

**MEMORANDUM OF AGREEMENT
BETWEEN
THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT
AND LEE COUNTY
FOR A CALOOSAHATCHEE RIVER BASIN WATER QUALITY PROJECT**

THIS AGREEMENT (the "Agreement") is made and entered into as of this ____ day of _____, 2007, by and between the **South Florida Water Management District**, a public corporation of the State of Florida (the "District") and **Lee County**, a political subdivision of the State of Florida (the "County").

BACKGROUND AND OBJECTIVES

WHEREAS, the District is an independent taxing authority, created by the Florida Legislature and given those powers and responsibilities enumerated in Chapter 373, Florida Statutes; and

WHEREAS, the District is empowered to enter into contractual arrangements with public agencies, private corporations or other persons, pursuant to Section 373.083, Florida Statutes, and the Florida Interlocal Cooperation Act of 1969, as amended (Section 163.01 et seq, Florida Statutes); and

WHEREAS, the County is a political subdivision of the State of Florida and is authorized by the Florida Interlocal Cooperation Act of 1969, as amended, to enter into agreements with the District for the purposes set forth herein; and

WHEREAS, the District is developing water resource projects for the restoration of South Florida ecosystem while providing for the other water-related needs of the region, including water supply and flood protection; and

WHEREAS, the County is developing its own water resource enhancement projects within the Caloosahatchee River Watershed ("Watershed"), and supports the development and implementation of District projects to protect and improve the water quality and water resources of the Caloosahatchee Watershed.

WHEREAS, these projects include water resource projects in the Watershed; and

WHEREAS, the District intends to implement a water quality treatment and testing facility (the "Project") in the Watershed upstream of the S-79 structure to address the removal of nutrients and suspended solids; and

WHEREAS, the Northern Everglades and Estuary Protection Act (2007) recognizes the need for nutrient load reductions within the Caloosahatchee Watershed; and

WHEREAS, the District is negotiating the acquisition of approximately a 1,700 acre parcel of land in the Basin to build the Project ("Project Parcel"); and

WHEREAS, the District is also the process of hiring a consulting firm to develop conceptual design documents for the Project; and

WHEREAS, the County desires to support the Project; and

WHEREAS, the County and the District ("the Parties") desire to establish cooperative efforts to expedite implementation of projects to protect and enhance the water resources of the Caloosahatchee Watershed; and

WHEREAS, the COUNTY, by Resolution No. _____ dated the _____ day of October, 2007, has authorized the Chairperson of its Board of Commissioners to enter into this Agreement.

NOW, THEREFORE, in consideration of these premises and mutual covenants contained herein, the parties agree as follows:

1. The above recitals in the "Background and Objectives" section are true and correct, incorporated herein.
2. The District shall pursue a negotiated purchase of the Project Parcel in accordance with District land acquisition policies and procedures.
3. Subject to the District's acquisition of the Project Parcel, the District shall develop the conceptual design documents for the Project on the Project Parcel. The District shall provide the County with a copy of said design documents and provide the County with a reasonable period of time to provide written comments for the District's consideration.
4. Subsequent to the completion of the conceptual design, the District shall develop the preliminary and final design documents for the Project. The District shall provide the County with a copy of said design documents and provide the County with a reasonable period of time to provide written comments for the District's consideration.
5. The District shall construct the Project consistent with the final design documents developed by the District. The District shall be solely responsible for testing, operating, maintaining, repairing, and rehabilitating the Project.

6. All decisions with respect to the design, construction, testing, operation, maintenance, repair, and rehabilitation of the Project rest in the sole and absolute discretion of the District, and such decisions are final.

7. The County, shall no later than 20 days prior to closing on the Project Parcel and upon presentation of the available draft closing documents, contribute a total of Ten Million Dollars (\$10,000,000.00) by wire transfer to the District to help defray the District's land acquisition costs for the Project. The District shall be responsible for the balance of the costs of land acquisition and project construction through available funding as determined by the District. The County may also contribute additional funds for Project implementation.

8. The District will endeavor to complete the Project expeditiously, subject to funding and budgetary constraints, and consistent with the District's Strategic Plan.

9. At least 1,335 acres of the Project Parcel shall remain in permanent public ownership and be owned and managed by the District, or other public entity deemed acceptable by the Parties. In no event shall the ultimate land use for at least 1,335 acres be anything other than water quality treatment and/or enhancement for the benefit of the Caloosahatchee River and Estuary.

10. All notices required or permitted to be given under the terms and provisions of this Agreement by either party to the other shall be in writing and shall be sent by registered or certified, return receipt requested, or facsimile, to the parties as follows:

District:

South Florida Water Management District
ATTN.: Lead Project Manager, Everglades Restoration Area
2301 McGregor Boulevard
Fort Meyers, Florida 33901
Fax Number: (239) 338-2936

County:

Lee County
ATTN.: Roland Ottolini, Director, Natural Resources Division
P. O. Box 398
Ft. Myers, FL 33902
Fax Number: (239) 479-8108

Or to such other address as may hereafter be provided by the parties in writing. Notices sent registered or certified mail shall be deemed received on the delivery date indicated by the U.S. Postal Service on the return receipt. Facsimile notice shall be deemed received upon confirmed receipt of the facsimile.

I. Compliance with Laws

11. The Parties shall allow public access to all documents, papers, letters, or other material made or received by the District or the County in conjunction with this Agreement in accordance with the provisions of Chapter 119, Florida Statutes.

12. The County and the District agree that the District, its employees, and subcontractors are not agents of the County as a result of this Agreement nor are the County, its employees, and subcontractors agents of the District as a result of this Agreement. Further, subject to the provisions of section 768.28, F.S., the District shall indemnify, defend, and hold harmless the County and all of its officers, agents, and employees from any claim, loss, damage, cost, charge, or expense arising out of any wrongful or negligent act, error, omission by the District, its officers, or employees during the performance of this Agreement, except that the District will not be liable under this paragraph for any claim, loss, damage, cost, charge, or expense arising out of any wrongful or negligent act, error, omission, by the County or its officers, or employees during the performance of this Agreement for which the County is liable under section 768.28.

II. Mutual Responsibilities

13. The Parties will provide, on a best efforts basis, such assistance to each other in order that the land acquisition takes place on an expedited basis.

14. The Parties will, to the extent consistent with applicable law, share technical expertise and reasonably available information to accomplish the purposes and objectives stated in this Agreement, and to abide by the terms and conditions herein.

III. Performance and Financial Reports

15. The District will provide a Project design and construction schedule when available along with quarterly progress reports to the County. The District will notify the County of any developments that are likely to, or may, significantly affect the activities contemplated by this Agreement, including any difficulties or delays that materially impair the ability to meet the Agreement's objectives. In making such notification. The District shall describe what action it has taken or is considering taking to address the situation and what assistance it may need in so doing.

IV. Records

16. The District shall provide copies of the recorded deeds and leases as evidence that title and any other rights to the lands acquired pursuant to this Agreement have been transferred to the District, including grantor' names, tract numbers, and a list of recorded deed references.

17. Records of any costs and fees incurred under terms of this Agreement shall be maintained and made available upon request to the County.

V. Miscellaneous

18. Nothing in this Agreement, whether express or implied, is intended to confer to the County any rights or remedies under this Agreement against the District's contractors or subcontractors and County is not a third party beneficiary with respect to any District contract or subcontract. No provision of this Agreement give any third persons any right of subrogation or action against any party to this Agreement.

19. This Exchange Agreement contains the entire agreement between the parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations and understandings of the parties. No agreements or representations, unless incorporated in this Agreement shall be binding upon any of the parties. No modification or change in this Agreement shall be valid or binding upon the parties unless in writing and executed by the party or parties intended to be bound by it.

20. If any part of this Agreement shall be determined to be invalid or unenforceable by a court of competent jurisdiction or by any other legally constituted body having the jurisdiction to make such determination, the remainder of this Agreement shall remain in full force and effect provided that the part of this Agreement thus invalidated or declared unenforceable is not material to the intended operation of this Agreement.

21. The County's financial contributions under this Agreement shall count towards its option to provide matching funds under section 373.470(6)(c), Florida Statutes.

22. The District represents that (1) this Agreement has been duly authorized, and executed and (2) it has the required power and authority to perform this Agreement.

23. The County represents that (1) this Agreement has been duly authorized, executed and delivered by the Board of County Commissioners as the governing body of Lee County, and (2) it has the required power and authority to perform this Agreement.

24. This Agreement is subject to the availability of funding by the parties for

the present and future fiscal years and does not obligate appropriations. The parties will endeavor to obtain adequate funding.

VI. Dispute Resolution

25. In the event that there is a dispute with respect to the terms of this Agreement, the Party must first notify the other Party in writing of the nature of the purported dispute and seek in good faith to resolve the dispute through negotiation.

26. Nothing in this Section VI shall be construed to limit the rights or remedies of any Party hereto upon the exhaustion of dispute resolution set forth in this section.

VII. Termination

27. Should the District fail to present executed Project Parcel closing documents within 90 days of execution of this Agreement, this Agreement shall be null and void unless an extension is agreed upon by the Parties.

IN WITNESS WHEREOF, the parties or their duly authorized representatives hereby execute this AGREEMENT on the date first written above. The Effective Date of this Agreement shall be the date of last execution.

ATTEST: CHARLIE GREEN
CLERK OF COURTS

**BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA**

By: _____
Deputy Clerk

By: _____
Chair

Date: _____

APPROVED AS TO FORM:

By: _____

Attest:

By: Secretary

Legal Form Approved SFWMD
Office of Counsel

By: _____

**SOUTH FLORIDA WATER
MANAGEMENT DISTRICT, BY ITS
GOVERNING BOARD**

By: _____
Eric Buermann, Chair

Date: _____