

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2006	2007	2008	2009	2010
Capital Expenditures	_____	<u>\$250,000</u>	_____	_____	
Operating Costs	_____	_____	_____	_____	
External Revenues	_____	< <u>\$125,000</u> >	_____	_____	
Program Income (County)	_____	_____	_____	_____	
In-Kind Match (County)	_____	_____	_____	_____	
NET FISCAL IMPACT	_____	<u>\$125,000</u>	_____	_____	
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	

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

Fund _____ Agency _____ Org. _____ Object _____

Fund _____ Agency _____ Org. _____ RSRC _____

Reporting Category

B. Recommended Sources of Funds/Summary of Fiscal Impact

\$125,000.00 South Florida Water Management District
 \$125,000.00 Natural Areas Fund (matching)

C. Department Fiscal Review: *JF*

III. REVIEW COMMENTS

A. OFMB Fiscal and /or Contract Administrator Comments:

Am. J. Jacob 5/30/07
 OFMB *5/24/07* *EN* *5/23/07* Contract Administrator
5/24/07 *5/30/07*

B. Legal Sufficiency:

Memo Top
 Assistant County Attorney

This Contract complies with our contract review requirements.

C. Other Department Review:

Department Director

ORIGINAL



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

AGREEMENT NO. 460000681

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 Cypress 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

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 Cypress 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 one (1) year.
3. The total **DISTRICT** contribution shall not exceed the amount of One Hundred Twenty Five Thousand Dollars and No Cents (\$125,000.00). 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 \$125,000.00. 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**.

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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 One Hundred Twenty Five Thousand Dollars and No Cents (\$125,000.00) 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---4th 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.
25. 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.

26. Any inconsistency in this AGREEMENT shall be resolved by giving precedence in the following order:
- (a) Terms and Conditions outlined in preceding paragraphs 1 – 24
 - (b) Exhibit "A" Statement of Work
 - (c) 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: _____

Frank Hayden, Director of Procurement

SFWMD Procurement Approved

Rv: Patricia Hester

Date: 2-2-07

sm

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS

By: _____

Addie E. Greene

Title _____

Chairperson

Richard E. W. W. W.

APPROVED AS TO TERMS
AND CONDITIONS.

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EXHIBIT "A"
STATEMENT OF WORK
Palm Beach County
Cypress Creek Restoration – Phase II

1.0 INTRODUCTION

Cypress Creek is a major tributary to the Wild and Scenic Northwest Fork of the Loxahatchee River and historically has contributed approximately one-third of the flow to the River. Phase I of this restoration project was funded in FY '05-'06 by LRPI and consisted of removing exotic vegetation that was invading the area. Phase II will be focused on restoring the hydrological functionality of the site by filling and plugging ditches. Filling and plugging ditches will allow water to stay on site longer and create a more natural wetland drainage system. The restoration activities will aid in the enhancement of both water quality, storage, and wetland habitat functions within the Cypress Creek Watershed. By improving the functionality of the wetlands and allowing them to store more water, the Loxahatchee River will receive a less severe storm surge. The restoration activities will also help to improve the quality of the surface water reaching the river. Planting of native wetland and upland species on highly disturbed portions of the site will also help in the restoration process (see map). Base flows to the River will be extended and suitable habitat for listed species (area has been identified as a strategic habitat conservation area for the Florida Sandhill Crane) will be re-established.

2.0 OBJECTIVE

The purpose of this project is to address the problems associated with hydrological changes in the Cypress Creek basin. These changes were caused by the past creation of a road and ditch network. The filling and plugging of ditches will help restore the historic hydrology and vegetation of Cypress Creek and associated wetlands.

3.0 SCOPE OF WORK

This project consists of the filling and or plugging of specific ditches on the Cypress Creek Natural Area and restoration / enhancement planting of native vegetation.

4.0 WORK BREAKDOWN STRUCTURE

Task 1: Design / Engineering and Permitting

ERM staff will perform necessary elevation and cross section design work, research historical hydrological flows, and develop restoration plans in order to obtain the permits for this project.

Deliverables: The County shall provide to the District documentation of ERM staff time spent to obtain permits and copies of all approved permits by July 2007.

Task 2: Plug and Fill Ditches

Heavy equipment will be used to plug and fill the specified ditches. A contractor from the County's term contract list will be utilized with considerable County staff oversight. Some work may be done in-house using ERM staff and equipment.

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Deliverables: The County will provide a map of the plugged and filled ditches, photographic documentation, and quarterly reports of this work, which should be completed by December 2007.

Task 3: Restoration Planting

A planting plan will be provided to the District. Areas of intense disturbance due to the filling and plugging of ditches will be planted with native vegetation by volunteers with County oversight. Plants being considered for this restoration include: slash pine, saw palmetto, live and laurel oak, lyonia, fetterbush, and various habitat specific herbaceous species.

Deliverables: The County shall provide a final as-built planting plan and photographic documentation when the planting is complete by January 2008.

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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.

Task	Deliverable	Date	PBC	SFWMD	TOTAL
Task 1	Design / Engineering and Permitting	July 2007	\$30,000	\$0	\$30,000
Task 2	Plug and Fill Ditches	December 2007	\$70,000	\$100,000	\$170,000
Task 3	Restoration Planting	January 2008	\$25,000	\$25,000	\$50,000
TOTAL			\$125,000	\$125,000	\$250,000

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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	\$125,000.00	

Total Award					\$125,000.00	
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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.

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 5/15/2007	REMAINING BALANCE
Appropriations							
<u>Reserve-Natural Areas Stwdship</u>							
380-3195 9902 - Operating Reserves	8,515,977	404,205	0	125,000	279,205	0	279,205
<u>Transfers</u>							
820-3290 9207 - Tr To Capital Outlay Fd 3900	0	2,857,406	125,000	0	2,982,406	2,857,406	125,000
			125,000	125,000			

Environmental Resources
Management

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

Signatures & Dates

Richard E. Wainly

BY BOARD OF COUNTY COMMISSIONERS
AT MEETING OF

June 19, 2007

Deputy Clerk to the
Board of County Commissioners

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2007 -

BGEX - 380- 0516070000000001682

BGRV - 380- 0516070000000000559

BOARD OF COUNTY COMMISSIONERS
PALM BEACH COUNTY, FLORIDA

BUDGET AMENDMENT
Fund 3900 Capital Outlay

ACCOUNT NAME AND NUMBER	ORIGINAL BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED BUDGET	ENCUMBERED 5/16/2007	REMAINING BALANCE
<u>REVENUES</u>							
800 - 9100 Transfers 8033 Tr Fr Natural Areas Fd 1226	0	2,857,406	125,000		2,982,406		
381 - E406 Cypress Creek Tract 3403 State Grant Capital-Phy Envirn	0	0	125,000		125,000		
TOTAL RECEIPTS & BALANCES	38,521,780	40,503,358	250,000	0	40,753,358		
<u>EXPENDITURES</u>							
381- E406 Cypress Creek Tract 6505-Design/Eng/Mgmt- Cip Admin	0	0	25,000		25,000	0	25,000
381- E406 Cypress Creek Tract 6504-Iotb Non Infrastructure	0	250,000	225,000		475,000	0	475,000
TOTAL APPROPRIATIONS & EXPENDITURES	38,521,780	40,503,358	250,000	0	40,753,358		

Environmental Resources
Management

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

Signatures & Dates

Richard E. Weirich

BY BOARD OF COUNTY COMMISSIONERS

AT MEETING OF

June 19, 2007

Deputy Clerk to the
Board of County Commissioners

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