



**II. FISCAL IMPACT ANALYSIS**

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

Fiscal Years	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>
Capital Expenditures					
Operating Costs	\$ 199,000				
External Revenues					
Program Income (County)					
In-Kind Match (County)					
<b>Net Fiscal Impact</b>	<u>\$ 199,000</u>				
<b># ADDITIONAL FTE POSITIONS (Cumulative)</b>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

Is Item Included In Current Budget? Yes   X   No         
 Budget Account   Exp No.: Fund 5010 Dept 700 Unit 7130 Obj 4511  
                           Rev No.: Fund        Dept        Unit        Obj       

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

**C. Departmental Fiscal Review:**

**III. REVIEW COMMENTS**

**A. OFMB Fiscal and/or Contract Dev. and Control Comments:**

*[Signature]* OFMB 8/22/13  
*[Signature]* Contract Dev. and Control 8-26-13

**B. Legal Sufficiency:**

*Amy Doyle Petrole*  
 Assistant County Attorney

**C. Other Department Review:**

\_\_\_\_\_  
 Department Director

**Background and Justification (or Policy Issues): (continued from page 1):**

The proposed Contract provides compensation for consulting, professional, and expert witness services provided by the engineering firm of SDI Environmental Services, Inc., to Palm Beach County. The Contract provides for three phases: the first phase includes data acquisition and analysis, site visits, and staff meetings; the second phase includes the performance of additional hydrological modeling, as required; and the third phase involves providing expert assistance in trial preparation and expert testimony on the hydrological issues in the case, if needed.

Phillip R. Davis, will direct SDI Environmental Services, Inc.'s efforts under the Agreement. Mr. Davis has more than 40 years of experience in investigating and resolving groundwater issues, including the performance of hydrologic modeling. Mr. Davis has routinely served as an expert witness for public and private clients on hydrology and modeling.

**CONTRACT FOR CONSULTING/PROFESSIONAL AND EXPERT WITNESS SERVICES**

This Contract is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2013 , by and between Palm Beach County, a Political Subdivision of the State of Florida, by and through its Board of Commissioners, hereinafter referred to as the COUNTY, and SDI Environmental Services, Inc. authorized to do business in the State of Florida, hereinafter referred to as the CONSULTANT, whose Federal I.D. is 59-2543820.

In consideration of the mutual promises contained herein, the COUNTY and the CONSULTANT agree as follows:

**ARTICLE 1 - SERVICES**

The CONSULTANT'S responsibility under this Contract is to provide professional/consultation services in the area of hydrogeology, as more specifically set forth in the Scope of Work detailed in Exhibit "A".

The COUNTY'S representative/liason during the performance of this Contract shall be Senior Assistant County Attorney Amy Taylor Petrick, telephone no. (561) 355-2529.

The CONSULTANT'S representative/liason during the performance of this Contract shall be Phillip R. Davis, telephone no. (813) 961-1935.

**ARTICLE 2 - TERM**

The term of this Agreement shall commence as of the date the lawsuit titled *Cove Club Investors, Ltd. v. Palm Beach County*, Case No. 50 2013 CA 003916 XXXX MB (Fla. 15<sup>th</sup> Judicial Circuit)(hereinafter "the Lawsuit") was filed and shall terminate when the Lawsuit is resolved.

Reports and other items shall be delivered or completed in accordance with the detailed schedule set forth in Exhibit "A".

**ARTICLE 3 - PAYMENTS TO CONSULTANT**

- A. The total amount to be paid by the COUNTY under this Contract for all services and materials including, if applicable, "out of pocket" expenses (specified in paragraph C below) shall not exceed a total contract amount of ONE HUNDRED NINETY-NINE THOUSAND Dollars (\$199,000.00). The CONSULTANT shall notify the COUNTY's representative in writing when 90% of the "not to exceed amount" has been reached. The CONSULTANT will bill the COUNTY on a monthly basis at the amounts set forth in Exhibit "B" for services rendered toward the completion of the Scope of Work. Incremental billings for partially completed items are permitted, and the total billings shall not exceed the estimated percentage of completion as of the billing date.

- B. Invoices received from the CONSULTANT pursuant to this Contract will be reviewed and approved by the COUNTY's representative, to verify that services have been rendered in conformity with the Contract. Approved invoices will then be sent to the Finance Department for payment. Invoices will normally be paid within thirty (30) days following the COUNTY representative's approval.
- C. "Out-of-pocket" expenses will be reimbursed up to an amount not to exceed FIFTEEN THOUSAND Dollars (\$15,000.00), and in accordance with the list of the types and amounts of expenditures eligible for reimbursement as set forth in Exhibit "B". All requests for payment of "out-of-pocket" expenses eligible for reimbursement under the terms of this Contract shall include copies of paid receipts, invoices, or other documentation acceptable to the Palm Beach County Finance Department. Such documentation shall be sufficient to establish that the expense was actually incurred and necessary in the performance of the Scope of Work described in this Contract. Any travel, per diem, mileage, meals, or lodging expenses which may be reimbursable under the terms of this Contract will be paid in accordance with the rates and conditions set forth in Section 112.061, Florida Statutes.
- D. Final Invoice: In order for both parties herein to close their books and records, the CONSULTANT will clearly state "final invoice" on the CONSULTANT'S final/last billing to the COUNTY. This shall constitute CONSULTANT'S certification that all services have been properly performed and all charges and costs have been invoiced to Palm Beach County. Any other charges not properly included on this final invoice are waived by the CONSULTANT.

#### **ARTICLE 4 - TRUTH-IN-NEGOTIATION CERTIFICATE**

Signature of this Contract by the CONSULTANT shall also act as the execution of a truth-in-negotiation certificate certifying that the wage rates, over-head charges, and other costs used to determine the compensation provided for in this Contract are accurate, complete and current as of the date of the Contract and no higher than those charged the CONSULTANT'S most favored customer for the same or substantially similar service.

The said rates and costs shall be adjusted to exclude any significant sums should the COUNTY determine that the rates and costs were increased due to inaccurate, incomplete or noncurrent wage rates or due to inaccurate representations of fees paid to outside consultants. The COUNTY shall exercise its rights under this Article 4 within three (3) years following final payment.

#### **ARTICLE 5 - TERMINATION**

This Contract may be terminated by the CONSULTANT upon sixty (60) days' prior written notice to the COUNTY's representative in the event of substantial failure by the COUNTY to perform in accordance with the terms of this Contract through no fault of the CONSULTANT. It may also be terminated, in whole or in part, by the COUNTY, with or without cause, immediately upon written notice to the CONSULTANT. Unless the CONSULTANT is in breach of this Contract, the CONSULTANT shall be paid for services rendered to the COUNTY'S satisfaction through the date of termination. After receipt of a Termination Notice and except as otherwise directed by the

COUNTY the CONSULTANT shall:

- A. Stop work on the date and to the extent specified.
- B. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.
- C. Transfer all work in process, completed work, and other materials related to the terminated work to the COUNTY.
- D. Continue and complete all parts of the work that have not been terminated.

#### **ARTICLE 6 - PERSONNEL**

The CONSULTANT represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the COUNTY.

All of the services required hereinunder shall be performed by the CONSULTANT or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

Any changes or substitutions in the CONSULTANT'S key personnel, as may be listed in Exhibit "A", must be made known to the COUNTY'S representative and written approval must be granted by the COUNTY's representative before said change or substitution can become effective.

The standard of care applicable to CONSULTANT'S services will be the degree of care and skill ordinarily exercised by consultants performing the same or similar services in the same locality at the time the services are provided. No warranty, express or implied, is made or intended by the Consultant's undertaking herein or its performance of services, and it is agreed that the Consultant is not a fiduciary with respect to the Client.

All of the CONSULTANT'S personnel (and all Subcontractors), while on County premises, will comply with all COUNTY requirements governing conduct, safety and security.

#### **ARTICLE 7 - SUBCONTRACTING**

The work authorized by this Agreement does not include the use of sub-consultants. If sub-consultants are used, the CONSULTANT acknowledges that additional requirements with respect to SBE requirements shall be imposed by the County and agrees to comply with the County's SBE standards.

The CONSULTANT agrees to maintain all relevant records and information necessary to document compliance with the Palm Beach County Code and will allow the COUNTY to inspect such records.

#### **ARTICLE 8 - FEDERAL AND STATE TAX**

The COUNTY is exempt from payment of Florida State Sales and Use Taxes. The COUNTY will

sign an exemption certificate submitted by the CONSULTANT. The CONSULTANT shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the COUNTY, nor is the CONSULTANT authorized to use the COUNTY'S Tax Exemption Number in securing such materials.

The CONSULTANT shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this contract.

**ARTICLE 9 - AVAILABILITY OF FUNDS**

The COUNTY'S performance and obligation to pay under this contract for subsequent fiscal years are contingent upon annual appropriations for its purpose by the Board of County Commissioners.

**ARTICLE 10 - INSURANCE**

- A. CONSULTANT shall, at its sole expense, agree to maintain in full force and effect at all times during the life of this Contract, insurance coverages and limits (including endorsements), as described herein. CONSULTANT shall agree to provide the COUNTY with at least ten (10) day prior notice of any cancellation, non-renewal or material change to the insurance coverages. The requirements contained herein, as well as COUNTY'S review or acceptance of insurance maintained by CONSULTANT are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by CONSULTANT under the contract.
- B. **Commercial General Liability** CONSULTANT shall maintain Commercial General Liability at a limit of liability not less than **\$500,000** Each Occurrence. Coverage shall not contain any endorsement excluding Contractual Liability or Cross Liability unless granted in writing by County's Risk Management Department. CONSULTANT shall provide this coverage on a primary basis.
- C. **Business Automobile Liability** CONSULTANT shall maintain Business Automobile Liability at a limit of liability not less than **\$500,000** Each Accident for all owned, non-owned and hired automobiles. In the event CONSULTANT doesn't own any automobiles, the Business Auto Liability requirement shall be amended allowing CONSULTANT to agree to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto coverage form. CONSULTANT shall provide this coverage on a primary basis.
- D. **Worker's Compensation Insurance & Employers Liability** CONSULTANT shall maintain Worker's Compensation & Employers Liability in accordance with Florida Statute Chapter 440. CONSULTANT shall provide this coverage on a primary basis.
- E. **Professional Liability** CONSULTANT shall maintain Professional Liability or equivalent Errors & Omissions Liability at a limit of liability not less than **\$1,000,000** Each Claim. When a self-insured retention (SIR) or deductible exceeds **\$10,000**, COUNTY reserves the right, but not the obligation, to review and request a copy of CONSULTANT'S most recent annual report or audited financial statement. For policies written on a "Claims-Made" basis, CONSULTANT shall maintain a Retroactive Date prior to or equal to the effective date of this Contract. The Certificate of Insurance providing evidence of the purchase of this coverage shall clearly indicate whether coverage is provided on an "occurrence" or "claims -

made” form. If coverage is provided on a “claims - made” form the Certificate of Insurance must also clearly indicate the “retroactive date” of coverage. In the event the policy is canceled, non-renewed, switched to an Occurrence Form, retroactive date advanced, or any other event triggering the right to purchase a Supplement Extended Reporting Period (SERP) during the life of this Contract, CONSULTANT shall purchase a SERP with a minimum reporting period not less than 3 years. CONSULTANT shall provide this coverage on a primary basis.

**Additional Insured** CONSULTANT shall endorse the COUNTY as an Additional Insured with a CG 2026 Additional Insured - Designated Person or Organization endorsement, or its equivalent, to the Commercial General Liability. The Additional Insured endorsement shall read “Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents.” CONSULTANT shall provide the Additional Insured endorsements coverage on a primary basis.

- F. **Waiver of Subrogation** CONSULTANT hereby waives any and all rights of Subrogation against the County, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement to the policy, then CONSULTANT shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which specifically prohibits such an endorsement, or which voids coverage should CONSULTANT enter into such an agreement on a pre-loss basis.
- G. **Certificate(s) of Insurance** Prior to execution of this Contract, CONSULTANT shall deliver to the COUNTY’S representative as identified in Article 26, a Certificate(s) of Insurance evidencing that all types and amounts of insurance coverages required by this Contract have been obtained and are in full force and effect. Such Certificate(s) of Insurance shall include a minimum ten (10) day endeavor to notify due to cancellation or non-renewal of coverage. The certificate of insurance shall be issued to

Palm Beach County  
c/o Andrew J. McMahon, Esq.,  
Palm Beach County Attorney’s Office  
300 North Dixie Highway, Suite 359  
West Palm Beach, FL 33401-4606

- H. **Umbrella or Excess Liability** If necessary, CONSULTANT may satisfy the minimum limits required above for either Commercial General Liability, Business Auto Liability, and Employer’s Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest “Each Occurrence” limit for either Commercial General Liability, Business Auto Liability, or Employer’s Liability. The COUNTY shall be specifically endorsed as an “Additional Insured” on the Umbrella or Excess Liability, unless the Certificate of Insurance notes the Umbrella or Excess Liability provides coverage on a “Follow-Form” basis.
- I. **Right to Review** COUNTY, by and through its Risk Management Department, in



cooperation with the contracting/monitoring department, reserves the right to review, modify, reject or accept any required policies of insurance, including limits, coverages, or endorsements, herein from time to time throughout the term of this Contract. COUNTY reserves the right, but not the obligation, to review and reject any insurer providing coverage because of its poor financial condition or failure to operate legally.

#### **ARTICLE 11 - INDEMNIFICATION**

CONSULTANT shall indemnify and hold COUNTY, employees and elected officers harmless from and against all claims, liability, expense, loss, cost, damages or causes of action, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising during and as a result of the negligent acts or omissions of CONSULTANT.

#### **ARTICLE 12 - SUCCESSORS AND ASSIGNS**

The COUNTY and the CONSULTANT each binds itself and its partners, successors, executors, administrators and assigns to the other party and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Contract. Except as above, neither the COUNTY nor the CONSULTANT shall assign, sublet, convey or transfer its interest in this Contract without the prior written consent of the other.

#### **ARTICLE 13 - REMEDIES**

This Contract shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Contract will be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

No provision of this Contract is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Contract, including but not limited to any citizen or employees of the COUNTY and/or CONSULTANT.

#### **ARTICLE 14 - CONFLICT OF INTEREST**

The CONSULTANT represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided for in Chapter 112, Part III, Florida Statutes, and the Palm Beach County Code of Ethics. The CONSULTANT further represents that no person having any such conflict of interest shall be employed for said performance of services.

The CONSULTANT shall promptly notify the COUNTY's representative, in writing, by certified mail, of all potential conflicts of interest of any prospective business association, interest or other circumstance which may influence or appear to influence the CONSULTANT'S judgement or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the CONSULTANT may undertake and request an opinion of the COUNTY as to whether the association, interest or circumstance would, in the opinion of the COUNTY, constitute a conflict of interest if entered into

by the CONSULTANT. The COUNTY agrees to notify the CONSULTANT of its opinion by certified mail within thirty (30) days of receipt of notification by the CONSULTANT. If, in the opinion of the COUNTY, the prospective business association, interest or circumstance would not constitute a conflict of interest by the CONSULTANT, the COUNTY shall so state in the notification and the CONSULTANT shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the COUNTY by the CONSULTANT under the terms of this Contract.

**ARTICLE 15 - EXCUSABLE DELAYS**

The CONSULTANT shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond the control of the CONSULTANT or its subcontractors and without their fault or negligence. Such causes include, but are not limited to, acts of God, force majeure, natural or public health emergencies, labor disputes, freight embargoes, and abnormally severe and unusual weather conditions.

Upon the CONSULTANT'S request, the COUNTY shall consider the facts and extent of any failure to perform the work and, if the CONSULTANT'S failure to perform was without it or its subcontractors fault or negligence, the Contract Schedule and/or any other affected provision of this Contract shall be revised accordingly, subject to the COUNTY'S rights to change, terminate, or stop any or all of the work at any time.

**ARTICLE 16 - ARREARS**

The CONSULTANT shall not pledge the COUNTY'S credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgement, lien, or any form of indebtedness. The CONSULTANT further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Contract.

**ARTICLE 17 - DISCLOSURE AND OWNERSHIP OF DOCUMENTS**

The CONSULTANT shall deliver to the COUNTY's representative for approval and acceptance, and before being eligible for final payment of any amounts due, all documents and materials prepared by and for the COUNTY under this Contract.

To the extent allowed by Chapter 119, Florida Statutes, all written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the COUNTY or at its expense will be kept confidential by the CONSULTANT and will not be disclosed to any other party, directly or indirectly, without the COUNTY'S prior written consent unless required by a lawful court order. All drawings, maps, sketches, programs, data base, reports and other data developed, or purchased, under this Contract for or at the COUNTY'S expense shall be and remain the COUNTY'S property and may be reproduced and reused at the discretion of the COUNTY.

All covenants, agreements, representations and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Contract and the consummation of the transactions contemplated hereby.

Notwithstanding any other provision in this Contract, all documents, records, reports and any other materials produced hereunder shall be subject to disclosure, inspection and audit, pursuant to the

Palm Beach County Office of the Inspector General, Palm Beach County Code, Sections 2-421 - 2-440, as amended.

**ARTICLE 18 - INDEPENDENT CONTRACTOR RELATIONSHIP**

The CONSULTANT is, and shall be, in the performance of all work services and activities under this Contract, an Independent Contractor, and not an employee, agent, or servant of the COUNTY. All persons engaged in any of the work or services performed pursuant to this Contract shall at all times, and in all places, be subject to the CONSULTANT'S sole direction, supervision, and control. The CONSULTANT shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONSULTANT'S relationship and the relationship of its employees to the COUNTY shall be that of an Independent Contractor and not as employees or agents of the COUNTY.

The CONSULTANT does not have the power or authority to bind the COUNTY in any promise, agreement or representation.

**ARTICLE 19 - CONTINGENT FEES**

The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Contract.

**ARTICLE 20 - ACCESS AND AUDITS**

The CONSULTANT shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least three (3) years after completion or termination of this Contract. The COUNTY shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the CONSULTANT'S place of business.

Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the CONSULTANT, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.

Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

**ARTICLE 21 - NONDISCRIMINATION**

The CONSULTANT warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression.

**ARTICLE 22 - AUTHORITY TO PRACTICE**

The CONSULTANT hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the COUNTY's representative upon request.

**ARTICLE 23 - SEVERABILITY**

If any term or provision of this Contract, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Contract, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Contract shall be deemed valid and enforceable to the extent permitted by law.

**ARTICLE 24 - PUBLIC ENTITY CRIMES**

As provided in F.S. 287.132-133, by entering into this contract or performing any work in furtherance hereof, the CONSULTANT certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).

**ARTICLE 25 - MODIFICATIONS OF WORK**

The COUNTY reserves the right to make changes in Scope of Work, including alterations, reductions therein or additions thereto. Upon receipt by the CONSULTANT of the COUNTY'S notification of a contemplated change, the CONSULTANT shall, in writing: (1) provide a detailed estimate for the increase or decrease in cost due to the contemplated change, (2) notify the COUNTY of any estimated change in the completion date, and (3) advise the COUNTY if the contemplated change shall affect the CONSULTANT'S ability to meet the completion dates or schedules of this Contract.

If the COUNTY so instructs in writing, the CONSULTANT shall suspend work on that portion of the Scope of Work affected by a contemplated change, pending the COUNTY'S decision to proceed with the change.

If the COUNTY elects to make the change, the COUNTY shall initiate a Contract Amendment and the CONSULTANT shall not commence work on any such change until such written amendment is signed by the CONSULTANT and approved and executed on behalf of Palm Beach County.

**ARTICLE 26 - NOTICE**

All notices required in this Contract shall be sent by certified mail, return receipt requested, hand delivery or other delivery service requiring signed acceptance. If sent to the COUNTY, notices shall be addressed to:

Maurice Tobon  
Director of Engineering  
Water Utilities Department  
8100 Forest Hill Blvd  
West Palm Beach, FL 33413

With copy to:

Amy Taylor Petrick, Esq.  
Palm Beach County Attorney's Office  
300 North Dixie Highway, Suite 359  
West Palm Beach, FL 33401-4606

If sent to the CONSULTANT, notices shall be addressed to:

Phillip R. Davis  
SDI Environmental Services, Inc.  
3816 W Linebaugh Ave., Suite 200  
Tampa, FL 33618

**ARTICLE 27 - ENTIRETY OF CONTRACTUAL AGREEMENT**

The COUNTY and the CONSULTANT agree that this Contract sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Contract may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto in accordance with Article 25- Modifications of Work.

**ARTICLE 28 - CRIMINAL HISTORY RECORDS CHECK**

If CONSULTANT'S employees or subcontractors are required under this contract to enter a "critical facility," as identified in Resolution R-2003-1274, the CONSULTANT shall comply with the provisions of Chapter 2, Article IX of the Palm Beach County Code ("Criminal History Records Check" section). The CONSULTANT acknowledges and agrees that all employees and subcontractors who are to enter a "critical facility" will be subject to a fingerprint based criminal history records check. Although COUNTY agrees to pay for all applicable FDLE/FBI fees required for criminal history record checks, the CONSULTANT shall be solely responsible for the financial, schedule, and staffing implications associated in complying with this section of the Palm Beach County Code.

**ARTICLE 29 - REGULATIONS; LICENSING REQUIREMENTS**

The CONSULTANT shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, to include those applicable to conflict of interest and collusion. CONSULTANT is presumed to be familiar with all federal, state and local laws, ordinances, codes and regulations that may in any way affect the services offered.

**ARTICLE 30 - SCRUTINIZED COMPANIES (when contract value is greater than \$1 million)**

As provided in F.S. 287.135, by entering into this Contract or performing any work in furtherance hereof, the CONSULTANT certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies With Activities in Sudan List or Scrutinized Companies With Activities in The Iran Petroleum Energy Sector List created pursuant to F.S. 215.473.

If the County determines, using credible information available to the public, that a false certification has been submitted by CONSULTANT, this Contract may be terminated and a civil penalty equal to the greater of \$2 million or twice the amount of this Contract shall be imposed, pursuant to F.S. 287.135.

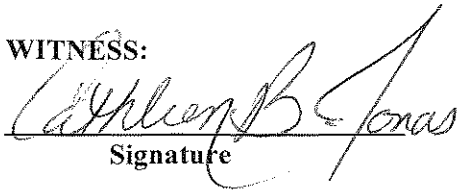
IN WITNESS WHEREOF, the Board of County Commissioners of Palm Beach County, Florida has made and executed this Contract on behalf of the COUNTY and CONSULTANT has hereunto set its hand the day and year above written.

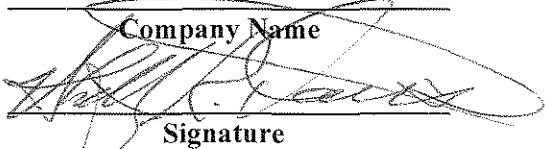
ATTEST:  
SHARON R. BOCK  
CLERK AND COMPTROLLER


PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS:

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Mayor

WITNESS:  
  
Signature  
Cathleen B. Jonas  
Name (type or print)

CONSULTANT:  
SDI Environmental Services, Inc.  
Company Name  
  
Signature  
Phillip R. Davis  
Typed Name

  
Signature  
Patricia L. Ward  
Name (type or print)

President  
Title

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

(corp. seal)

By   
County Attorney

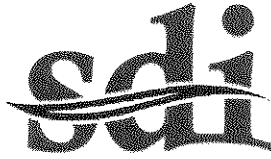
APPROVED AS TO TERMS  
AND CONDITIONS

By   
Department Director

**EXHIBIT "A"**

**SCOPE OF WORK**





## EXHIBIT A

**SDI Environmental Services, Inc.**

3816 W. Linebaugh Ave., Suite 200, Tampa, FL 33618; (813) 961-1935

### ATTORNEY WORK PRODUCT PREPARED AT REQUEST OF COUNSEL

July 19, 2013

Amy Taylor Petrick, Esq.  
Palm Beach County  
County Attorney's Office  
300 N. Dixie Highway, Suite 359  
West Palm Beach, FL 33401-4606

**Re: Proposal: Provide Expert Witness Consulting Services**  
**Subject: Potential Water Resource Impacts, Boca Dunes Golf & CC**  
**Client: Board of County Commissioners**  
**Location: Palm Beach County**  
**Reference: SDI Proposal No. T13-901.**

Dear Ms. Petrick:

SDI Environmental Services, Inc. (SDI) is pleased to provide Palm Beach County (County) with a proposal to provide expert witness consulting services regarding a Circuit Court case relative to alleged water resource impacts caused by Palm Beach County water facilities near the Boca Dunes Golf and County Club. This proposal is based on information provided during a meeting on July 2<sup>nd</sup> regarding the complaint and data available to the County or otherwise publicly accessible. All work would be directed to you (Counsel) or any outside counsel at your direction.

#### **Project Team**

SDI and its senior personnel have been involved in evaluating Florida's hydrology for nearly 25 years, with particular emphasis on public water supply permitting and potential impact analysis. Phillip R. Davis will direct SDI's efforts and will serve as the main point of contact for SDI. Additional analyses and support will be provided by Cathleen Beaudoin Jonas, P.G., who has nearly 25 years of experience on public water supply projects in FL, and by James R. Dozier, P.G., who has 17 years of experience in water resource evaluations and groundwater modeling. All three members of our team have expert testimony experience. If I am unavailable, Ms. Jonas will be the primary point of contact.

#### **Project Approach**

In support of our proposal scope and cost, SDI has made the following assumptions based on information provided during our meeting.

- Relevant maps and data exist in useable electronic format, some of which may be in your possession and others may require a public records request or query.
- No discussions with regulatory personnel will occur without the knowledge and/or presence of County personnel.
- Project meetings would be held in West Palm Beach.

SDI recommends performing the proposed tasks in three separate phases. At the end of each phase, the information acquired during that phase would be discussed with Counsel to refine the activities proposed for subsequent tasks.

The first phase would include document and data acquisition, review and analysis, a site visit, and a meeting with Counsel to discuss preliminary findings and any critical data deficiencies. The second phase would assess the mitigation of significant data deficiencies and conduct any additional hydrologic modeling that may be necessary to support the County's position. The third phase would be trial preparation and expert testimony required on behalf of the County.

Based on our current understanding, SDI will focus on evaluating and preparing technical arguments to assess the potential hydrologic factors that could result in the alleged impacts to the Boca Dunes property and land use. If the alleged impacts are confirmed, SDI will evaluate the extent to which the County's water withdrawals bear responsibility, if any, for those impacts. In particular, emphasis will be placed on the following hydrologic impact factors: rainfall; groundwater pumpage; canal water levels; and groundwater levels in the area of interest. Because the complaint alleges that adverse impacts did not occur until after 2003 - 2004, SDI will primarily focus on the past 20 years.

## PHASE I

### **Task 1 Scope: Document and Data Acquisition, Review and Analysis**

#### **Objectives**

- To become familiar with on-site hydrologic conditions; e.g., hydrologic features, groundwater pumpage history inflow/outflow points and canal/drainage network, particularly relative to the water features located on and near the Boca Dunes property.
- To refine the hydrologic conceptual model of the area of interest and how various factors influence the hydrology of the area.
- To identify any significant data deficiencies that may affect the assessment of potential causal relationships.

#### **Scope:**

1. Identify and acquire relevant documents and available hydrologic data from County personnel and/or publicly available data sources, focusing on data over the past 20 years.



2. Conduct technical analyses necessary to understand the hydrology and the interaction of various factors in the area of interest.

## **Task 2 Scope: Site Visit and Review Meeting**

### **Objectives**

- To conduct a field-level reconnaissance of the area of interest and to discuss preliminary assessments with Counsel.

### **Scope:**

1. Visit the area of interest with County personnel to better understand aspects of the hydrologic system.
2. Meet with Counsel to discuss preliminary assessments and any significant data deficiencies.

## **PHASE II**

## **Task 3 Scope: Design and/or Implement Potential Activities to Mitigate Significant Data Deficiencies**

### **Objectives**

- To identify the scope for additional quantitative assessments that would be essential to mitigate significant data deficiencies and assist County personnel in undertaking additional testing activities.
- To assess the methodologies, parameterizations and assumptions used to develop existing groundwater simulation models.
- Identify deficiencies in existing models and discuss the potential need for additional modeling with Counsel.

### **Scope:**

1. Work with County personnel to design and implement appropriate field tests to mitigate significant data deficiencies.
2. Review and analyze field test data to determine if groundwater modeling may be necessary to more defensibly estimate hydrologic impacts due to different factors.
3. Determine if existing groundwater models can be relied upon for defensible impact analyses. If not, develop an approach to refine an existing groundwater model based on data analysis and field test results and conduct additional modeling.

### **Task 3 Deliverables**

- Meet with Counsel and County personnel to summarize historical modeling analyses, evaluating their adequacy, deficiencies and the defensibility of the results.



Review the adequacy of field tests results to mitigate significant data deficiencies and to assess the need and/or scope to conduct additional groundwater modeling.

#### **Task 4 Scope: Conduct Additional Groundwater Modeling to Better Evaluate Hydrologic Impacts**

##### **Objective**

- To assess potential hydrologic impacts of relevant factors using a refined groundwater model.

##### **Scope**

- Develop a refined groundwater model to more accurately assess the hydrology of the area of interest and conduct an analysis of potential hydrologic impacts due to the operation of the County's facility and/or Boca Dunes operations.

##### **Task 4 Deliverables**

- Present results of additional modeling analyses and interpretations in meeting with Counsel.

#### **PHASE II – B: OPTIONAL**

This optional Phase II – B is provided as a supplemental effort and would only be implemented if SDI, in consultation with County staff, agrees that the Phase II – A results are insufficient to meet the objectives of Tasks 3 and 4. For this optional work proposed, SDI would design one (or more) appropriate production well test(s) using multiple wells that would provide more definitive data regarding actual well field impacts. SDI would supervise the execution of the well field test(s), but the County would be responsible for implementing the test(s), acquiring the field data, and providing the results in electronic format for analysis by SDI.

It is anticipated that the field results would validate prior simulated estimates of well field impacts, or, if necessary, the results would be useful in improving an existing groundwater model in order to better agree with observed conditions.

#### **PHASE III**

#### **Task 5 Scope: Legal Support**

##### **Objectives**

- To assist Counsel in trial preparation and provide expert testimony at depositions, trial, or County Commission meetings.



**Scope: Provide Legal Support**

- Assist Counsel in developing technical aspects of legal strategies.
- Identify and review additional discovery materials and provide questions for discovery and depositions.
- Prepare technical and demonstrative exhibits necessary to support expert testimony.
- Prepare for and provide expert testimony at depositions and in trial.

**Task 5 Deliverables**

- Potential lists of discovery material and questions for opposing technical experts.
- Preparation of draft and final exhibits for Counsel. SDI assumes that the project team will prepare approximately 50 page-size exhibits in PowerPoint format.

**Project Budget and Schedule**

<b>Task</b>	<b>Estimated Hours</b>	<b>Estimated Cost</b>
<i>Phase I</i>		
1. Document and Data Acquisition, Review and Analysis	160	\$ 18,824
2. Site Visit and Review Meeting	44	\$ 6,944
Phase I Expenses		\$ 500
Phase I Total		\$ 26,268
<i>Phase II - A</i>		
3. Design and/or Implement Activities to Mitigate Significant Data Deficiencies	152	\$ 22,856
4. Conduct Additional Groundwater Modeling to Better Evaluate Hydrologic Impacts	160	\$ 21,440
Phase II Expenses		\$ 400
Phase II Total		\$ 44,696
<i>Phase III</i>		
5. Legal Support	368	\$ 64,940
Phase III Expenses		\$ 3,000
Phase III Total		\$ 67,940
<b>Grand Total</b>		<b>\$138,904</b>
<i>Phase II – B: Optional</i>		
If warranted, design, supervise and analyze supplemental multiple well production test(s)	394	\$ 59,778
Grand Total with Optional Phase II – B		\$198,682



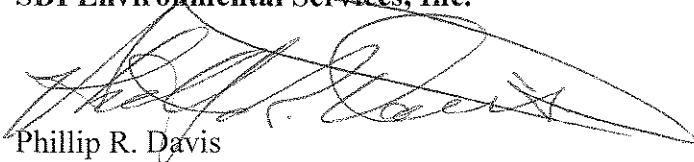
Amy Taylor Petrick, Esq.  
Proposal to Provide Expert Consulting Services  
July 19, 2013  
Page 6 of 7

ATTORNEY WORK PRODUCT

SDI can initiate work on the project as soon as authorization to proceed is received. SDI recognizes that certain activities are time sensitive and will coordinate closely with Counsel to maintain the project schedule. The proposed effort would be completed on a time-and-expense basis on a not-to-exceed total fee. I have attached a Fee Schedule for our services.

SDI appreciates this opportunity to provide expert witness services to Palm Beach County. Please do not hesitate to contact us should you have any questions or need additional information.

Sincerely,  
**SDI Environmental Services, Inc.**



Phillip R. Davis  
President

PRD/plw

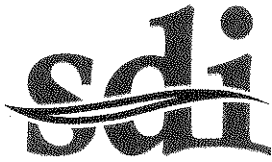
Attachment

c: Edward de la Parte, Jr., Esq.



**EXHIBIT "B"**

**FEE SCHEDULE**



## EXHIBIT B

**SDI Environmental Services, Inc.**

3816 W. Linebaugh Ave., Suite 200, FL 33618; (813) 961-1935

### **SCHEDULE OF FEES FOR PROFESSIONAL SERVICES Palm Beach County**

The charges for services provided by SDI Environmental Services, Inc. consist of:

- An hourly fee for professional staff members.
- Reimbursement of allowable expenses.
- Reimbursement of subcontractor's and other special costs.

Invoices covering the hourly charges and expenses are submitted for payment on a monthly basis unless other arrangements have been agreed upon.

Fee rates for various classifications of SDI Environmental Services, Inc. personnel are indicated below.

<u>Classification</u>	<u>Hourly Rate</u>
Principal	\$250.00
Senior Project Hydrogeologist/Engineer	168.00
Senior Hydrogeologist/Engineer	116.00
Hydrogeologist/Engineer	90.00
CAD/GIS Specialist	67.00
Word Processing	65.00

Reimbursable Expenses. These include travel costs; living expenses for personnel required to be away from their home office in connection with a project; rental cars; telephone; reproductions; prints or reports; shipping costs for samples and other materials; expendable supplies purchased specifically for a project; and premiums for insurance in addition to normal coverage when required. Mileage is charged in accordance with the rates and conditions set forth in Section 112.061, Florida Statutes.

Subcontractor Charges. Subcontractors, purchase or rental of special equipment necessary for a project, and other special costs not associated with normal office overhead are billed at cost.



BUDGET AVAILABILITY STATEMENT  
RISK MANAGEMENT


REQUEST DATE: 8/13/13 REQUESTED BY: County Attorney's Office

REQUESTED FOR: SDI Environmental for Cove Club Claim #000103-009588-GD-01

REQUESTED AMOUNT: \$199,999 AGENDA DATE: 9/10/13

BUDGET ACCOUNT NUMBER:

FUND: 5010 DEPT: 700 UNIT: 7130 OBJ: 4511

BAS APPROVED BY:  DATE: 8/13/13  
Jessica Kolb