Plan (PWP). The PWP shall document 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) week of agreement execution.

Task 2 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 3 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 report upon completion of the activities. Lee County will provide a completion report and other supporting documents indicating completion of the construction activities, including invoices from the contractor(s) to the District.

Task 4 Final Phase I Report:

On completion of the project, Lee County shall prepare a final report summarizing the

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 the instrumentation phase 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.

Task 5 Telemetry Installation:

The In-Situ model Troll-9500 (two units) with a telemetry links will be pilot tested in two wells for a six-month period. Following successful pilot testing, the monitoring data loggers will be purchased. 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 the data loggers 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 District's needs for MEL 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 (completed under C-15432) 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 Exhibit "B" 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). 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 in Exhibit "B". The invoices shall be accompanied by adequate supporting documentation, including, where applicable, copies of invoices paid to the contractor by the County.

EXHIBIT "B"
PAYMENT AND DELIVERABLES SCHEDULE

This is a cost share project with anticipated funding of \$200,000 coming from Lee County and the District's not to exceed share of \$140,000.

Total payment by the District shall not exceed the amount of \$140,000. All invoices shall be accompanied by adequate documentation to support actual expenditures incurred by the County within the not-to-exceed amounts specified below in the Agreement. The County is responsible for reviewing and approving deliverables from the consultant to ensure that project objectives are met. The County is also responsible for project management, budget management and quality control with the consultant.

Task	Deliverable	Due Date*	DISTRICT** Not-to Exceed Payment	Lee County
Task 1:	Project Work Plan (PWP)	1 week	\$2,500	
Task 2:	Notice to proceed to driller	3 weeks	\$10,000	
Task 3:	Progress report & updated PWP	3 months	\$61,250	
Task 4:	Well installation report	6 months	\$66,250	
Task 5:	Telemetry Installation	12 months		\$200,000
			\$140,000	

* All dates are referenced from the date of contract execution.

** The District shall only be obligated to pay for documented actual expenditures within the not-to-exceed amounts specified above. In the event actual expenditures by the County are less than the not-to-exceed for a particular task, the County shall have the right to apply the unexpended balance towards a subsequent task. The County shall provide written notice of its decision to exercise this right. In no event shall the District's total obligation exceed \$140,000.00 as specified above. The County is responsible for any additional funds either through local revenues, grants, other appropriations, and/or other funding sources.