



ORIGINAL

SAP REFERENCE NO.

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

AGREEMENT NO. 4600002210

BETWEEN THE

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

AND

CITY OF NAPLES

THIS AGREEMENT is entered into as of the _____ by and between the South Florida Water Management District (**DISTRICT**) and the City of Naples (**CITY**).

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 **CITY** for the Basin 111 Water Quality & Flood Mitigation Improvements; and

WHEREAS, the **CITY** 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

WHEREAS, the Governing Board of the **DISTRICT**, at its October 14, 2010 meeting, approved entering into this **AGREEMENT** with the **CITY**;

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 **CITY** 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 **CITY** to construct improvements to the stormwater management system within Basin 111.

2. The period of performance of this **AGREEMENT** shall commence on the date of execution of this **AGREEMENT** and shall continue for a period one (1) year.
3. The total **DISTRICT** contribution shall not exceed the amount of Six Hundred Thousand Dollars and No Cents (\$600,000.00). The **DISTRICT** shall make payment upon completion and acceptance of the deliverables as described in 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 \$600,000.00. In no event shall the **DISTRICT** be liable for any contribution hereunder in excess of this amount. In the event the **CITY** is providing a cost sharing contribution as provided for in paragraph 5 below, the **CITY** shall provide evidence that its minimum cost share has been met for each invoice submitted. The subject cost share documentation shall be included with each invoice. 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 **CITY** 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 **CITY** shall submit quarterly financial reports to the **DISTRICT** providing a detailed accounting of all expenditures incurred hereunder throughout the term of this **AGREEMENT**. The **CITY** 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 **CITY** shall cost share in the total amount of Six Hundred Thousand Dollars and No Cents (\$600,000) in conformity with the laws and regulations governing the **CITY**.
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 **CITY** 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 **CITY** 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 of the **AGREEMENT**, unless authorized through execution of an amendment to cover succeeding periods.
7. The **CITY** is hereby authorized to contract with third parties (subcontracts) for services awarded through a competitive process required by Florida Statutes. The **CITY** shall not subcontract, assign or transfer any other work under this **AGREEMENT** without the prior written consent of the **DISTRICT's** Project Manager. The **CITY** 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 **CITY** that the **DISTRICT** shall not be liable to any subcontractor for any expenses or liabilities incurred under the subcontract(s).

race, color, disability, national origin, religion, age, familial status, or sex. Upon receipt of evidence of such discrimination, the COUNTY shall have the right to terminate this Agreement.

To the greatest extent feasible, lower-income residents of the project areas shall be given opportunities for training and employment; and to the greatest feasible extent eligible business concerns located in or owned in substantial part by persons residing in the project areas shall be awarded contracts in connection with the project. The SUBRECIPIENT shall comply with Section 3 of the Housing and Community Development Act of 1968.

B. OPPORTUNITIES FOR SMALL AND MINORITY/WOMEN-OWNED BUSINESS ENTERPRISES

In the procurement of supplies, equipment, construction, or services, the SUBRECIPIENT shall make a positive effort to utilize small business and minority/women-owned business enterprises of supplies and services, and provide these sources the maximum feasible opportunity to compete for contracts to be performed pursuant to this Agreement. To the maximum extent feasible, these small business and minority/women-owned business enterprises shall be located in or owned by residents of the CDBG areas designated by Collier County in the Annual Consolidated Plan approved by HUD.

C. PROGRAM BENEFICIARIES

At least fifty-one percent (51%) of the beneficiaries of a project funded through this Agreement must be low- and moderate- income persons. If the project is located in an entitlement city, as defined by HUD, or serves beneficiaries countywide, more than thirty percent (30%) of the beneficiaries directly assisted under this Agreement must reside in unincorporated Collier County or in municipalities participating in the County's Urban County Qualification Program. The project shall assist beneficiaries as defined above for the time period designated in Exhibit "A" of this Agreement.

D. CONFLICT OF INTEREST

The SUBRECIPIENT covenants that no person who presently exercises any functions or responsibilities in connection with the Project, has any personal financial interest, direct or indirect, in the target areas or any parcels therein, which would conflict in any manner or degree with the performance of this Agreement and that no person having any conflict of interest shall be employed by or subcontracted by the SUBRECIPIENT. Any possible conflict of interest on the part of the SUBRECIPIENT or its employees shall be disclosed in writing to HHVS provided, however, that this paragraph shall be interpreted in such a manner so as not to unreasonably impede the statutory requirement that maximum opportunity be provided for employment of and participation of low and moderate-income residents of the project target area.

E. PUBLIC ENTITY CRIMES

As provided in § 287.133, *Fla. Stat.* by entering into this Agreement or performing any work in furtherance hereof, the SUBRECIPIENT certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof. This notice is required by § 287.133 (3)(a), *Fla. Stat.*

will attempt to advise the **CITY**, 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 **CITY** for authorized work performed through the termination date shall be returned to the **DISTRICT** within sixty (60) days of termination.
15. The **CITY** shall allow public access to all project documents and materials in accordance with the provisions of Chapter 119, Florida Statutes. Should the **CITY** 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 **CITY**.
16. The **CITY** shall maintain records and the **DISTRICT** shall have inspection and audit rights below. The **CITY** shall similarly require each subcontractor to maintain and allow access to such records for audit purposes:
 - A. Maintenance of Records: The **CITY** 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 **CITY** 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 **CITY** 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 **CITY** as set forth in Exhibit "C". The **CITY** 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 **CITY's** financial and non-financial records to the extent necessary to monitor the **CITY'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

Attn: Max Guerra, Project Manager
Attn: Rupert Giroux, Contract Specialist

3301 Gun Club Road
West Palm Beach, FL 33406
Telephone No. (561) 682-2532
FAX No. (561) 681-6275

City of Naples

Attn: Gregg R. Strakaluse
Project Manager

295 Riverside Circle
Naples, FL 34102
Telephone No. (239) 213-5000
Fax No. 239-213-5010

19. Invoices, clearly marked "ORIGINAL", shall be sent to the attention of Accounts Payable at the **DISTRICT's** address specified below. All invoices shall reference the **AGREEMENT** and SAP Reference Numbers specified on page one of this **AGREEMENT**. In addition, a copy of the invoice shall be sent to the attention of the **DISTRICT's** Project Manager either at the address specified in paragraph 18 above or via Facsimile (FAX) using the FAX number also specified above.

South Florida Water Management District
Attention: Accounts Payable
P.O. Box 24682
West Palm Beach, Florida 33416-4682

20. **CITY** 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.
21. 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.

22. 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.
23. Should any term or provision of this **AGREEMENT** be held, to any extent, invalid or unenforceable, as against any person, city 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.
24. 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.
25. 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.
26. 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**.
27. Any inconsistency in this **AGREEMENT** shall be resolved by giving precedence in the following order:
 - (a) Terms and Conditions outlined in preceding paragraphs 1 – 26
 - (b) Exhibit “A” Statement of Work
 - (c) Exhibit “B” Payment and Deliverable Schedule
 - (d) 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 ITS GOVERNING BOARD**

By: _____

Jessica J. Flathmann, Director of Procurement

SFWMD PROCUREMENT APPROVED

By: Ronald Livengood

Date: 9/8/10 or

CITY OF NAPLES

By: _____

Title: _____

EXHIBIT "A"

STATEMENT OF WORK

WATER QUALITY AND FLOOD MITIGATION IMPROVEMENTS CITY OF NAPLES

A. INTRODUCTION

Naples Bay, located on the southwest coast of Florida in Collier County, is a relatively narrow and shallow body of water ranging in width from 75 to 1500 feet and depth of 1 to 23 feet. Salt water enters the Bay from the south through Gordon Pass and mixes with freshwater entering the north end from the Golden Gate Canal, Rock Creek, Haldeman Creek, and the Gordon River. While the Bay once drained about 20 square miles, it is now the receiving body from approximately 120 square miles due to the construction of the Golden Gate Canal system and its linkage to the Bay.

The Bay's historical watershed was comprised of swamps, marshes and sloughs that replenished aquifers, supported plant and animal life, and supplied water for a relatively low human population in the region. However, beginning in the mid-twentieth century, the watershed's landscape began to change from this natural setting to agriculture in the east, and, particularly in the western portion of the watershed, to highly urbanized land uses. The development of urban infrastructure in the form of roads, utilities, canals, and recreational facilities has resulted in the loss of many historic flow ways to the Bay and changes in both the quantity of water running off the land and the amount of pollutants being carried with that water into the Bay have occurred.

In Fiscal Year 2007, the District received funding from the Florida State Legislature in Special Appropriation 1717A for the Naples Bay Watershed Initiative. Additionally, the Big Cypress Basin of the South Florida Water Management District budgeted funds to support local stormwater management system improvements in the Basin. Within the Naples Bay Watershed Initiative are several projects addressing important water restoration and management issues in Collier County. The goals of the Initiative are to:

- Construct stormwater treatment structures/facilities that improve polluted runoff,
- Reduce the amount of freshwater entering the Bay and, ultimately,
- Restore sea grasses, oyster reefs, and mangroves in the Bay.

Chronic flooding problems plague portions of the City and are a result of old and inadequate stormwater management infrastructure. Although improvements to infrastructure and development codes are being made, stormwater runoff carries pollutants into Naples Bay. This agreement provides funding to the City of Naples specifically for constructing improvements to the stormwater management system within Basin III. These improvements are aimed at mitigating flooding and improving the water quality of Naples Bay.

B. OBJECTIVES

The purpose of the City's Water Quality and Flood Mitigation Improvements is to attenuate flooding and the duration of water events through the use of increased retention and detention, and improve the stormwater collection features while decreasing the quantity and improving water quality of waters released to Naples Bay.

C. SCOPE OF WORK

The scope of work for improvements throughout the City will elapse over many years and many phases; however the scope for this cooperative agreement will address the following:

1. Basin III Water Quality & Flood Mitigation Improvements

In 2007, Phase I of a multi phase improvement project was completed within Basin III of the City. The City received \$1.4 million in District grant funding towards this \$3.5 million project and the project was completed with great success. At this time, the City is acquiring a District permit for Phase II Improvements within Basin III. These improvements will focus on mitigating flooding problems along Gulfshore Blvd, Broad Ave and 8th Street South. Also, in an effort to improve water quality prior to discharging into Naples Bay, a detention system is being proposed along Broad Ave South. The detention system will receive and detain stormwater flows, thereby removing pollutants and recharging the groundwater aquifer.

D. WORK BREAKDOWN STRUCTURE

Project Management

The City shall be responsible for the satisfactory completion of this project and may retain a consultant to provide the professional services needed to complete the design, plans, specifications and permits, and to assist the City during construction. The City is responsible for project management, budget management and quality control. The City is responsible for reviewing and approving deliverables from the consultant and/or contractor to ensure that the project objectives are met.

Task 1 Milestone: NOTICE TO PROCEED

Task 1 Milestone is issuing a Notice to Proceed to a contractor for construction to begin within Basin III.

Deliverables: One copy of the 100% Plans, Construction Bid Tabulation Form, and Notice To Proceed Letter.

Task 2 Milestone: 50% Construction Completion Basin III

Task 2 includes up to 50% completion of the construction and/or materials acquisition effort to implement the construction plans for Basin III.

Deliverables: City certification that 50% of materials and/or construction has been obtained and/or achieved and submittal of invoices for project.

EXHIBIT "B"

PAYMENT AND DELIVERABLES SCHEDULE

This is a cost-share project with funding coming from the District and the City of Naples. Total payment by the District shall not exceed the amount of \$600,000 for this cooperative agreement. All invoices shall be accompanied by adequate documentation to demonstrate completion of each task in accordance with the Statement of Work requirements. All deliverables submitted hereunder are subject to review and acceptance by the District. Acceptability of all work will be based on the judgment of the District that the work is technically complete and accurate.

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.

Tasks	Deliverables	Due Date	Estimated Total Cost	District Not-to-Exceed Payment*
Task #1 Basin III Water Quality & Flood Mitigation Improvements	Notice To Proceed	3 Months from contract execution	\$265,000	\$0
Task #2 Basin III Water Quality & Flood Mitigation Improvements	Certification of 50% Construction &/or Acquired Material Completion	09/30/2011	\$1,800,000	\$600,000
Total			\$2,056,000	\$600,000

*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 City are less than the not-to-exceed for a particular task, the City shall have the right to apply the unexpended balance towards a subsequent task. The City shall provide written notice of its decision to exercise this right. In no event shall the District's total obligation exceed \$600,000 as specified above for this cooperative agreement. The City is responsible for any additional funds either through local revenues, grants, other appropriations, and/or other funding sources.

EXHIBIT C

FUNDS AWARDED TO THE ENTITY PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

Federal Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following:					
Federal Program Number	Federal Agency	CFDA Number	CFDA Title	Funding Amount	State Appropriation Category
			Not Applicable		

State Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following Matching Resources for Federal Programs:					
Federal Program Number	Federal Agency	CFDA Number	CFDA Title	Funding Amount	State Appropriation Category
			Not Applicable		

State Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following Resources Subject to Section 215.97, F.S.:						
State Program Number	Funding Source	State Fiscal Year	CSFA Number	CSFA Title Or Funding Source Description	Funding Amount	State Appropriation Category
				Not Applicable		
Total Award						

For each program identified above, the recipient shall comply with the program requirements described in the Catalog of Federal Domestic Assistance (CFDA) [<http://12.46.245.173/cfda/cfda.html>] and/or the Florida Catalog of State Financial Assistance (CSFA) [<http://state.fl.us/fsaa/catalog>]. The services/purposes for which the funds are to be used are included in the Contract scope of services/work. Any match required by the recipient is clearly indicated in the Contract.