



PO NO. 950086369

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

AGREEMENT NO. 4600003151

BETWEEN THE

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

AND

CITY OF NAPLES

THIS AGREEMENT is entered into as of FEB 19 2015 by and between the South Florida Water Management District (**DISTRICT**) and City of Naples (**CITY**).

WHEREAS, the **DISTRICT** is a government entity created by Chapter 373, Florida Statutes; and

WHEREAS, the **DISTRICT** desires to provide financial assistance to the **CITY** for Lake Manor Restoration; 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 November 13, 2014 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 Lake Manor Restoration.
2. The period of performance of this **AGREEMENT** shall commence on December 1, 2014 and shall continue for a period of one (1) year terminating on November 30, 2015.
3. The total **DISTRICT** contribution shall not exceed the amount of \$325,000.00. 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** payment is a

reimbursement of actual expenditures and therefore is subject to adequate documentation to support actual expenditures within the not-to-exceed **AGREEMENT** funding limitation of \$325,000.00. 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**'s contribution shall be 75% of the total cost of the project 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 **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 October 31, 2015 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).
8. Both the **DISTRICT** and the **CITY** 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.

9. The **CITY**, 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 **CITY** and the officers, employees, servants and agents thereof. The **CITY** 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 **CITY**, its officers and employees while acting within the scope of their employment during performance of under this **AGREEMENT**. In the event that the **CITY** subcontracts any part or all of the work hereunder to any third party, the **CITY** shall require each and every subcontractor to identify the **DISTRICT** as an additional insured on all insurance policies as required by the **CITY**. Any contract awarded by the **CITY** shall include a provision whereby the **CITY's** subcontractor agrees to indemnify, pay on behalf, and hold the **DISTRICT** harmless from all damages arising in connection with the **CITY's** subcontract.
10. The **CITY** 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 **CITY**, 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 **CITY**, 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 **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 City of Naples

Attn: Joseph Schmidt, Project Manager
Attn: Sharman Rose, Contract Specialist
3301 Gun Club Road
West Palm Beach, FL 33406
Telephone No: (561) 682-2167
Email: shrose@sfwmd.gov

Attn: Andy Holland, Project Manager
Department of Streets and Stormwater
295 Riverside Circle
Naples, FL 34102
Telephone No: (239) 213-5001
Email: aholland@naplesgov.com

19. CITY shall send its invoices and any attachments to APIInvoice@sfwmd.gov and a copy to the **DISTRICT** Project Manager. All invoices must reference the CITY's legal name as authorized to do business with the State of Florida; **DISTRICT'S AGREEMENT** Number and Purchase Order (PO) Number as specified on the cover/signature page of the **AGREEMENT**; a unique invoice number not previously used; date; a description of the services performed, and the amount to be invoiced. CITY shall: 1) submit invoices using a pdf file at a resolution of no less than 300 dpi; 2) name the pdf file with the CITY's name and the PO number, and 3) provide all required attachments with the invoice file. If email or pdf filing is not possible, the CITY must provide the above to the following address:

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

CITY must submit its invoices in compliance with the requirements of this subsection and all other terms and conditions of this **AGREEMENT** in order to receive prompt payment by the **DISTRICT** as described in Section 218.70, F.S. CITY's failure 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**.

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 executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A photocopy, electronic or facsimile copy of this **AGREEMENT** and any signatory hereon shall be considered for all purposes as original.


22. 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.
23. 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.
24. 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.
25. 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.
26. 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.
27. 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**.
28. Any inconsistency in this **AGREEMENT** shall be resolved by giving precedence in the following order:
 - (a) Terms and Conditions outlined in preceding paragraphs 1 – 27
 - (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: 
Dorothy A. Bradshaw, Procurement Bureau Chief *am*

SFWMD PROCUREMENT APPROVED

By: 
Date: 10/03/14 *am*

CITY OF NAPLES

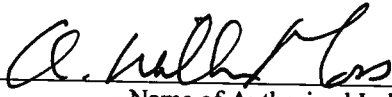
By: 
Name of Authorized Individual
Title: City Manager

EXHIBIT "A"
STATEMENT OF WORK

City of Naples
Lake Manor Restoration

A. INTRODUCTION / BACKGROUND

The South Florida Water Management District (District) has allocated funding in Fiscal Year 2015 for flood control, natural system restoration, water quality improvement, and alternative water supply projects which meet the objectives of the Big Cypress Basin's Strategic Plan.

Lake Manor is a 5-acre stormwater lake that receives runoff from an 81 acre watershed that includes public and private properties within the City of Naples (City). Lake Manor discharges to the nearby Gordon River which empties into Naples Bay. Naples Bay has been identified as an impaired water body with respect to dissolved oxygen, fecal coliform, copper, iron, and mercury in fish tissue. An accumulation of organic detritus within Lake Manor has created a nutrient laden muck layer that has impaired pollutant removal abilities of the lake. Based on water quality monitoring data available since 2008, the City has determined that significant reductions in total nitrogen, total phosphorus, fecal coliform, copper, and suspended solids loading to Naples Bay can be achieved through restoration of Lake Manor.

B. OBJECTIVES

Lake Manor receives stormwater runoff from developed land within the City. The lake is hydraulically connected to Naples Bay by an outfall structure which discharges to the Gordon River. The objective of this project is to improve the quality of stormwater within Lake Manor that eventually enters Naples Bay by excavation of nutrient laden muck contained within the lake, removal of invasive vegetation along the shoreline of the lake which generates excessive detritus, and creation of a littoral zone in the lake with suitable aquatic acreage for native wetland vegetation.

C. SCOPE OF WORK

The City of Naples (City) shall complete restoration of Lake Manor, which includes excavation of approximately 7,500 cubic yards of nutrient laden muck and sediment trapped within the lake, re-configuring and/or re-contouring the sides and bottom of the lake, removal of approximately 1.17 acres of invasive vegetation long the shoreline of the lake, creation of approximately 0.18 acres of littoral zone within the lake, and planting of approximately 0.18 acres of native wetland vegetation within the new littoral zone of the lake.

The City will be responsible for satisfactory completion of this scope of work and may retain consultants, contractors, and/or vendors to provide the professional and construction services required. The City will be responsible for project management, budget management, quality control, and public outreach. The City will also be responsible for reviewing and approving

deliverables from its consultant(s), contractor(s), and/or vendor(s) to ensure that project objectives are met.

D. WORK BREAKDOWN STRUCTURE

The work breakdown structure is presented below.

Task 1: Pre-construction

- Submit design plans, project specifications, bid amount documentation, and Notice to Proceed (NTP) to the District.

Tasks 2 – 4: Construction

- Complete Lake Manor improvements (excavation of approximately 7,500 cubic yards of nutrient laden muck and sediment trapped within the lake, re-configuring and/or re-contouring the sides and bottom of the lake, removal of approximately 1.17 acres of invasive vegetation along the shoreline of the lake, creation of approximately 0.18 acres of littoral zone within the lake, and planting of approximately 0.18 acres of native wetland vegetation along the shoreline and in the new littoral zone) per design plans, project specifications, and applicable permits.
- Submit quarterly status reports (Exhibit “D”) which provide a narrative of construction activities completed to date, a discussion of project status, an explanation of conflicts or issues, if any, which may affect construction progress or project performance, and a description of other pertinent information attached to the quarterly status reports such as project oversight/management documentation, results from applicable inspections or field tests, addendums or revisions to design plans or project specifications, and relevant project correspondence to the District.

Task 5: Post-construction

- Submit a Reimbursement Request and Certification of Completion which includes supporting documentation such as consultant, contractor, and/or vendor invoices and proof of payment(s) to the District.

EXHIBIT "B"
DELIVERABLES AND PAYMENT SCHEDULE

City of Naples
Lake Manor Restoration

- The schedule set forth below is December 1, 2014 to October 31, 2015.
- All deliverables submitted hereunder are subject to review and acceptance by the **District** Project Manager(s). Acceptability of all work will be based on the judgment of the **District** that the work is technically complete and accurate.
- Payment shall be made following receipt and acceptance by the **District** of the Reimbursement Request Package(s) in accordance with the schedule set forth below. The **City** shall submit a reimbursement request upon completion of each Task noted below. If applicable, the **City** shall submit a final reimbursement request package for payment and Exhibit "D" on or before October 31, 2015. All reimbursement request packages shall be accompanied by adequate documentation to demonstrate completion of each Task in accordance with Exhibit "A", the Statement of Work (SOW).
- Reimbursement Request Packages shall include, but not be limited to, a copy of the **City's** invoice, signed certification letter for partial payment that the Task(s) is (are) complete per the SOW or that the project is complete per the SOW, copies of vendor invoices (pay applications), and any other documentation supporting payment. Reimbursement Request Packages shall adequately demonstrate completion of each Task in accordance with Exhibit "A", the SOW.
- The **District** shall only be obligated to pay for documented actual FY2015 construction¹ costs within the not-to-exceed amounts specified below. In the event actual construction costs by the **City** are less than the not-to-exceed amount for a particular Task, the **City** shall have the right to apply the unexpended balance toward another Task, unless the total current fiscal year construction cost has decreased. The **City** shall provide prior written notice of its decision to exercise this right to the **District** Project Manager(s). If the **City** does not exercise this right, the **City** agrees to amend the contract to revise the approved funding consistent with the original percentage to the lower construction cost. In *no event* shall the **District's** total obligation exceed the amount specified below for the total **Agreement**; however, an actual construction cost less than the estimated construction cost *may* result in a reduced final payment. The **City** is responsible for any additional funds either through local revenues, grants, other appropriations, and/or other funding sources.
- Total payment by the **District** for all work completed herein *shall not exceed* the amount of \$325,000. If the total consideration for this **Agreement** is subject to multi-year funding allocations, funding for each applicable fiscal year 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.

Task	Deliverable(s)	Invoice Date²	Report Due Date	City Share (75%)	District Not-To-Exceed Share (25%)	Project Cost (100%)
1	Design Plans, Project Specifications, Bid Amount Documentation, and NTP	N/A	Upon Contract Execution ³	N/A	N/A	N/A
2	Exhibit "D" - Quarterly Status Report ⁴	N/A	March 31, 2015	N/A	N/A	N/A
3	Exhibit "D" - Quarterly Status Report ⁴	N/A	June 30, 2015	N/A	N/A	N/A
4	Exhibit "D" - Quarterly Status Report ⁴	N/A	September 30, 2015	N/A	N/A	N/A
5	Reimbursement Request and Certification of Completion for stormwater lake restoration per Exhibit "A"	Upon Conclusion of Construction Task(s)	October 31, 2015	\$975,000	\$325,000	\$1,300,000

¹ Ineligible costs include, but not limited to, permits, as-builts, videos, early completion bonus, bonds and insurance, etc.

² If applicable, interim Reimbursement Request Packages shall be submitted upon completion of the task(s) noted above. Reimbursement Request Packages must be submitted on or before October 31, 2015 for reimbursement.

³ If construction bids and vendor estimates have not been completed upon execution of the Agreement, the Recipient shall submit this information as soon as it is available to the District Project Manager(s).

⁴ Exhibit "D" Quarterly Status Reports are due within ten (10) business days of the due date.

EXHIBIT "D"
QUARTERLY STATUS REPORT

City of Naples
Lake Manor Restoration

Date of Report:

Name / Title of Person Completing Report:

1.) Narrative of construction activities completed to date:

2.) Discussion of overall Project status:

3.) Explanation of conflicts or issues, if any, which may affect construction progress or Project performance:

4.) Description of other pertinent information attached to this Report: