

AGREEMENT TO IMPROVE A STORMWATER OUTFALL AND CONSTRUCT A FILTER MARSH

THIS Agreement to improve a stormwater outfall and construct a Filter Marsh (hereinafter referred to as the "Agreement") is made and entered into on this day of _____, 2009, by and between the CONSERVANCY OF SOUTHWEST FLORIDA, Inc., a Florida Non Profit Corporation, the mailing address of which is 1450 Merrihue Drive, Naples, FL 34102, (hereinafter referred to as the "Conservancy"), and THE CITY OF NAPLES, a Florida Municipal corporation, (hereinafter referred to as "City"), the mailing address of which is 735 Eight Street South , Naples, Florida 34102.

WHEREAS, the Conservancy is improving a stormwater outfall and constructing a Filter Marsh on lands described in Exhibit "A", which is attached hereto and made a part of this Agreement (hereinafter referred to as the "Project") ; and

WHEREAS, stormwater that is generated within the City currently passes through an undersized ditch inundated with vegetative growth and restrictive pipe culverts on the Conservancy's property; and

WHEREAS, the Conservancy has agreed to hire a contractor to construct the Project improvements on lands owned by the Conservancy for a cost of \$476,790; and

WHEREAS, the Conservancy holds all necessary permits for the Project; and

WHEREAS, the Conservancy will be responsible to adhere to all permit requirements and conditions, including those stated specifically in the South Florida Water Management District's permit number 11-02960-P; and

WHEREAS, the Project will provide substantial stormwater improvements to areas within the City by allowing stormwater to pass more freely to the Gordon River, including passage from public areas; and

WHEREAS, the City has determined and the Conservancy mutually agrees that it is in the public's best interest to consummate this Agreement.

NOW THEREFORE, in consideration of these premises, 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. The City as a local government agency will disburse funds, not to exceed \$150,000.00, to the Conservancy as payment for construction of a portion of the Project. Funds will be disbursed to the conservancy upon receipt and in accordance with the following procedures:
 - a) This project is a cost share project with an anticipated total contribution between by the City to the Conservancy in the amount of \$150,000. This amount is a portion of the entire project cost which is estimated at \$476,790. Therefore, the City's share is a maximum of 31.46% of the project cost (but not to exceed \$150,000).
 - b) The Conservancy will submit an invoice documenting the work completed on the outfall and culvert portions of the Project. The invoice shall be in a form acceptable to the City with proof that the outfall and culvert work has been completed. Upon receipt of the Conservancy's invoices, the City will review and process the invoices for payment.
 - c) The Conservancy shall maintain all records required by the City. All invoices, plans, surveys, information, documents, maps, and other data procedures developed, prepared, assembled, or completed by the Conservancy for the purpose of this Agreement shall be made available to the City by the Conservancy at any time upon request by the City and be subject to treatment under Chapter 119, Florida Statutes, also known as the Public Records Law . Upon completion of all work contemplated under this Agreement copies of all documents and records relating to this Agreement shall be surrendered to City, if requested.
3. City and the Conservancy 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.
4. City agrees, represents and warrants the following:
 - a) City has full right, power and authority 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 City hereunder and to consummate the transaction contemplated hereby.
 - b) No party or person other than the Conservancy has any right or option to acquire the Project or any portion thereof.
 - c) The property underlying the Project, 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 Project; that the

Conservancy has no knowledge of any spill or environmental law violation on the property contiguous to or in the vicinity of the Project, that the City or the Conservancy have not received notice and otherwise has no knowledge of: a) any spill on the property underlying the Project; b) any existing or threatened environmental lien against the property underlying the Project; or c) any lawsuit, proceeding or investigation regarding the generation, storage, treatment, spill or transfer of hazardous substances on the property underlying the Project.

d) The City shall not be responsible for, nor shall the City dictate upon the Conservancy construction means, methods, techniques, skills, sequences or procedures of construction relating to the Filter Marsh project. The aforementioned responsibilities during construction shall remain with the Conservancy and or its contractor and/or the contractor's subcontractors.

5. City has no fiscal responsibility for the construction of the Project, other than what is provided for in this Agreement.

6. The Conservancy agrees, represents and warrants the following :

a) Conservancy shall coordinate and confer with the City and other similarly situated parties as necessary throughout the construction of the Project.

b) Conservancy shall oversee the construction of the Project.

c) Conservancy shall provide a schedule and progress reports to the City as construction of the Project proceeds through completion. Conservancy agrees to regularly communicate with the City and respond to inquiries regarding the project within a reasonable period of time during the construction period.

d) Upon completion of Project construction, including work authorized under any change orders and supplemental agreements, the Conservancy will conduct a final inspection of the work, which final inspection shall include the City's designated agent/representative prior to the City issuing final payment.

e) All contracts entered into by the Conservancy for the construction of the Project shall require the party contracting with the Conservancy to save harmless, indemnify and defend City 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 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 the Conservancy's contractor pertaining to the construction of the Project or by any person, firm or corporation to whom any portion of the Project is subcontracted by the Conservancy's contractor.

f) The Conservancy shall be solely responsible for all costs directly and indirectly associated with the design, permit and contract administration services to be performed in connection with the Project. The Conservancy shall provide the City with all State directives and communications received during the construction of the Project and provide a set of approved construction plans and executed contract documents for the Project prior to the commencement of construction activities by the Conservancy's contractor.

g) The Conservancy'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 insurance;
- 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 Conservancy's contractors shall add the City as an additional insured on its general liability insurance policy.

h) The Conservancy's contractor selection process satisfies the City's procurement procedures as set forth in Chapter 2, of the Naples City Code.

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 no later than (30) days after the construction portion of the Filter Marsh Project has been completed, unless the parties mutually agree to extend that period through a separate written document amending this Agreement.
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. Venue is in Collier County, Florida.

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

AS TO THE CONSERVANCY OF SOUTHWEST FLORIDA, INC. :

BY: _____

Print Name: _____

Witness (Signature): _____

Name (Print or Type): _____

AS TO THE CITY OF NAPLES

~~BY:~~

~~BY:~~ _____
A. William Moss, City Manager

Attest:

Tara A. Norman, City Clerk

Approved as to form and legality:

Robert D. Pritt, City Attorney

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