



**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	2006	2007	2008	2009	2010
Capital Expenditures	_____	<u>\$660,000</u>	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	< <u>\$330,000</u> >	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	_____	<u>\$330,000</u>	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes \_\_\_ No X  
 Budget Account No.:

Fund 3900 Agency 381 Org. E441 Object 650A/6505  
 Fund 3900 Agency 381 Org. E441 RSRC 3403

**Reporting Category**

**B. Recommended Sources of Funds/Summary of Fiscal Impact**

\$330,000.00 South Florida Water Management District  
 \$330,000.00 Natural Areas Fund (MATCHING)

**C. Department Fiscal Review:**

*JF*

**III. REVIEW COMMENTS**

**A. OFMB Fiscal and /or Contract Administrator Comments:**

*[Signature]* 3/27/07 *[Signature]* 3/27/07  
 OFMB 3/23/07 3/23/07  
 Contract Administrator  
 3/27/07

**B. Legal Sufficiency:**

This Contract complies with our contract review requirements.

*[Signature]*  
 Assistant County Attorney

**C. Other Department Review:**

Department Director



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

**AGREEMENT NO. 4600000690**

**BETWEEN THE**

**SOUTH FLORIDA WATER MANAGEMENT DISTRICT**

**AND**

**PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS**

**THIS AGREEMENT** is entered into as of the \_\_\_\_\_ by and between the South Florida Water Management District (**DISTRICT**) and Palm Beach County Board of County Commissioners (**COUNTY**).

**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 **COUNTY** for the Limestone Creek Restoration Phase II; and

**WHEREAS**, the **COUNTY** 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 March 15, 2007 meeting, approved entering into this **AGREEMENT** with the **COUNTY**;

**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 **COUNTY** 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 project in support of the Limestone Creek Restoration Phase II.
2. The period of performance of this **AGREEMENT** shall commence on the date of execution of this **AGREEMENT** and shall continue for a period of two (2) years.
3. The total **DISTRICT** contribution shall not exceed the amount of Three Hundred Thirty Thousand Dollars and No Cents (\$330,000.00). The **DISTRICT** will provide the full amount based on 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 \$330,000.00. In no event shall the **DISTRICT** be liable for any contribution hereunder in excess of this amount. 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 **COUNTY** 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 **COUNTY** shall submit quarterly financial reports to the **DISTRICT** providing a detailed accounting of all expenditures incurred hereunder throughout the term of this **AGREEMENT**. The **COUNTY** 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 **COUNTY** shall cost share in the total amount of Three Hundred Thirty Thousand Dollars and No Cents (\$330,000.00) 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 **COUNTY** 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 **COUNTY** 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, unless authorized through execution of an amendment to cover succeeding periods.
7. The **COUNTY** is hereby authorized to contract with third parties (subcontracts) for services awarded through a competitive process required by Florida Statutes. The **COUNTY** shall not subcontract, assign or transfer any other work under this **AGREEMENT** without the prior written consent of the **DISTRICT's** Project Manager. The **COUNTY** 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 **COUNTY** 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 **COUNTY** 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. Notwithstanding the foregoing, ownership of all equipment and hardware purchased by the **COUNTY** under this **AGREEMENT** shall be deemed to be the property of the **COUNTY** upon completion of this **AGREEMENT**. The **COUNTY** shall retain all ownership to tangible property.
9. The **COUNTY**, 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 **COUNTY** and the officers, employees, servants and agents thereof. The **COUNTY** 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 **COUNTY**, its officers and employees while acting within the scope of their employment during performance of under this **AGREEMENT**. In the event that the **COUNTY** subcontracts any part or all of the work hereunder to any third party, the **COUNTY** shall require each and every subcontractor to identify the **DISTRICT** as an additional insured on all insurance policies as required by the **COUNTY**. Any contract awarded by the **COUNTY** shall include a provision whereby the **COUNTY's** subcontractor agrees to indemnify, pay on behalf, and hold the **DISTRICT** harmless from all damages arising in connection with the **COUNTY's** subcontract.
10. The **COUNTY** 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 **COUNTY**, 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 **COUNTY**, 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 **COUNTY**, 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 **COUNTY** for authorized work performed through the termination date shall be returned to the **DISTRICT** within sixty (60) days of termination.
15. The **COUNTY** shall allow public access to all project documents and materials in accordance with the provisions of Chapter 119, Florida Statutes. Should the **COUNTY** 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 **COUNTY**.
16. The **COUNTY** shall maintain records and the **DISTRICT** shall have inspection and audit rights below. The **COUNTY** shall similarly require each subcontractor to maintain and allow access to such records for audit purposes:
  - A. Maintenance of Records: The **COUNTY** 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 **COUNTY** 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 **COUNTY** 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 **COUNTY** as set forth in Exhibit "C". The **COUNTY** 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 **COUNTY's** financial and non-financial records to the extent necessary to monitor the **COUNTY'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: Tom Conboy, Project Manager  
Telephone No. (561) 682-6318

Attn: Patrick Wiener, Contract Specialist  
Telephone No. (561) 682-6220

Address:  
P.O. Box 24680  
3301 Gun Club Road  
West Palm Beach, FL 33416-4680

**PALM BEACH COUNTY BOARD OF  
COUNTY COMMISSIONERS--DERM**

Attn: Melissa Tolbert, Project Manager  
Telephone No. (561) 233-2562

Address:  
Palm Beach County  
Department of Environmental Resources  
Management  
2300 N. Jog Road---4<sup>th</sup> Floor  
West Palm Beach, FL 33411-2743

19. **COUNTY** 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.
20. 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.
21. 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.
22. Should any term or provision of this **AGREEMENT** be held, to any extent, invalid or unenforceable, as against any person, **COUNTY** 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.
23. 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.
24. 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. 6



**EXHIBIT "A"**  
**STATEMENT OF WORK**  
**Palm Beach County**  
**Limestone Creek Restoration Phase II**

**1.0 INTRODUCTION**

Remnants of the old Limestone Creek are located near the S-46 structure on the south fork of the Loxahatchee River, just east of I-95. Two remnant blackwater tributaries drain into the south fork of the Loxahatchee River through an approximately 52.5-acre property managed by Palm Beach County as the Limestone Creek Natural Area. The natural area is primarily composed of pine flatwoods, small amounts of scrubby flatwoods, and mesic oak hammock vegetation communities that occur along the blackwater stream channels. These tributaries have become highly eroded near their juncture with the south fork of the River. Drainage improvements for the neighboring Limestone Creek neighborhood have interrupted the historic flow of these drainageways, leaving them highly impacted hydrologically.

This project proposes to construct an oxbow near the eastern tributary where it historically drained into the south fork of the River. The oxbow will reconfigure the current connection of the historic creek tributary to discharge into the proposed oxbow. The existing canal bank will be excavated and regraded to create an intertidal mangrove wetland and associated transitional and upland areas. This will reduce erosive velocities of waters in the tributary, reduce sedimentation into the river, improve tidal flushing of mangrove wetlands, enhance estuarine habitat along the south fork of the River and will help improve overall water quality. The planning and design work for the oxbow will include an evaluation to determine if the installation of a weir(s) is also necessary within the tributary to slow the water, curb erosion, and rehydrate the adjacent hammock communities. Additionally, engineering design work will be performed to evaluate the possibility of installing additional oxbows on the south side of the River. Finally, public use facilities consisting of a small parking lot, interpretive kiosk, ADA accessible nature trail, hiking trails, fishing platform and observation deck will be constructed to provide passive recreational and educational opportunities for the local community.

**2.0 OBJECTIVE**

The creation of an oxbow will reduce erosive velocities of waters in the tributary, reduce sedimentation into the river, improve tidal flushing of mangrove wetlands, enhance estuarine habitat along the south fork of the River and will help improve overall water quality. A potential weir in the tributary channel may allow rehydration of the adjacent hammock communities, which is a desirable objective in this effort. The restoration area will provide essential wildlife habitat, including habitat for fish as well as listed migratory bird species. Additionally, the installation of limited public use facilities will allow access for passive recreational and educational opportunities for the local community.

**3.0 SCOPE OF WORK**

This project proposes to construct an oxbow near the eastern tributary where it historically drained into the south fork of the River. The oxbow will reconfigure the current connection of the historic creek tributary to discharge into the proposed oxbow. The existing canal bank will be excavated and regraded to create a shallow water oxbow including an intertidal mangrove wetland and associated transitional and upland areas. The planning and design work for the oxbow will include an evaluation to determine if the installation of a weir(s) is also necessary within the tributary to slow the water, curb erosion, and rehydrate the adjacent hammock communities. Additionally, engineering design work will be performed to evaluate the possibility of installing additional oxbows on the south side of the River. Finally, public use facilities consisting of a small parking lot, interpretive kiosk, ADA accessible nature trail, hiking trails, fishing platform and observation deck will be designed and constructed to provide passive recreational and educational opportunities for the local community.

**4.0 WORK BREAKDOWN STRUCTURE**

**Task 1: Project Planning/Engineering Design**



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Palm Beach County Environmental Resources Management (ERM) will develop a conceptual plan for project implementation within the Limestone Creek Natural Area. The plan shall include hydrological enhancements on the north and south sides of the south fork of the Loxahatchee River, as well as passive public use facilities within the natural area. ERM staff will design and prepare the construction documents, in conjunction with a contractor, for the public use facilities.

Deliverables: The County shall provide to the District a complete set of construction drawings and specifications.

**Task 2: Project Permitting**

Palm Beach County Environmental Resources Management will contract out the task of securing all appropriate permits which will include but are not limited to the following:

- Environmental Resource Permit
- USACOE Dredge and Fill Permit
- SFWMD ROW Permit
- PBC Building Permit

Deliverables: The County shall provide to the District copies all approved permits.

**Task 3: Construction Bid Process**

Palm Beach County Environmental Resources Management will prepare the bid documents and advertise for, receive and evaluate bids for construction of the oxbow and public use facilities. An award will be made; contracts signed and notice to proceed given.

Deliverables: The County shall provide to the District a copy of the construction contract with a notice to proceed given to the responsible low bidder.

**Task 4: Construction**

Palm Beach County Environmental Resources Management will implement and oversee construction by the selected contractor.

Deliverables: The County shall provide to the District as-built drawings and certification of construction completion.

**Task 5: Project Planning/Engineering Design South Oxbows/Littoral Shelf**

Palm Beach County Environmental Resources Management (ERM) will develop a conceptual plan for hydrological enhancements, including oxbows and/or littoral shelves on the south side of the South fork of the Loxahatchee River.

Deliverables: The County shall provide to the District a conceptual plan for the hydrological enhancements.

9

**EXHIBIT "B"**  
**PAYMENT AND DELIVERABLES SCHEDULE**

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.

<b>Task</b>	<b>Deliverable</b>	<b>Due Date</b>	<b>PBC</b>	<b>SFWMD</b>	<b>TOTAL</b>
Task 1	Project Planning/ Engineering and Design – Public Use Facilities	March 2007	\$25,000	\$25,000	\$50,000
Task 2	Project Permitting	July 2007	\$60,000	0	\$60,000
Task 3	Construction Bid Process	December 2007	\$10,000	\$10,000	\$20,000
Task 4	Construction	August 2008	\$210,000	\$270,000	\$480,000
Task 5	Project Planning/ Engineering and Design – South Oxbows/Littoral Shelf	August 2008	\$25,000	\$25,000	\$50,000
<b>TOTAL</b>			<b>\$330,000</b>	<b>\$330,000</b>	<b>\$660,000</b>

10

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

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

State Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following Resources Subject to Section 215.97, F.S.:						
Federal Program Number	Federal Agency	State Fiscal Year	CSFA Number	CSFA Title Or Funding Source Description	Funding Amount	State Appropriation Category
	Dept of Environmental Protection	2007	37.039	Water Resource Management	\$330,000.00	

<b>Total Award</b>					<b>\$330,000.00</b>	
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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.

2007 - 919

BGEX - 380-0320070000000001246

BOARD OF COUNTY COMMISSIONERS  
PALM BEACH COUNTY, FLORIDA

BUDGET TRANSFER  
Fund 1226 Natural Areas Fund

ACCOUNT NAME AND NUMBER	ORIGINAL BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED BUDGET	ENC/EXP 3/12/2007	REMAINING BALANCE
<u>Appropriations</u>							
<u>Reserve-Natural Areas Stwdship</u>							
380-3195                      9909 - Res-Improvement Progrm	8,515,977	809,205	0	330,000	479,205	0	479,205
<u>Transfers</u>							
820-3290                      9207 Xfer to Cap Outlay Fd 3900	0	2,527,406	330,000	0	2,857,406	0	2,857,406
			330,000	330,000			

Environmental Resources  
Management

INITIATING DEPARTMENT/DIVISION  
Administration/Budget Department Approval  
OFMB Department - Posted

Signatures & Dates

*[Signature]* 3/22/07  
*[Signature]* 3-27-07  
*[Signature]* 3/23/07

BY BOARD OF COUNTY COMMISSIONERS  
AT MEETING OF

April 10, 2007  
Deputy Clerk to the  
Board of County Commissioners

12

ATTACHMENT 2

