

PROJECT: Freedom Park (aka Gordon River Water Quality Park)
PARCEL No(s):
FOLIO No(s): 13800022000

**INTERLOCAL AGREEMENT TO CONSTRUCT AN
AQUIFER STORAGE AND RECOVERY (ASR) TEST WELL
AND TO CONVEY A TEMPORARY EASEMENT**

THIS Interlocal Agreement to Construct An Aquifer Storage and Recovery Test Well and to Convey a Temporary Easement (hereinafter referred to as the "Agreement") is made and entered into on this _____ day of May, 2008, by and between the **CITY OF NAPLES**, whose mailing address is 380 Riverside Circle, Naples, FL 34102, (hereinafter referred to as "City"), and **COLLIER COUNTY**, a political subdivision of the State of Florida (hereinafter referred to as "County"), whose mailing address is 3301 Tamiami Trail East, Naples, Florida 34112.

WHEREAS, City requires a Temporary Easement for the Freedom Park over, under, upon and across the lands described in Exhibit "A", which is attached hereto and made a part of this Agreement (hereinafter referred to as the "Easement"); and

WHEREAS, County desires to convey the Easement to the City for the following stated purposes, on the terms and conditions set forth herein; and

WHEREAS, City has agreed to hire a contractor to construct one, (1), Class V, Group 7, Aquifer Storage and Recovery Test Well the Freedom Park at no cost to the County (the "ASR Test Well"); and

WHEREAS, City will provide Construction, Engineering and Inspection services through out the construction of the ASR Test Well and associated facilities; and

WHEREAS, City will provide a schedule and progress reports on the construction of the ASR Test Well to the County; and

WHEREAS, County is the permittee for the ASR well; and

WHEREAS, City will be responsible to adhere to the permit requirements and conditions stated in the Department of Environmental Protection permit number 262487-001-UC/5X (See Exhibit "B," attached); and

WHEREAS, County and City have determined and mutually agree that it is economically advantageous and in the best interest of the public to consummate this Agreement.

NOW THEREFORE, in consideration of these premises, the sum of Ten Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, it is agreed by and between the parties as follows:

1. All of the above RECITALS are true and correct and are hereby expressly incorporated herein by reference as if set forth fully below, and all Exhibits referenced herein are made a part of this Agreement.
2. County and City agree to do all things which may be required to give effect to this Agreement immediately as such requirement is made known to them or they are requested to do so, whichever is the earlier.
3. County agrees, represents and warrants the following:
 - (a) County has full right, power and authority to own and operate the property underlying the Easement, to enter into and to execute this Agreement, to execute, deliver and perform its obligations under this Agreement and the instruments executed in connection herewith, to undertake all actions and

to perform all tasks required of County hereunder and to consummate the transaction contemplated hereby.

- (b) No party or person other than City has any right or option to acquire the Easement or any portion thereof.
 - (c) The property underlying the Easement, and all uses of the said property, have been and presently are in compliance with all Federal, State and Local environmental laws; that no hazardous substances have been generated, stored, treated or transferred on the property underlying the Easement except as specifically disclosed to the City; that the County has no knowledge of any spill or environmental law violation on the property contiguous to or in the vicinity of the Easement to be granted to the City, that the County has not received notice and otherwise has no knowledge of: a) any spill on the property underlying the Easement; b) any existing or threatened environmental lien against the property underlying the Easement; or c) any lawsuit, proceeding or investigation regarding the generation, storage, treatment, spill or transfer of hazardous substances on the property underlying the Easement.
 - (d) County shall not be responsible for, nor shall County dictate upon City construction means, methods, techniques, skills, sequences or procedures of construction relating to the ASR Project. The aforementioned responsibilities during construction shall remain with the City and or its contractor and/or the contractor's subcontractors.
4. County agrees to grant the Easement for the purpose of constructing one, (1), Class V, Group 7, Aquifer Storage and Recovery (ASR) Test Well at the Freedom Park an easement for access. This Easement shall expire upon thirty (30) days after final completion of the Test Well unless the parties mutually agree to extend that period through a separate written document amending this Agreement.
5. City agrees, represents and warrants the following:
- (a) City shall coordinate and confer with the County, environmental agencies and other similarly situated parties as necessary throughout the construction of the ASR Test Well.
 - (b) City shall put the ASR Test Well project out to bid in accordance with Florida law, hire and remit payment to a contractor to construct the ASR Test Well and oversee the construction of the ASR Test Well in close coordination with County staff.
 - (c) City will provide a schedule and progress reports to the County upon the commencement of construction of the ASR Test Well through its conclusion. City agrees to regularly communicate with the County and respond to inquiries regarding the ongoing project within a reasonable period of time during the construction period.
 - (d) Upon completion of the construction of the ASR Test well, including all work authorized under any change orders and supplemental agreements, City shall conduct a final inspection of the work, which final inspection shall include the County's designated agent/representative, prior to City's issuing a final payment to its contractor.
 - (e) All contracts entered into by City for the construction of the ASR Test Well shall require the party contracting with City to save harmless, indemnify and defend County and its agents, officers and employees from any and all claims, losses, penalties, demands, judgments, and costs of suit, including attorney's fees, or any expense, damage or liability incurred by any of them, whether for personal injury, property damage, direct or

consequential damages or economic loss, arising directly or indirectly on account of or in connection with the work done by City's contractor pertaining to the construction of the ASR Test Well or by any person, firm or corporation to whom any portion of the ASR Test Well is subcontracted by City's contractor.

- (f) City shall be solely responsible for all costs directly and indirectly associated with all design, construction and contract administration services to be performed in connection with the ASR Project.
- (g) City shall provide County with all State directives and communications received during the construction of the ASR Test Well and provide two (2) sets of the approved construction plans and executed contract documents for the ASR Test Well project prior to commencement of construction activities by the City's contractor.
- (h) City's contractors shall maintain insurance in the following amounts:
 - (i) \$1,000,000.00 in pollution liability coverage;
 - (ii) \$1,000,000.00 in employer's liability coverage;
 - (iii) \$1,000,000.00 in general liability coverage;
 - (iv) \$500,000.00 in automobile liability coverage; and
 - (v) Statutory minimum for workers' compensation coverage.

In addition, the City's contractors shall add the County as an additional insured on its general liability insurance policy.

6. City and County mutual agree and represent:

- (a) City shall match any grant funding for the ASR Test Well project received from the South Florida Water Management District, Big Cypress Basin, up to the amount of \$561,000.
- (b) If after construction of the ASR Test Well the Parties mutually agree that the test well failed to result in a successful production of water resources, the project between the Parties shall be concluded and shall terminate as provided in paragraph seven (7), *infra*.
- (c) If after construction of the ASR Test Well the Parties mutually agree that the test well resulted in a successful production of water resources and the County decides that it wishes to proceed with a further phase of the project by pursuing the construction of an Aquifer Storage and Recovery Well System, the Parties agree to cooperate and enter into negotiations to discuss the possibility of future contributions to develop the ASR Test Well, as well as, a sharing of a percentage of the volume of water emitted from a fully developed ASR Well System.

7. This Agreement and the terms and provisions hereof shall be effective as of the date this Agreement is executed by both parties and shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, personal representatives, successors, successor trustees, and/or assignees, whenever the context so requires or admits and shall terminate upon the completion of services and responsibilities mutually performed by City and County to the written satisfaction of each other.

8. Whenever necessary, the Parties shall cooperate to fulfill their respective obligations under this Agreement.

9. This Agreement shall only be amended or cancelled by mutual written consent of the parties hereto or by their successors in interest.
10. Should any part of this Agreement be found to be invalid, then such invalid part shall be severed from the Agreement, and the remaining provisions of this Agreement shall remain in full force and effect and not be affected by such invalidity.
11. This Agreement is governed and construed in accordance with the laws of the State of Florida.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

ATTEST:

AS TO THE CITY OF NAPLES:

Clerk, City of Naples

Approved as to form and
legal sufficiency:

Reck D. Pung

ATTEST:
DWIGHT E. BROCK, Clerk

BOARD OF COUNTY COMMISSIONERS
COLLIER COUNTY, FLORIDA

Deputy Clerk

BY: _____
TOM HENNING, Chairman

Approved as to form and
legal sufficiency:

Collier County Attorney