

**WORKSHOP ITEM SUMMARY SHEET**  
**VILLAGE COUNCIL MEETING**  
**MAY 16, 2018**

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**Agenda Item:**

Review of the proposed Cooperative Agreement between Lee County and the South Florida Water Management District (SFWMD) regarding assumption of additional maintenance responsibilities.

Phil Flood, Intergovernmental Representative of the SFWMD will be presenting.

**Description:**

There has been a concern that the revenues collected by SFWMD have not been used to the benefit of the Village. A similar concern has been expressed by the City of Bonita Springs and Lee County. As a result, our three organizations approached the State Legislature in the last session to transfer the taxing authority from SFWMD to the Big Cypress Water Management District. In spite of considerable legislative support, the agencies involved were asked to attempt a negotiated settlement of this dispute. The attached Cooperative Agreement is the product of those discussions.

The agreement requires that the SFWMD:

1. Assume the primary maintenance responsibility for a number of local watercourses, with the following of particular importance to Estero:
  - a. The North and South Branches of the Estero River up to I-75,
  - b. Halfway Creek, and
  - c. Spring Creek.
2. The work shall include cutting and removing vegetation and debris from the watercourse up to the top of bank,
3. Maintaining the natural conveyance of each watercourse and will not preclude sediment removal where necessary to re-establish a reasonable or effective level of flood carrying capacity and functionality.

The County would continue to be responsible for disposal costs.

Importantly, the SFWMD does not assume any responsibility for navigational capabilities.

**Financial Impacts:**

Recently, these maintenance duties have been funded and performed by Lee County or the Village. It is assumed that the SFWMD will pick up most of these on-going costs.

Unrelated to this specific agreement is the Village payment to the County for Natural Resources services. This agreement, in part, has covered some of these maintenance obligations performed by Lee County. In discussions with the County, it has been suggested that we simply let that agreement expire (September 30, 2018), as a number of storm water maintenance duties will now be performed by the SFWMD. The Village may then contract for certain services, not assumed by SFWMD, with the County or other service provider.

**Attachments:**

1. Cooperative Agreement between the South Florida Water Management District and Lee County, Florida

**COOPERATIVE AGREEMENT  
BETWEEN THE  
SOUTH FLORIDA WATER MANAGEMENT DISTRICT  
and  
LEE COUNTY, FLORIDA**

**THIS COOPERATIVE AGREEMENT BETWEEN THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT and LEE COUNTY, FLORIDA ("AGREEMENT"),** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2018, by and between the South Florida Water Management District, an independent special district of the State of Florida, (the "*DISTRICT*") and Lee County, a political subdivision of the State of Florida, (the "*COUNTY*"). Collectively, the *DISTRICT* and the *COUNTY* are referred to as the Parties (the "*PARTIES*").

**RECITALS:**

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

**WHEREAS,** the *COUNTY* is a charter county pursuant to Article VIII, Section 1(g), Florida Constitution, and §125.01, Florida Statutes; and

**WHEREAS,** the Board of County Commissioners is the governing body in and for the *COUNTY*; and

**WHEREAS,** it is the desire and the intent of the *PARTIES* that the *DISTRICT* to assume the responsibility for the maintenance of designated primary watercourses which have a significant impact upon the water resources in the *DISTRICT* and Lee County, Florida; and

**WHEREAS,** the *DISTRICT* has the statutory authority through §373.086, Florida Statutes, to maintain such works of other districts as the *DISTRICT* Governing Board may deem advisable under agreement with such districts and the *DISTRICT* Governing Board has approved entering into this Agreement on XXXX,XX, 2018.

**NOW, THEREFORE,** in consideration of the benefits flowing from each to the other, the adequacy and sufficiency of which is acknowledge by both *PARTIES*, the *DISTRICT* and the *COUNTY* agree as follows:

1. The Recitals as set forth above are incorporated in the terms of this *AGREEMENT* as if set out herein at length.

2. The purpose of this AGREEMENT is to provide a mechanism for the PARTIES' responsibilities and obligations regarding maintenance of those watercourses delineated in Exhibit "A," attached hereto and incorporated herein by reference. Accordingly, unless extended or earlier terminated, this AGREEMENT will commence on XXXX,XX, 2018 and continue for a period of ten (10) years to XXXX,XX, 2028, and may be renewed upon mutual agreement of the PARTIES. In the event that the PARTIES cannot mutually agree to an extended renewal period, this AGREEMENT will lapse and terminate as set forth herein.

3. The Project Managers for the DISTRICT and for the COUNTY are as follows:

	<u>DISTRICT</u>	<u>COUNTY</u>
Name:		
Street:		1500 Monroe Street
City:	West Palm Beach	Fort Myers
State:	Florida	Florida
Zip:		33901
Tel:		

The PARTIES will direct all matters arising in connection with the performance of this AGREEMENT to the attention of the Project Managers for attempted resolution or action. The Project Managers will be responsible for overall coordination and oversight relating to the performance of this AGREEMENT.

4. All notices to the COUNTY under this AGREEMENT must be in writing and sent by certified mail to \_\_\_\_\_, or their designee. All notices to the DISTRICT under this AGREEMENT must also be in writing and sent by certified mail to:

South Florida Water Management District  
Attn: Procurement Division  
P. O. Box 24680  
West Palm Beach, FL 33416-4680

The COUNTY will also provide a copy of all notices to the DISTRICT's Project Manager. All notices required by this AGREEMENT will be considered delivered upon receipt. Should either party change its address or designated Project Managers, immediate written notice of the new address and/or Project Manager must be sent to the other party.

5. The COUNTY, to the extent of its authority, will provide to the DISTRICT water management easements where available to maintain the watercourses described in this AGREEMENT. Such maintenance easements must run for the duration of this AGREEMENT and will revert to the COUNTY in the event of the termination of this AGREEMENT.

6. When requested by the DISTRICT, the COUNTY will use its best efforts to assist the DISTRICT to obtain rights of entry from property owners where needed to maintain a watercourse for which there is no existing or established easement or similar right of access. Whenever possible, the DISTRICT will utilize existing or established easement(s) for the watercourse. The DISTRICT will be responsible for the removal of any physical impediments other than debris affecting the maintenance for any watercourse under this AGREEMENT. The DISTRICT will be primarily responsible for obtaining staging areas, debris removal areas, and access to any watercourse under this AGREEMENT and, when requested, the COUNTY will assist in such tasks.

7. The DISTRICT and COUNTY will cooperate to obtain and utilize alternative funding methods to accomplish this AGREEMENT. The DISTRICT and COUNTY will also cooperate to submit projects for legislative asks/funding.

8. It is the intent of the DISTRICT to use its best efforts to maintain the various watercourses to meet the water management needs of the region as a whole. The DISTRICT will maintain the watercourses dependent on antecedent and forecasted climatological conditions to maximize reasonable and beneficial use of the resource and balance the needs of flood control, water supply and environmental concerns.

9. It is the intent of the DISTRICT and the COUNTY that the DISTRICT will maintain the identified watercourses in a manner consistent with those levels of service or goals resulting from the annual joint review and evaluation of the needs by both the DISTRICT and the COUNTY. The COUNTY will coordinate an annual planning meeting between COUNTY staff and DISTRICT staff wherein the DISTRICT will notify the COUNTY of planned activities related to this AGREEMENT for the upcoming year. A primary purpose of the annual planning meeting is for the PARTIES to establish a prioritized list of projects for the coming year. The PARTIES may also explore cost-sharing water management plans for potential capital improvement projects intended to provide desired level of services.

10. Notwithstanding any provisions of this AGREEMENT to the contrary, the PARTIES will not be held liable if failure or delay in the performance of this AGREEMENT arises from fires, floods, strikes, embargoes, acts of the public enemy, unusually severe weather, outbreak of war, restraint of Government, riots, civil commotion, force majeure, act of God, or for any other cause of the same character which is unavoidable through the exercise of due care and beyond the control of the PARTIES.

11. The DISTRICT will be responsible for the removal of vegetation and debris from the watercourses delineated in attached Exhibit "A" for the purposes of maintaining the natural conveyance capabilities of the watercourses subject to terms of this AGREEMENT. The DISTRICT does not assume any responsibility for navigational capabilities. The DISTRICT

will undertake no dredging pursuant to this agreement. The foregoing will not preclude sediment removal where necessary to re-establish a reasonable or effective level of flood carrying service capacity and functionality.

12. All maintenance work will be limited to those named watercourses delineated in attached Exhibit "A". Work may, where deemed necessary by the DISTRICT, include the cutting and removal of vegetation and debris from the watercourse up to and including top of bank. The work may also require the modification of canopy elevations to allow for the operation of equipment necessary to conduct the work depicted in this AGREEMENT. The DISTRICT and COUNTY will coordinate removal of the debris and the DISTRICT will not be responsible for any disposal fees or costs associated with the removal of vegetation and debris. The COUNTY will be responsible for any permit fees or costs normally charged by the COUNTY for the removal or disposal of vegetation and debris.

13. While this AGREEMENT is in force and effect, the DISTRICT will assume the primary responsibility for the management and control over those named watercourses delineated in attached Exhibit "A" as "works" of the DISTRICT. The DISTRICT will also be primarily responsible for the maintenance of those named watercourses. Notwithstanding the foregoing, the COUNTY will retain the right, but not the obligation, to provide independent or concurrent efforts of maintenance as the COUNTY may, in its sole discretion, deem to be necessary. The COUNTY will provide written notice to the DISTRICT of the COUNTY's decision to undertake any such act of maintenance, and the DISTRICT will not unreasonably object, oppose or seek to deny or prevent such efforts by the COUNTY. In conjunction with the foregoing, when deemed necessary by the COUNTY, the PARTIES will cooperate to establish project-specific parameters with respect to levels and/or extent of vegetation removal.

14. This AGREEMENT is contingent upon funding and budget approval by the DISTRICT for the maintenance of the watercourses listed in Exhibit "A" attached and made a part of this AGREEMENT. The failure of either party to obtain sufficient funding to cover its respective obligations pursuant to the terms of this AGREEMENT will be a cause for either to terminate this AGREEMENT for convenience. In addition, unless agreed to by the PARTIES, this AGREEMENT may be terminated by either party for convenience by providing the other party a minimum of six (6) months advance written notice. In such event, both PARTIES will be relieved of any and all future obligations under this AGREEMENT as of the effective date of termination, including but not limited to, lost and consequential damages.

15. In the event of emergency maintenance, the DISTRICT and COUNTY may coordinate their available resources and cooperate to address the existing situation(s).

16. The PARTIES hereto acknowledge that they are self-insured public entities.

17. To the extent permitted by Florida law, the COUNTY will assume any and all risks of personal injury, bodily injury and property damage attributable to the negligent acts or omissions of the COUNTY and the officers, employees, servants, and agents thereof.

18. To the extent permitted by Florida law, the DISTRICT will assume any and all risks of personal injury, bodily injury and property damage attributable to the negligent acts or omissions of the DISTRICT and the officers, employees, servants, and agents thereof.

19. The COUNTY and the DISTRICT further agree that nothing contained herein will 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 as provided in §768.28, Florida Statutes.

20. This AGREEMENT may be amended only with the written approval of the PARTIES.

21. The PARTIES will allow public access to all project documents and materials in accordance with the provisions of Chapter 119, Florida Statutes.

22. The laws of the state of Florida will govern all aspects of this AGREEMENT. In the event it is necessary for either party to initiate legal action regarding this AGREEMENT, venue will be in the Twentieth Judicial Circuit for claims under State law, and the Middle District of Florida for any claims that are justiciable in Federal court.

23. By execution of this AGREEMENT, neither the COUNTY, nor the DISTRICT are assuming any liabilities or duties whatsoever, of the other, which may presently exist or have previously accrued to any third party, including, but not limited to, personal injury, property damage, inverse condemnation, etc., resulting from either party's ownership, operation or control over such watercourses, water control facilities and related works.

24. This AGREEMENT states the entire understanding between the PARTIES and supersedes any written or oral representations, statements, negotiations or agreements to the contrary. The PARTIES recognize that any representations, statements or negotiations made by DISTRICT or COUNTY staff are not legally sufficient to bind the PARTIES in a contractual relationship unless they have been reduced to writing, approved and signed by authorized representatives of the PARTIES.

25. This AGREEMENT will be binding upon the PARTIES, their assigns, and successors in interest.

[End of provisions – signature page follows]

**IN WITNESS WHEREOF**, the PARTIES hereto set their hands and seals on the day, month and year first above written.

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

\_\_\_\_\_  
1<sup>st</sup> Witness Signature

\_\_\_\_\_  
1<sup>st</sup> Witness Printed Name

\_\_\_\_\_  
2<sup>nd</sup> Witness Signature

\_\_\_\_\_  
2<sup>nd</sup> Witness Printed Name

BY: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name  
District Chair

LINDA DOGGETT, CLERK

BY: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name  
Deputy Clerk

BY: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name  
Chair/Vice-Chair

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

APPROVED AS TO FORM FOR THE RELIANCE OF LEE COUNTY ONLY:

\_\_\_\_\_  
Office of the Lee County Attorney



## **EXHIBIT A**

### **Delineated/Name Watercourses**

Bedman Creek

Hickey Creek

Orange River

Daughtrey Creek

Mullock Creek

Estero River (Including North and South Branches)

Halfway Creek

Spring Creek

Imperial River

Oak Creek

Leitner Creek

Kehl Canal

Ten Mile Canal (Hanson to Mullock Creek)