

RESOLUTION NO. 02-70

A RESOLUTION OF THE TOWN COUNCIL OF TOWN OF MIAMI LAKES, FLORIDA, ACCEPTING A GRANT AWARD IN THE AMOUNT OF ONE HUNDRED FIFTY THOUSAND DOLLARS FOR THE DEVELOPMENT OF THE TOWN'S STORMWATER MANAGEMENT PLAN; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE GRANT AGREEMENT BETWEEN THE TOWN AND THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town applied for a grant from the South Florida Water Management District for the development of the Town's stormwater management plan (the "Plan"); and

WHEREAS, a grant has been awarded to the Town in the amount of One Hundred Fifty Thousand Dollars; and

WHEREAS, the grant requires a \$5,000.00 match comprised of in-kind contributions including staff time and professional fees associated with the development of the Plan; and

WHEREAS, the Town Council desires to accept the grant award.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF MIAMI LAKES, FLORIDA, AS FOLLOWS:

Section 1. **Recitals** The above recitals are true and correct and incorporated into this Resolution by this reference.

Section 2. The Town Council hereby accepts the award of One Hundred Fifty Thousand Dollars for the development of the Town's stormwater management plan and approves the grant agreement in substantially the form attached as Exhibit "A" (the "Grant Agreement"). The Town Manager is authorized to execute the Grant Agreement on behalf of the Town and to take all actions necessary to implement the grant.

Section 3. This Resolution shall become effective immediately upon its adoption.

PASSED AND ADOPTED this 14th day of May 2002

Wayne Slaton
WAYNE SLATON, MAYOR

ATTEST:

Beatris M Arguelles
BEATRIS M. ARGUELLES, CMC
TOWN CLERK

APPROVED AS TO LEGAL SUFFICIENCY:

Alejo S Becker
WEISS, SEROTA, HELFMAN, PASTORIZA & GUEDES,
TOWN ATTORNEY

Thomson / Meador

Council voted <u>70</u> as follows:	
Mayor Wayne Slaton	<u>✓</u>
Vice Mayor Roberto Alonso	<u>✓</u>
Councilmember Mary Collins	<u>✓</u>
Councilmember Robert Meador	<u>✓</u>
Councilmember Michael Pizzi	<u>✓</u>
Councilmember Nancy Simon	<u>✓</u>
Councilmember Peter Thomson	<u>✓</u>

Resolution No. 02-70



SOUTH FLORIDA WATER MANAGEMENT DISTRICT

3301 Gun Club Road, West Palm Beach, Florida 33406 • (561) 686-8800 • FL WATS 1-800-432-2045 • TDD (561) 697-2574
Mailing Address: P.O. Box 24680, West Palm Beach, FL 33416-4680 • www.sfwmd.gov

Dennis - P4 E -
Return to file

ADM 28-06

May 24, 2002

Ms. Diane Gonzalez
Town of Miami Lakes
6853 Main Street
Miami Lakes, FL 33014

REC'D MAY 28 2002

**Subject: Contract No. C-13159
Local Flood Mitigation Strategy Project**

Dear Ms. Gonzalez:

Enclosed please find one (1) fully executed copy of the above referenced contract. If you have any questions, please contact me at (561) 682-2720.

Thank you for your efforts on behalf of the District.

Sincerely,

A handwritten signature in cursive script that reads "Johanna Labrada".

Johanna Labrada
Contract Specialist
Procurement Department

/dlk
Enclosure

c: Original File
Equity in Contracting, 6614
Raul Pellegrino, 6120
District Clerk

GOVERNING BOARD

Trudi K. Williams, *Chair*
Lennart E. Lindahl, *Vice-Chair*
Pamela Brooks-Thomas

Michael Collins
Hugh M. English
Gerardo B. Fernández

Patrick J. Gleason, Ph.D., P.G.
Nicolás J. Gutiérrez, Jr., Esq.
Harkley R. Thornton

EXECUTIVE OFFICE

Henry Dean, *Executive Director*

ORIGINAL



SOUTH FLORIDA WATER MANAGEMENT DISTRICT AGREEMENT

THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT (hereinafter referred to as DISTRICT) HEREBY ENTERS INTO THIS AGREEMENT WITH: Name: TOWN OF MIAMI LAKES Address: 6853 MAIN STREET MIAMI LAKES, FL 33014 Project Manager: Diane Gonzalez Telephone No: (305) 793-0597 Fax No: (305) 669- 9438 Hereinafter referred to as: ENTITY	This number must appear on all Invoices and Correspondence C-13159
	M/WBE Goal: 0%
	COST SHARING INFORMATION Total Project Cost: \$ 155,000.00 ENTITY Contribution: \$ In-Kind Contribution (See Exhibit "C" Statement of Work)

PROJECT TITLE: LOCAL FLOOD MITIGATION STRATEGY PROJECT

The following Exhibits are attached hereto and made a part of this AGREEMENT:

Exhibit "A" - Special Provisions	Exhibit "H" - Not Applicable
Exhibit "B" - General Terms and Conditions	Exhibit "I" - Not Applicable
Exhibit "C" - Statement of Work	Exhibit "J" - Not Applicable
Exhibit "D" - Payment and Deliverable Schedule	Exhibit "K" - Not Applicable
Exhibit "E" - Not Applicable	Exhibit "L" - Not Applicable
Exhibit "F" - Not Applicable	Exhibit "M" - Not Applicable
Exhibit "G" - Not Applicable	

TOTAL DISTRICT CONSIDERATION: \$150,000.00	AGREEMENT TYPE: Not-to-Exceed
Multi-Year Funding (If Applicable)	
Fiscal Year:	Fiscal Year:
Fiscal Year:	Fiscal Year:
Fiscal Year:	Fiscal Year:
*Subject to District Governing Board Annual Budget Approval	

AGREEMENT TERM: ONE (1) YEAR	EFFECTIVE DATE: Last Date of Execution by the Parties
District Project Manager: RAUL PELLEGRINO	District Contract Administrator:
Telephone No: (561) 682-6583	Johanna Labrada (561) 682-2720
Fax No. (561) 682-6374	Fax No.: (561) 682-6397 or (561) 681-6275

SUBMIT INVOICES AND NOTICES TO THE DISTRICT AT:	SUBMIT NOTICES TO THE ENTITY AT:
South Florida Water Management District 3301 Gun Club Road West Palm Beach, Florida 33406 <u>Attention:</u> Procurement Division	TOWN OF MIAMI LAKES 6853 MAIN STREET MIAMI LAKES, FL 33014 <u>Attention:</u> Diane Gonzalez Dennis White, Town Manager

IN WITNESS WHEREOF, the authorized representative hereby executes this AGREEMENT on this date, and accepts all Terms and Conditions under which it is issued.

TOWN OF MIAMI LAKES Accepted By: <u>Dennis White</u> Signature of Authorized Representative Title: <u>Town Manager</u> Date: <u>May 14, 2002</u>	SOUTH FLORIDA WATER MANAGEMENT DISTRICT BY ITS GOVERNING BOARD Accepted By: <u>Frank Hayden</u> Frank Hayden, Procurement Director Date: <u>5/23/02</u> SFWMD OFFICE OF COUNSEL APPROVED By: <u>[Signature]</u> Date: <u>4/24/02</u> SFWMD PROCUREMENT APPROVED By: <u>[Signature]</u> Date: <u>4/22/02</u>
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20270



SOUTH FLORIDA WATER MANAGEMENT DISTRICT CONTRACT

EXHIBIT "A" SPECIAL PROVISIONS

The purpose of this Exhibit "A" is to delineate any and all changes, deletions and/or additions to the Exhibit "B" General Terms & Conditions. In the event of any conflict between this Exhibit "A" and any other provision specified in this Agreement, this Exhibit "A" shall take precedence.

1. All references to "ENTITY" throughout this AGREEMENT shall be construed to mean "TOWN".
2. A new Article 1.4 is hereby added as follows:

"The TOWN shall submit quarterly reports to the DISTRICT throughout the term of this AGREEMENT. Any requests for changes to the Exhibit "C" Statement of Work shall be submitted by the TOWN in writing to the DISTRICT for approval, and the DISTRICT shall submit its comments/approval in writing to the TOWN within ten (10) days after receipt of the request for change. The DISTRICT shall be responsible for initiating any amendments to this AGREEMENT, if required."

3. Article 2.4 is hereby deleted and replaced as follows:

"The TOWN shall submit quarterly financial statements to the DISTRICT providing a detailed accounting of all expenditures incurred hereunder throughout the term of this AGREEMENT. The TOWN shall report and document the amount of funds expended per month during the quarterly reporting period and the AGREEMENT expenditures to date. The DISTRICT shall only be obligated to pay for a maximum no-to-exceed AGREEMENT funding limitation of \$150,000.00. In no event shall the DISTRICT be liable for any expenditures hereunder in excess of \$150,000.00."

4. A new Article 2.5 is hereby added as follows:

"The TOWN is hereby authorized to contract with third parties (subcontract) for engineering services awarded through a competitive process comparable to Chapters 255 and 287, Florida Statutes. The TOWN shall not subcontract, assign, or transfer any other work under this AGREEMENT without the prior written consent of the DISTRICT's Project Manger. The TOWN 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 TOWN that the DISTRICT shall not be liable to any subcontractor for any expenses or liabilities incurred under the subcontract(s)."

5. Article 7.1 is hereby modified to add the following paragraph:

"The TOWN shall maintain books, records and documents directly pertinent to performance under this AGREEMENT as described above. The TOWN shall similarly require each subcontractor to maintain and allow access to such records for audit purposes."

6. Article 7.2 is hereby deleted in its entirety and replaced as follows:

"Both the DISTRICT and the TOWN 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 "C", Statement of Work. Both parties' rights to



SOUTH FLORIDA WATER MANAGEMENT DISTRICT CONTRACT

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 **TOWN** under this **AGREEMENT** shall be deemed to be the property of the **TOWN** upon termination of this **AGREEMENT**. All tangible property shall remain owned by the **TOWN**."

7. Articles 6.3, 7.3, 7.4, 7.5, 11 and 13 are hereby deleted in their entirety.

SFWMD Office of Counsel Approved

By: [Signature] Date: 4/24/02

SFWMD PROCUREMENT APPROVED

By: [Signature] Date: 4/22/02



SOUTH FLORIDA WATER MANAGEMENT DISTRICT

EXHIBIT "B"

GENERAL TERMS AND CONDITIONS

ARTICLE 1 - STATEMENT OF WORK

1.1 The **ENTITY** shall, to the satisfaction of the **DISTRICT**, fully and timely perform all work items described in the "Statement of Work," attached hereto as Exhibit "C" and made a part of this **AGREEMENT**.

1.2 As part of the services to be provided by the **ENTITY** under this **AGREEMENT**, the **ENTITY** shall substantiate, in whatever forum reasonably requested by the **DISTRICT**, the methodology, lab analytical examinations, scientific theories, data, reference materials, and research notes. The **ENTITY** shall also be required to substantiate any and all work completed, including but not limited to, work completed by subcontractors, assistants, models, concepts, analytical theories, computer programs and conclusions utilized as the basis for the final work product required by the **AGREEMENT**. This paragraph shall survive the expiration or termination of this **AGREEMENT**.

1.3 The parties agree that time is of the essence in the performance of each and every obligation under this **AGREEMENT**.

ARTICLE 2 - COMPENSATION/ CONSIDERATION

2.1 The total consideration for all work required by the **DISTRICT** pursuant to this **AGREEMENT** shall not exceed the amount as indicated on Page 1 of this **AGREEMENT**. Such amount includes all expenses which the **ENTITY** may incur and therefore no additional consideration shall be authorized.

2.2 The **ENTITY** assumes sole responsibility for all work which is performed pursuant to the Statement of Work, Exhibit "C". By providing funding hereunder, the **DISTRICT** does not make any warranty, guaranty, or any representation whatsoever regarding the correctness, accuracy, or reliability of any of the work performed hereunder.

2.3 The **ENTITY** by executing this **AGREEMENT**, certifies to truth-in-negotiation, specifically, that wage rates and other factual unit costs supporting the consideration are accurate, complete, and current at the time of contracting. The **ENTITY**

agrees that the **DISTRICT** may adjust the consideration for this **AGREEMENT** to exclude any significant sums by which the consideration was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. The **DISTRICT** shall make any such adjustment within one (1) year following the expiration or termination of this **AGREEMENT**.

ARTICLE 3 - INVOICING AND PAYMENT

3.1 The **ENTITY**'s invoices shall reference the **DISTRICT**'s **AGREEMENT** Number and shall be sent to the **DISTRICT**'s address specified on Page 1 of this **AGREEMENT**. The **ENTITY** shall not submit invoices to any other address at the **DISTRICT**.

3.2 The **ENTITY** shall submit the invoices on a completion of deliverable basis, pursuant to the schedule outlined in the Payment and Deliverable Schedule, attached hereto as Exhibit "D" and made a part of this **AGREEMENT**. In the event the schedule does not specify payment on a completion of deliverable basis, all invoices shall be substantiated by adequate supporting documentation to justify hours expended and expenses incurred within the not-to-exceed budget, including but not limited to, copies of approved timesheets, payment vouchers, expense reports, receipts and subcontractor invoices.

3.3 The **DISTRICT** shall pay the full amount of the invoice within thirty (30) days following **DISTRICT** acceptance of services and/or deliverable(s) required by this **AGREEMENT**. However, failure by the **ENTITY** to follow the foregoing instructions and submit acceptable services and or deliverables(s) may result in an unavoidable delay of payment by the **DISTRICT**.

3.4 Unless otherwise stated herein, the **DISTRICT** shall not pay for any obligation or expenditure made by the **ENTITY** prior to the commencement date of this **AGREEMENT**.

ARTICLE 4 - PROJECT MANAGEMENT/ NOTICE

4.1 The parties shall direct all technical matters arising in connection with the performance of this



SOUTH FLORIDA WATER MANAGEMENT DISTRICT

EXHIBIT "B"

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AGREEMENT, other than invoices and notices, to the attention of the respective Project Managers specified on Page 1 of the **AGREEMENT** for attempted resolution or action. The Project Managers shall be responsible for overall coordination and oversight relating to the performance of this **AGREEMENT**. The **ENTITY** shall direct all administrative matters, including invoices and notices, to the attention of the **DISTRICT's** Contract Administrator specified on Page 1 of the **AGREEMENT**.

All formal notices between the parties under this **AGREEMENT** shall be in writing and shall be deemed received if sent by certified mail, return receipt requested, to the respective addresses specified on Page 1 of the **AGREEMENT**. The **ENTITY** shall also provide a copy of all notices to the **DISTRICT's** Project Manager. All notices required by this **AGREEMENT** shall be considered delivered *upon receipt*. Should either party change its address, written notice of such new address shall promptly be sent to the other party.

All correspondence to the **DISTRICT** under this **AGREEMENT** shall reference the **DISTRICT's** Contract Number specified on Page 1 of the **AGREEMENT**.

ARTICLE 5 – INDEMNIFICATION & INSURANCE

5.1 For value received, which is hereby acknowledged, the **ENTITY** shall defend, indemnify, save, and hold the **DISTRICT**, its officers, directors, board members, agents, assigns, and employees harmless from any and all claims, damages, losses, and expenses, direct or indirect or consequential (including but not limited to, fees and charges of attorneys and other professionals, court and arbitration or other dispute resolution costs) arising out of or resulting from any negligent or intentional act or omission by the **ENTITY**, its subcontractors, suppliers, agents, assigns, invitees, or employees in connection with this **AGREEMENT**. The **DISTRICT** shall have the right to approve counsel selected by the **ENTITY** to defend the **DISTRICT** in the event the **DISTRICT** is named in any legal action. Further, this indemnification shall specifically include all claims, losses, damages or expenses which

result from any of the following by the **ENTITY** or its subcontractors, suppliers, agents, assigns, invitees or employees:

- (a) any breach of the **AGREEMENT**;
- (b) any violation of any patent, trademark, copyright law or other intellectual property law;
- (c) any violation of any federal, state, or local law or regulation

The **ENTITY** further acknowledges that it is solely responsible for ensuring its compliance and the compliance of its subcontractors, suppliers, agents, assigns, invitees and employees with the terms of this **AGREEMENT**. This paragraph shall survive the expiration of termination of this **AGREEMENT**.

5.2 The **ENTITY** shall procure and maintain, through the term of this **AGREEMENT**, insurance coverage reflecting, at a minimum, the limits and coverage conditions identified on the **DISTRICT's** Insurance Requirements, attached as Exhibit "H" and made a part of this **AGREEMENT**. The coverage required shall extend to all employees and subcontractors of the **ENTITY**. Prior to the execution of this **AGREEMENT**, the **ENTITY** shall provide a Certificate of Insurance for such coverage to the **DISTRICT** for approval, indicating the producer, insured, carrier's name, and BEST rating, policy numbers and effective and expiration dates of each type of coverage required. The Certificate of Insurance shall be signed by the insurance carrier's authorized representative and shall identify the **DISTRICT** as added insured as required.

5.3 All insurers must be qualified to lawfully conduct business in the State of Florida. Failure of the **DISTRICT** to notify the **ENTITY** that the certificate of insurance does not meet the **AGREEMENT** requirements shall not constitute a waiver of the **ENTITY's** responsibility to meet the stated requirement. In addition, receipt and acceptance of the certificate of insurance by the **DISTRICT** shall not relieve the **ENTITY** from responsibility for adhering to the insurance limits and conditions of insurance required within this **AGREEMENT**. Misrepresentation of any material fact, whether intentional or not, regarding the



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ENTITY's insurance coverage, policies or capabilities, may be grounds for termination of the **AGREEMENT** as determined solely by the **DISTRICT**

ARTICLE 6 - TERMINATION/REMEDIES

6.1 If either party fails to fulfill its obligations under this **AGREEMENT** in a timely and proper manner, the other party shall have the right to terminate this **AGREEMENT** by giving written notice of any deficiency. The party in default shall then have ten (10) calendar days from receipt of notice to correct the deficiency. If the defaulting party fails to correct the deficiency within this time, the non-defaulting party shall have the option to terminate this **AGREEMENT** at the expiration of the ten (10) day time period. Should the **DISTRICT** elect to terminate for default in accordance with this provision, the **DISTRICT** shall be entitled to recover procurement costs, in addition to all other remedies under law and/or equity.

6.2 The **DISTRICT** may terminate this **AGREEMENT** with or without cause at any time for convenience upon thirty (30) calendar days prior written notice to the **ENTITY**. The performance of work under this **AGREEMENT** may be terminated by the **DISTRICT** in accordance with this clause in whole, or from time to time in part, whenever the **DISTRICT** shall determine that such termination is in the best interest of the **DISTRICT**. Any such termination shall be effected by delivery to the **ENTITY** of a Notice of Termination specifying the extent to which performance of work under the **AGREEMENT** is terminated, and the date upon which such termination becomes effective.

In the event of termination for convenience, the **DISTRICT** shall compensate the **ENTITY** for all authorized and accepted deliverables completed through the date of termination in accordance with Exhibit "C", Statement of Work. The **DISTRICT** shall be relieved of any and all future obligations hereunder, including but not limited to lost profits and consequential damages, under this **AGREEMENT**. The **DISTRICT** may withhold all payments to the **ENTITY** for such work until such time as the **DISTRICT** determines the exact amount due to the **ENTITY**.

6.3 If either party initiates legal action, including appeals, to enforce this **AGREEMENT**, the prevailing party shall be entitled to recover a reasonable attorney's fee, based upon the fair market value of the services provided.

6.4 In the event a dispute arises which the project managers cannot resolve between themselves, the parties shall have the option to submit to non-binding mediation. The mediator or mediators shall be impartial, shall be selected by the parties, and the cost of the mediation shall be borne equally by the parties. The mediation process shall be confidential to the extent permitted by law.

6.5 The **DISTRICT** may order that all or part of the work stop if circumstances dictate that this action is in the **DISTRICT's** best interest. Such circumstances may include, but are not limited to, unexpected technical developments, direction given by the **DISTRICT's** Governing Board, a condition of immediate danger to **DISTRICT** employees, or the possibility of damage to equipment or property. This provision shall not shift responsibility for loss or damage, including but not limited to, lost profits or consequential damages sustained as a result of such delay, from the **ENTITY** to the **DISTRICT**. If this provision is invoked, the **DISTRICT** shall notify the **ENTITY** in writing to stop work as of a certain date and specify the reasons for the action, which shall not be arbitrary or capricious. The **ENTITY** shall then be obligated to suspend all work efforts as of the effective date of the notice and until further written direction from the **DISTRICT** is received. Upon resumption of work, if deemed appropriate by the **DISTRICT**, the **DISTRICT** shall initiate an amendment to this **AGREEMENT** to reflect any changes to Exhibit "C", Statement of Work and/or the project schedule.

6.6 The **DISTRICT** anticipates a total project cost as indicated on Page 1, with the balance of matching funds and/or in-kind services to be obtained from the **ENTITY** in the amount as specified on Page 1 of this **AGREEMENT**. In the event such **ENTITY** matching funding and/or in-kind services becomes unavailable, that shall be good and sufficient cause for the **DISTRICT** to terminate the **AGREEMENT** pursuant to Paragraph 6.2 above.



SOUTH FLORIDA WATER MANAGEMENT DISTRICT

EXHIBIT "B"

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ARTICLE 7 - RECORDS RETENTION/ OWNERSHIP

7.1 The **ENTITY** shall maintain records and the **DISTRICT** shall have inspection and audit rights as follows:

A. Maintenance of Records: The **ENTITY** 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 years from completing performance and receiving final payment under this **AGREEMENT**.

B. Examination of Records: The **DISTRICT** or its 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 years from the date of final payment under this **AGREEMENT** and upon reasonable notice, time and place.

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 **ENTITY** shall extend the period of maintenance for all records relating to the **AGREEMENT** until the final disposition of the legal dispute, and all such records shall be made readily available to the **DISTRICT**.

7.2 The **DISTRICT** shall retain exclusive title, copyright and other proprietary rights in 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 **ENTITY**, its subcontractor(s), assign(s), agent(s) and/or successor(s) as required by the Exhibit "C", Statement of Work (the "Work"). In consideration for the **DISTRICT** entering into this **AGREEMENT**, and other good and valuable consideration the sufficiency and receipt in full of which is hereby acknowledged by the **ENTITY**, the

ENTITY hereby assigns, transfers, sells and otherwise grants to the **DISTRICT** any and all rights it now has or may have in the Work (the "Grant"). This Grant shall be self-operative upon execution by the parties hereto, however the **ENTITY** agrees to execute and deliver to the **DISTRICT** any further assignments or other instruments necessary to evidence the Grant, without the payment of any additional consideration by the **DISTRICT**. The **ENTITY** may not disclose, use, license or sell any work developed, created, or otherwise originated hereunder to any third party whatsoever. This paragraph shall survive the termination or expiration of this **AGREEMENT**.

7.3 The **ENTITY** represents and warrants that proprietary software, if any, to be provided to the **DISTRICT** by the **ENTITY** hereunder, as specifically identified in Exhibit "C", Statement of Work shall have been developed solely by or for the **ENTITY**, or lawfully acquired under license from a third party, including the right to sublicense such software. The **ENTITY** shall include copyright or proprietary legends in the software and on the label of the medium used to transmit the software. The **ENTITY** shall grant to the **DISTRICT** a perpetual, non-transferable, non-exclusive right to use the identified software without an additional fee. The **DISTRICT** acknowledges that title to the software identified in Exhibit "C" shall remain with the Licensor.

7.4 Any equipment purchased by the **ENTITY** with **DISTRICT** funding under this **AGREEMENT** shall be returned and title transferred from the **ENTITY** to the **DISTRICT** immediately upon termination or expiration of this **AGREEMENT** upon the written request of the **DISTRICT** not less than thirty (30) days prior to **AGREEMENT** expiration or termination. Equipment is hereby defined as any non-consumable items purchased by the **DISTRICT** with a value equal to or greater than \$500.00 and with a normal expected life of one (1) year or more. The **ENTITY** will maintain any such equipment in good working condition while in its possession and will return the equipment to the **DISTRICT** in good condition, less normal wear and tear. The **ENTITY** will use its best efforts to safeguard the equipment throughout the period of



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performance of this **AGREEMENT**. However the **DISTRICT** will not hold the **ENTITY** liable for loss or damage due to causes beyond the **ENTITY**'s reasonable control. In the event of loss or damage, the **ENTITY** shall notify the **DISTRICT** in writing within five (5) working days of such occurrence.

7.5 The **DISTRICT** has acquired the right to use certain software under license from third parties. For purposes of this **AGREEMENT**, the **DISTRICT** may permit the **ENTITY** access to certain third party owned software on **DISTRICT** computer systems. The **ENTITY** acknowledges the proprietary nature of such software and agrees not to reproduce, distribute or disclose such software to any third party. Use of or access to such software shall be restricted to designated **DISTRICT** owned systems or equipment. Removal of any copy of licensed software is prohibited.

ARTICLE 8 - STANDARDS OF COMPLIANCE

8.1 The **ENTITY**, 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 **ENTITY**, upon request, as to any such laws of which it has present knowledge.

8.2 The **ENTITY** hereby assures that no person shall be discriminated against on the grounds of race, color, creed, national origin, handicap, age, or sex, in any activity under this **AGREEMENT**. The **ENTITY** shall take all measures necessary to effectuate these assurances.

8.3 The laws of the State of Florida shall govern all aspects of this **AGREEMENT**. In the event it is necessary for either party to initiate legal action regarding this **AGREEMENT**, venue shall be in the Fifteenth Judicial Circuit for claims under state law and in the Southern District of Florida for any claims which are justiciable in federal court.

8.4 The **ENTITY**, by its execution of this **AGREEMENT**, acknowledges and attests that neither it, nor any of its suppliers, subcontractors, or

consultants who shall perform work which is intended to benefit the **DISTRICT** is a convicted vendor or, if the **ENTITY** or any affiliate of the **ENTITY** has been convicted of a public entity crime, a period longer than 36 months has passed since that person was placed on the convicted vendor list. The **ENTITY** further understands and accepts that this **AGREEMENT** shall be either void by the **DISTRICT** or subject to immediate termination by the **DISTRICT**, in the event there is any misrepresentation or lack of compliance with the mandates of Section 287.133, Florida Statutes. The **DISTRICT**, in the event of such termination, shall not incur any liability to the **ENTITY** for any work or materials furnished.

8.5 The **ENTITY** shall be responsible and liable for the payment of all of its FICA/Social Security and other applicable taxes resulting from this **AGREEMENT**.

8.6 The **ENTITY** warrants that it has not employed or retained any person, other than a bona fide employee working solely for the **ENTITY**, to solicit or secure this **AGREEMENT**. Further the **ENTITY** warrants that it has not paid or agreed to pay any person, other than a bona fide employee working solely for the **ENTITY**, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the awarding or making of this **AGREEMENT**. For breach of this provision, the **DISTRICT** may terminate this **AGREEMENT** without liability and, at its discretion, deduct or otherwise recover the full amount of such fee, commission, percentage, gift, or other consideration.

8.7 The **ENTITY** shall allow public access to all project documents and materials in accordance with the provisions of Chapter 119, Florida Statutes. Should the **ENTITY** 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 **ENTITY**.

8.7.1 Pursuant to Sections 119.07(3)(o), and 240.241 Florida Statutes, data processing software obtained by an agency under a license agreement which prohibits its disclosure and which software is a trade secret, as defined in Sections 812.081(c),



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Florida Statutes is exempt from the disclosure provisions of the Public Records law. However, the parties hereto agree that if a request is made of the **DISTRICT**, pursuant to Chapter 119, Florida Statute, for public disclosure of proprietary property being licensed to the **ENTITY** (Licensee) hereunder, the **DISTRICT** shall advise the **ENTITY** (Licensee) of such request and, as between the **DISTRICT** and the **ENTITY** (Licensee), it shall be the **ENTITY**'s (Licensee's) sole burden and responsibility to immediately seek and obtain such injunctive or other relief from the Courts and to immediately serve notice of the same upon the Licensor to protect the Licensor's claimed exemption under the Statute.

8.8 The **ENTITY** shall make reasonable efforts to obtain any necessary federal, state, local, and other governmental approvals, as well as all necessary private authorizations and permits, prior to the commencement of performance of this **AGREEMENT**. A delay in obtaining permits shall not give rise to a claim by the **ENTITY** for additional compensation. If the **ENTITY** is unable to obtain all necessary permits in a timely manner, either party may elect to terminate this **AGREEMENT**, each party to bear its own costs, notwithstanding other provisions of this **AGREEMENT** to the contrary.

8.9 Pursuant to Section 216.347, F.S., the **ENTITY** is prohibited from the expenditure of any funds under this **AGREEMENT** to lobby the Legislature, the judicial branch, or another state agency.

8.10 The **DISTRICT** is a governmental entity responsible for performing a public service and therefore has a legitimate interest in promoting the goals and objectives of the agency. The work under this **AGREEMENT** involves a project consistent with these goals and objectives. Consequently, the **DISTRICT** is desirous of satisfactorily completing and successfully promoting this project with the cooperation of its **ENTITY**. Therefore, as the **DISTRICT'S ENTITY** for this project, the **ENTITY** assures the **DISTRICT** that the **ENTITY**, its employees, subcontractors and assigns will refrain from acting adverse to the **DISTRICT'S** legitimate interest in promoting the goals and objectives of this project. The **ENTITY** agrees to take all reasonable measures necessary to effectuate these assurances. In

the event the **ENTITY** determines it is unable to meet or promote the goals and objectives of the project, it shall have the duty to immediately notify the **DISTRICT**. Upon such notification the **DISTRICT**, in its discretion, may terminate this **AGREEMENT**.

ARTICLE 9 - RELATIONSHIP BETWEEN THE PARTIES

9.1 The **ENTITY** shall be considered an independent contractor and neither party shall be considered an employee or agent of the other party. Nothing in this **AGREEMENT** shall be interpreted to establish any relationship other than that of independent contractor between the parties and their respective employees, agents, subcontractors, or assigns during or after the performance on this **AGREEMENT**. Both parties are free to enter into contracts with other parties for similar services.

9.2 It is the intent and understanding of the Parties that this **AGREEMENT** is solely for the benefit of the **ENTITY** and the **DISTRICT**. No person or entity other than the **ENTITY** or the **DISTRICT** shall have any rights or privileges under this **AGREEMENT** in any capacity whatsoever, either as third-party beneficiary or otherwise.

9.3 The **ENTITY** shall not assign, delegate, or otherwise transfer its rights and obligations as set forth in this **AGREEMENT** without the prior written consent of the **DISTRICT**. Any attempted assignment in violation of this provision shall be void.

9.4 The **ENTITY** shall not pledge the **DISTRICT'S** credit or make the **DISTRICT** a guarantor of payment or surety for any contract, debt, obligation, judgement, lien, or any form of indebtedness.

9.5 The **DISTRICT** assumes no duty with regard to the supervision of the **ENTITY** and the **ENTITY** shall remain solely responsible for compliance with all safety requirements and for the safety of all persons and property at the site of contract performance.

ARTICLE 10 - MBE PARTICIPATION

10.1 The **ENTITY** hereby acknowledges that no Minority Business Enterprises (MBE) participation



SOUTH FLORIDA WATER MANAGEMENT DISTRICT

EXHIBIT "B"

GENERAL TERMS AND CONDITIONS

goal has been established for this **AGREEMENT**; however, both parties agree to provide the other advance notice of competitive contracts that may result from this **AGREEMENT** along with timelines for public notice and award of such contracts. In the event subsequent competitive contract awards do result in M/WBE participation, such participation shall be reported to the other party. Both the **ENTITY** and the **DISTRICT** will ensure compliance with the provisions of their respective program, laws, ordinances and policies and will support the other's initiatives to the extent allowed by law.

ARTICLE 11 - YEAR 2000 COMPLIANCE

Article 11 is hereby deleted.

ARTICLE 12 - GENERAL PROVISIONS

12.1 Notwithstanding any provisions of this **AGREEMENT** to the contrary, the parties shall not be held liable for any failure or delay in the performance of this **AGREEMENT** that 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. Failure to perform shall be excused during the continuance of such circumstances, but this **AGREEMENT** shall otherwise remain in effect. This provision shall not apply if the "Statement of Work" of this **AGREEMENT** specifies that performance by **ENTITY** is specifically required during the occurrence of any of the events herein mentioned.

12.2 In the event any provisions of this **AGREEMENT** shall conflict, or appear to conflict, the **AGREEMENT**, including all exhibits, attachments and all documents specifically incorporated by reference, shall be interpreted as a whole to resolve any inconsistency.

12.3 Failures or waivers to insist on strict performance of any covenant, condition, or provision of this **AGREEMENT** by the parties, their successors and assigns 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.

12.4 Should any term or provision of this **AGREEMENT** be held, to any extent, invalid or unenforceable, as against any person, entity 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.

12.5 This **AGREEMENT** may be amended only with the written approval of the parties hereto.

12.6 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**. The **ENTITY** recognizes that any representations, statements or negotiations made by **DISTRICT** staff do not suffice to legally bind the **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.

ARTICLE 13 - SAFETY REQUIREMENTS

13.1 The **ENTITY** shall require appropriate personal protective equipment in all operations where there is exposure to hazardous conditions.

13.2 The **ENTITY** shall instruct employees required to handle or use toxic materials or other harmful substances regarding their safe handling and use, including instruction on the potential hazards,



SOUTH FLORIDA WATER MANAGEMENT DISTRICT

EXHIBIT "B"

GENERAL TERMS AND CONDITIONS

personal hygiene and required personal protective measures. A Material Safety Data Sheet (MSDS) shall be provided by the **ENTITY** to the **DISTRICT** on each chemical product used.

13.3 The **ENTITY** shall comply with the standards and regulations set forth by the Occupational Safety and Health Administration (OSHA), the Florida Department of Labor and Employment Security and all other appropriate federal, state, local or **DISTRICT** safety and health standards.

13.4 It is the **ENTITY'S** sole duty to provide safe and healthful working conditions to its employees and those of the **DISTRICT** on and about the site of **AGREEMENT** performance.

13.5 The **ENTITY** shall initiate and maintain an accident prevention program which shall include, but shall not be limited to, establishing and supervising programs for the education and training of employees in the recognition, avoidance, and prevention of unsafe conditions and acts.

13.6 The **ENTITY** shall erect and maintain, as required by existing conditions and performance of the **AGREEMENT**, reasonable safeguards for safety and protection, including posting of danger signs and other warnings, against hazards.

13.7 The **ENTITY** shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to:

13.7.1 employees on the work and other persons who may be affected thereby; including pedestrians, visitors, or traveling public;

13.7.2 the work, materials, and equipment to be incorporated therein; whether in storage on or off the site, under care, custody or control of the **ENTITY**, or the **ENTITY'S** subcontractors; and

13.7.3 other properties at the site or adjacent thereto; such as trees, shrubs, lawns, walks, utilities, pavement, roadways, structures, building, vehicles, and equipment not designated for removal, relocation or replacement in the course of work.

13.8 The **ENTITY** shall provide first aid services and

medical care to its employees.

13.9 The **ENTITY** shall develop and maintain an effective fire protection and prevention procedures and good housekeeping practices on the work site throughout the **AGREEMENT**.

13.10 *Emergencies:* In emergency affecting safety of persons or property on or about the site or as a result of the work; the **ENTITY** shall act, timely and with due diligence, to prevent threatened damage, injury, or loss.

13.11 *Environmental:* When the **ENTITY**, **ENTITY'S** subcontractors, or subcontractors, use petroleum products, hazardous chemicals, or any other chemicals used on or about the site, the **ENTITY** shall be responsible for handling these chemical constituents in accordance with federal, state and local regulations during the terms of the **AGREEMENT**. For accidental discharges or releases onto the floor, air, ground, surface waters, ground waters, it shall be the **ENTITY'S** sole responsibility to respond immediately to clean the site, at his expense, to the complete satisfaction of federal, state, local regulatory agencies and to the **DISTRICT** requirements.

13.12 The **DISTRICT** may order the **ENTITY** to halt operations under the **AGREEMENT**, at the **ENTITY'S** expense, if a condition of immediate danger to the public and/or **DISTRICT** employees, equipment, or property exist. This provision shall not shift the responsibility or risk of loss for injuries or damage sustained from the **ENTITY** to the **DISTRICT**; and the **ENTITY** shall remain solely responsible for compliance with all federal, state and local safety requirements, provisions of this section, and safety of all persons and property on or about the site.

EXHIBIT "C"
STATEMENT OF WORK
TOWN OF MIAMI LAKES
LOCAL FLOOD MITIGATION STRATEGY PROJECT

1.0 INTRODUCTION AND BACKGROUND

The Town of Miami Lakes's (TOWN) Stormwater System Improvement Plan is funded by the 2001/2002 legislature General Appropriation Act funds from the Florida Department of Environmental Protection (FDEP) through Special Appropriation 1747A to support the development of Local (Flood) Mitigation Strategies (LMS) in Miami-Dade County. These funds are administered through the South Florida Water Management DISTRICT (DISTRICT) and dispersed and managed at the local level.

The TOWN was incorporated in December 2000. Miami-Dade County currently operates all stormwater management improvements and programs. To address flood protection activities for its residents, critical issues exist regarding creating a stormwater utility, a stormwater master plan, and joining federal flood insurance programs.

2.0 OBJECTIVE

As provided for in Chapter 403.0891 F. S. and Chapter 24-61 of the Miami-Dade County Code, and to address environmental protection and adequate flood protection, the TOWN has approved the establishment and implementation of a Stormwater Utility and the development of a Stormwater Management Master Plan. In addition to protecting the environmental quality of its many lakes, the primary objective of establishing the Utility is to address the flooding that occurs in the TOWN.

3.0 SCOPE OF WORK

The TOWN of Miami Lakes shall hire and manage a consultant who will complete the following tasks:

- Task 1. Project Initiation and Management
- Task 2. Create a Stormwater Utility
- Task 3. Join the Community Rating System (CRS)
- Task 4. Data Compilation
- Task 5. Create a Stormwater Management Master Plan and Implement Local Projects.

4.0 WORK BREAKDOWN STRUCTURE

At the end of each task the TOWN shall deliver 5 copies of the task deliverables to the DISTRICT. The DISTRICT shall distribute the copies to the Local Mitigation Strategies Group and FDEP (Review Group) for their review and comments. Review comments and/or questions, if any, will be returned to the TOWN within 14 days. The TOWN shall

be responsible for properly addressing any and all comments/questions and concerns from the Review Group, at which time, the deliverable will be deemed complete.

Accordingly, the TOWN will hire a consulting firm who will perform the following functions for the TOWN:

Task 1. Project Initiation and Management.

This task will ensure that the different components of the project are integrated through proper management of the administrative components, the preparation, issuance and evaluation of requests for proposals, and overall monitoring and oversight of the functions to be performed.

Deliverable: Project Management Plan

Task 2. Create a Stormwater Utility.

This task will allow TOWN officials a dedicated source of funds, allow control over those funds, and will enable the TOWN to prioritize drainage improvement projects at the local level. The consultant will need to determine what the drainage needs for the TOWN are, develop a standard fee for residential and commercial buildings, create a billing system, ensure adequate legal authority exists to enforce collections, and create enforcement protocol.

Deliverable: Stormwater Utility Management Report to include drainage needs, recommended standard fee, description of billing system, legal authority on collection enforcement and enforcement protocol.

Task 3. Join the Community Rating System (CRS)

This task involves ensuring the community is in good standing with the NFIP, by requiring submittal and is keeping Elevation Certificates for new construction and substantial improvements and damages, and documenting activities the community is doing to improve flood protection.

Deliverable: Certificate of good standing with CRS.

Task 4. Data Compilation

This task involves an inventorying of existing stormwater drainage systems, compiling elevation and topographical data and using the compiled data to map and model the entire community to determine its overall drainage needs.

(a) **Data Collection** – Existing stormwater and drainage data, reports, plans, etc., will be collected and reviewed, historical flood complaints will be collected and analyzed.

- (b) **Drainage System Inventory** – Field inventory of existing drainage structures and accessible drainage systems.
- (c) **Drainage Atlas** – Preparation of an AutoCAD-based drainage atlas to include the type, size and general location of the storm sewer components identified in items a and b above.
- (d) **Basin and Sub-basin Delineation** – Based on available survey elevation data and other sources to be provided by the TOWN, delineate the sub-basins within the TOWN.

Deliverable: A data compilation report to include the appropriate exhibits evidencing completion of each item described in this task.

Task 5. Create a Stormwater Management Master Plan

The Master Plan shall include the items described in Task 4 and the following:

- (a) **Hydrologic and Hydraulic Modeling** – Analysis of existing systems and their capacity to handle the 5 year – 1 hour, 5 year – 24 hour, 25 year – 72 hour and 100 year – 72 hour storm events.
- (b) **Analysis of Needed Improvement** – Identify and analyze alternatives for improvements needed for deficiencies identified in item (a) above. Compare alternatives and make recommendations for TOWN approval.
- (c) **Stormwater Capital Improvements Plan (CIP)** – Develop an optional Capital Improvement Program to implement the improvements identified in Item (b) above.

Deliverable: Copy of the Stormwater Management Plan to include all items denoted under this task.

5.0 ENTITY IN-KIND CONTRIBUTION

The TOWN shall contribute in-kind services in the amount of \$5,000.00 which include staff time and professional fees associated with this project.

EXHIBIT "D"
PAYMENT AND DELIVERABLES SCHEDULE

Total payment by the DISTRICT shall not exceed the amount of **\$150,000.00**. All invoices shall be accompanied by adequate documentation to support actual expenditures incurred by the TOWN within the not-to-exceed amounts specified below in accordance with Article 3.2 of the Agreement. Payment by the DISTRICT is further subject to receipt of quarterly progress reports and financial statements from the TOWN with documentation to demonstrate completion of each project task in accordance with Exhibit "C" Statement of Work requirements. The TOWN is responsible for reviewing and approving deliverables from the consultant to ensure that project requirements are met. The TOWN is also responsible for project management, budget management and quality control with the consultant.

Task	Deliverable	*Due Date	Town Contribution	**DISTRICT Not-to-Exceed Payment
Task 1. Project Initiation and Management	Project Management Plan	90 days	\$5,000.00	\$5,000.00
Task 2. Create a Stormwater Utility	Stormwater Utility Management Report	180 days		\$15,000.00
Task 3. Join the Community Rating System (CRS)	Certificate of good standing with CRS.	150 days		\$5,000.00
Task 4. Data Compilation	Data Compilation Report	300 days		\$90,000.00
Task 5. Create a Stormwater Management Master Plan and implementation of local drainage projects	Stormwater Management Plan	360 days		\$35,000.00
Total Not-To-Exceed Amount				\$150,000.00

* All dates are referenced from the date of contract execution.

** The DISTRICT shall only be obligated to pay for documented actual expenditures within the not-to-exceed amounts specified above. In the event actual expenditures by the TOWN are less than the not-to-exceed for a particular task, the TOWN shall have the right to apply the unexpended balance towards a subsequent task. The TOWN shall provide written notice of its decision to exercise this right. In no event shall the DISTRICT's total obligation exceed \$150,000.00 as specified above.

ORIGINAL



SOUTH FLORIDA WATER MANAGEMENT DISTRICT AGREEMENT

*Submitted
sent 5/15/02
BTH*

THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT (hereinafter referred to as DISTRICT) HEREBY ENTERS INTO THIS AGREEMENT WITH: Name: TOWN OF MIAMI LAKES Address: 6853 MAIN STREET MIAMI LAKES, FL 33014 Project Manager: Diane Gonzalez Telephone No: (305) 793-0597 Fax No: (305) 669- 9438 Hereinafter referred to as: ENTITY	This number must appear on all Invoices and Correspondence C-13159
	M/WBE Goal: 0%
	COST SHARING INFORMATION Total Project Cost: \$ 155,000.00 ENTITY Contribution: \$ In-Kind Contribution (See Exhibit "C" Statement of Work)

PROJECT TITLE: LOCAL FLOOD MITIGATION STRATEGY PROJECT

The following Exhibits are attached hereto and made a part of this AGREEMENT:

Exhibit "A" - Special Provisions	Exhibit "H" - Not Applicable
Exhibit "B" - General Terms and Conditions	Exhibit "I" - Not Applicable
Exhibit "C" - Statement of Work	Exhibit "J" - Not Applicable
Exhibit "D" - Payment and Deliverable Schedule	Exhibit "K" - Not Applicable
Exhibit "E" - Not Applicable	Exhibit "L" - Not Applicable
Exhibit "F" - Not Applicable	Exhibit "M" - Not Applicable
Exhibit "G" - Not Applicable	

TOTAL DISTRICT CONSIDERATION: \$150,000.00	AGREEMENT TYPE: Not-to-Exceed
Multi-Year Funding (If Applicable)	
Fiscal Year:	Fiscal Year:
Fiscal Year:	Fiscal Year:
Fiscal Year:	Fiscal Year:
*Subject to District Governing Board Annual Budget Approval	

AGREEMENT TERM: ONE (1) YEAR	EFFECTIVE DATE: Last Date of Execution by the Parties
District Project Manager: RAUL PELLEGRINO	District Contract Administrator:
Telephone No: (561) 682-6583	Johanna Labrada (561) 682-2720
Fax No. (561) 682-6374	Fax No.: (561) 682-6397 or (561) 681-6275

SUBMIT INVOICES AND NOTICES TO THE DISTRICT AT: South Florida Water Management District 3301 Gun Club Road West Palm Beach, Florida 33406 <u>Attention:</u> Procurement Division	SUBMIT NOTICES TO THE ENTITY AT: TOWN OF MIAMI LAKES 6853 MAIN STREET MIAMI LAKES, FL 33014 <u>Attention:</u> Diane Gonzalez <i>Dennis White, Town Manager</i>
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IN WITNESS WHEREOF, the authorized representative hereby executes this AGREEMENT on this date, and accepts all Terms and Conditions under which it is issued.

TOWN OF MIAMI LAKES Accepted By: <u><i>Dennis White</i></u> Signature of Authorized Representative Title: <u>Town Manager</u> Date: <u>May 14, 2002</u>	SOUTH FLORIDA WATER MANAGEMENT DISTRICT BY ITS GOVERNING BOARD Accepted By: _____ Date: _____ Frank Hayden, Procurement Director SFWMD OFFICE OF COUNSEL APPROVED By: <u><i>J. Labrada</i></u> Date: <u>4/24/02</u> SFWMD PROCUREMENT APPROVED By: <u><i>Non</i></u> Date: <u>4/22/02</u>
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SOUTH FLORIDA WATER MANAGEMENT DISTRICT CONTRACT

EXHIBIT "A" SPECIAL PROVISIONS

The purpose of this Exhibit "A" is to delineate any and all changes, deletions and/or additions to the Exhibit "B" General Terms & Conditions. In the event of any conflict between this Exhibit "A" and any other provision specified in this Agreement, this Exhibit "A" shall take precedence.

1. All references to "ENTITY" throughout this AGREEMENT shall be construed to mean "TOWN".
2. A new Article 1.4 is hereby added as follows:

"The TOWN shall submit quarterly reports to the DISTRICT throughout the term of this AGREEMENT. Any requests for changes to the Exhibit "C" Statement of Work shall be submitted by the TOWN in writing to the DISTRICT for approval, and the DISTRICT shall submit its comments/approval in writing to the TOWN within ten (10) days after receipt of the request for change. The DISTRICT shall be responsible for initiating any amendments to this AGREEMENT, if required."

3. Article 2.4 is hereby deleted and replaced as follows:

"The TOWN shall submit quarterly financial statements to the DISTRICT providing a detailed accounting of all expenditures incurred hereunder throughout the term of this AGREEMENT. The TOWN shall report and document the amount of funds expended per month during the quarterly reporting period and the AGREEMENT expenditures to date. The DISTRICT shall only be obligated to pay for a maximum no-to-exceed AGREEMENT funding limitation of \$150,000.00. In no event shall the DISTRICT be liable for any expenditures hereunder in excess of \$150,000.00."

4. A new Article 2.5 is hereby added as follows:

"The TOWN is hereby authorized to contract with third parties (subcontract) for engineering services awarded through a competitive process comparable to Chapters 255 and 287, Florida Statutes. The TOWN shall not subcontract, assign, or transfer any other work under this AGREEMENT without the prior written consent of the DISTRICT's Project Manger. The TOWN 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 TOWN that the DISTRICT shall not be liable to any subcontractor for any expenses or liabilities incurred under the subcontract(s)."

5. Article 7.1 is hereby modified to add the following paragraph:

"The TOWN shall maintain books, records and documents directly pertinent to performance under this AGREEMENT as described above. The TOWN shall similarly require each subcontractor to maintain and allow access to such records for audit purposes."

6. Article 7.2 is hereby deleted in its entirety and replaced as follows:

"Both the DISTRICT and the TOWN 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 "C", Statement of Work. Both parties' rights to

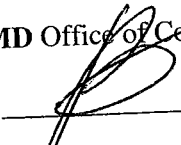


SOUTH FLORIDA WATER MANAGEMENT DISTRICT CONTRACT

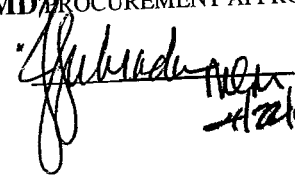
deliverables received under this **AGREEMENT** shall include the unrestricted and perpetual right to use, reproduce, modify and distribute such deliverables at no additional cost to the other party. Notwithstanding the foregoing, ownership of all equipment and hardware purchased by the **TOWN** under this **AGREEMENT** shall be deemed to be the property of the **TOWN** upon termination of this **AGREEMENT**. All tangible property shall remain owned by the **TOWN**."

7. Articles 6.3, 7.3, 7.4, 7.5, 11 and 13 are hereby deleted in their entirety.

SFWMD Office of Counsel Approved

By:  Date: 4/24/02

SFWMD PROCUREMENT APPROVED

By:  Date: 4/22/02



SOUTH FLORIDA WATER MANAGEMENT DISTRICT

EXHIBIT "B"

GENERAL TERMS AND CONDITIONS

ARTICLE 1 - STATEMENT OF WORK

1.1 The **ENTITY** shall, to the satisfaction of the **DISTRICT**, fully and timely perform all work items described in the "Statement of Work," attached hereto as Exhibit "C" and made a part of this **AGREEMENT**.

1.2 As part of the services to be provided by the **ENTITY** under this **AGREEMENT**, the **ENTITY** shall substantiate, in whatever forum reasonably requested by the **DISTRICT**, the methodology, lab analytical examinations, scientific theories, data, reference materials, and research notes. The **ENTITY** shall also be required to substantiate any and all work completed, including but not limited to, work completed by subcontractors, assistants, models, concepts, analytical theories, computer programs and conclusions utilized as the basis for the final work product required by the **AGREEMENT**. This paragraph shall survive the expiration or termination of this **AGREEMENT**.

1.3 The parties agree that time is of the essence in the performance of each and every obligation under this **AGREEMENT**.

ARTICLE 2 - COMPENSATION/ CONSIDERATION

2.1 The total consideration for all work required by the **DISTRICT** pursuant to this **AGREEMENT** shall not exceed the amount as indicated on Page 1 of this **AGREEMENT**. Such amount includes all expenses which the **ENTITY** may incur and therefore no additional consideration shall be authorized.

2.2 The **ENTITY** assumes sole responsibility for all work which is performed pursuant to the Statement of Work, Exhibit "C". By providing funding hereunder, the **DISTRICT** does not make any warranty, guaranty, or any representation whatsoever regarding the correctness, accuracy, or reliability of any of the work performed hereunder.

2.3 The **ENTITY** by executing this **AGREEMENT**, certifies to truth-in-negotiation, specifically, that wage rates and other factual unit costs supporting the consideration are accurate, complete, and current at the time of contracting. The **ENTITY**

agrees that the **DISTRICT** may adjust the consideration for this **AGREEMENT** to exclude any significant sums by which the consideration was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. The **DISTRICT** shall make any such adjustment within one (1) year following the expiration or termination of this **AGREEMENT**.

ARTICLE 3 - INVOICING AND PAYMENT

3.1 The **ENTITY**'s invoices shall reference the **DISTRICT**'s **AGREEMENT** Number and shall be sent to the **DISTRICT**'s address specified on Page 1 of this **AGREEMENT**. The **ENTITY** shall not submit invoices to any other address at the **DISTRICT**.

3.2 The **ENTITY** shall submit the invoices on a completion of deliverable basis, pursuant to the schedule outlined in the Payment and Deliverable Schedule, attached hereto as Exhibit "D" and made a part of this **AGREEMENT**. In the event the schedule does not specify payment on a completion of deliverable basis, all invoices shall be substantiated by adequate supporting documentation to justify hours expended and expenses incurred within the not-to-exceed budget, including but not limited to, copies of approved timesheets, payment vouchers, expense reports, receipts and subcontractor invoices.

3.3 The **DISTRICT** shall pay the full amount of the invoice within thirty (30) days following **DISTRICT** acceptance of services and/or deliverable(s) required by this **AGREEMENT**. However, failure by the **ENTITY** to follow the foregoing instructions and submit acceptable services and or deliverables(s) may result in an unavoidable delay of payment by the **DISTRICT**.

3.4 Unless otherwise stated herein, the **DISTRICT** shall not pay for any obligation or expenditure made by the **ENTITY** prior to the commencement date of this **AGREEMENT**.

ARTICLE 4 - PROJECT MANAGEMENT/ NOTICE

4.1 The parties shall direct all technical matters arising in connection with the performance of this



SOUTH FLORIDA WATER MANAGEMENT DISTRICT

EXHIBIT "B"

GENERAL TERMS AND CONDITIONS

AGREEMENT, other than invoices and notices, to the attention of the respective Project Managers specified on Page 1 of the **AGREEMENT** for attempted resolution or action. The Project Managers shall be responsible for overall coordination and oversight relating to the performance of this **AGREEMENT**. The **ENTITY** shall direct all administrative matters, including invoices and notices, to the attention of the **DISTRICT's** Contract Administrator specified on Page 1 of the **AGREEMENT**.

All formal notices between the parties under this **AGREEMENT** shall be in writing and shall be deemed received if sent by certified mail, return receipt requested, to the respective addresses specified on Page 1 of the **AGREEMENT**. The **ENTITY** shall also provide a copy of all notices to the **DISTRICT's** Project Manager. All notices required by this **AGREEMENT** shall be considered delivered *upon receipt*. Should either party change its address, written notice of such new address shall promptly be sent to the other party.

All correspondence to the **DISTRICT** under this **AGREEMENT** shall reference the **DISTRICT's** Contract Number specified on Page 1 of the **AGREEMENT**.

ARTICLE 5 – INDEMNIFICATION & INSURANCE

5.1 For value received, which is hereby acknowledged, the **ENTITY** shall defend, indemnify, save, and hold the **DISTRICT**, its officers, directors, board members, agents, assigns, and employees harmless from any and all claims, damages, losses, and expenses, direct or indirect or consequential (including but not limited to, fees and charges of attorneys and other professionals, court and arbitration or other dispute resolution costs) arising out of or resulting from any negligent or intentional act or omission by the **ENTITY**, its subcontractors, suppliers, agents, assigns, invitees, or employees in connection with this **AGREEMENT**. The **DISTRICT** shall have the right to approve counsel selected by the **ENTITY** to defend the **DISTRICT** in the event the **DISTRICT** is named in any legal action. Further, this indemnification shall specifically include all claims, losses, damages or expenses which

result from any of the following by the **ENTITY** or its subcontractors, suppliers, agents, assigns, invitees or employees:

- (a) any breach of the **AGREEMENT**;
- (b) any violation of any patent, trademark, copyright law or other intellectual property law;
- (c) any violation of any federal, state, or local law or regulation

The **ENTITY** further acknowledges that it is solely responsible for ensuring its compliance and the compliance of its subcontractors, suppliers, agents, assigns, invitees and employees with the terms of this **AGREEMENT**. This paragraph shall survive the expiration of termination of this **AGREEMENT**.

5.2 The **ENTITY** shall procure and maintain, through the term of this **AGREEMENT**, insurance coverage reflecting, at a minimum, the limits and coverage conditions identified on the **DISTRICT's** Insurance Requirements, attached as Exhibit "H" and made a part of this **AGREEMENT**. The coverage required shall extend to all employees and subcontractors of the **ENTITY**. Prior to the execution of this **AGREEMENT**, the **ENTITY** shall provide a Certificate of Insurance for such coverage to the **DISTRICT** for approval, indicating the producer, insured, carrier's name, and BEST rating, policy numbers and effective and expiration dates of each type of coverage required. The Certificate of Insurance shall be signed by the insurance carrier's authorized representative and shall identify the **DISTRICT** as added insured as required.

5.3 All insurers must be qualified to lawfully conduct business in the State of Florida. Failure of the **DISTRICT** to notify the **ENTITY** that the certificate of insurance does not meet the **AGREEMENT** requirements shall not constitute a waiver of the **ENTITY's** responsibility to meet the stated requirement. In addition, receipt and acceptance of the certificate of insurance by the **DISTRICT** shall not relieve the **ENTITY** from responsibility for adhering to the insurance limits and conditions of insurance required within this **AGREEMENT**. Misrepresentation of any material fact, whether intentional or not, regarding the



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ENTITY's insurance coverage, policies or capabilities, may be grounds for termination of the **AGREEMENT** as determined solely by the **DISTRICT**

ARTICLE 6 - TERMINATION/REMEDIES

6.1 If either party fails to fulfill its obligations under this **AGREEMENT** in a timely and proper manner, the other party shall have the right to terminate this **AGREEMENT** by giving written notice of any deficiency. The party in default shall then have ten (10) calendar days from receipt of notice to correct the deficiency. If the defaulting party fails to correct the deficiency within this time, the non-defaulting party shall have the option to terminate this **AGREEMENT** at the expiration of the ten (10) day time period. Should the **DISTRICT** elect to terminate for default in accordance with this provision, the **DISTRICT** shall be entitled to recover procurement costs, in addition to all other remedies under law and/or equity.

6.2 The **DISTRICT** may terminate this **AGREEMENT** with or without cause at any time for convenience upon thirty (30) calendar days prior written notice to the **ENTITY**. The performance of work under this **AGREEMENT** may be terminated by the **DISTRICT** in accordance with this clause in whole, or from time to time in part, whenever the **DISTRICT** shall determine that such termination is in the best interest of the **DISTRICT**. Any such termination shall be effected by delivery to the **ENTITY** of a Notice of Termination specifying the extent to which performance of work under the **AGREEMENT** is terminated, and the date upon which such termination becomes effective.

In the event of termination for convenience, the **DISTRICT** shall compensate the **ENTITY** for all authorized and accepted deliverables completed through the date of termination in accordance with Exhibit "C", Statement of Work. The **DISTRICT** shall be relieved of any and all future obligations hereunder, including but not limited to lost profits and consequential damages, under this **AGREEMENT**. The **DISTRICT** may withhold all payments to the **ENTITY** for such work until such time as the **DISTRICT** determines the exact amount due to the **ENTITY**.

6.3 If either party initiates legal action, including appeals, to enforce this **AGREEMENT**, the prevailing party shall be entitled to recover a reasonable attorney's fee, based upon the fair market value of the services provided.

6.4 In the event a dispute arises which the project managers cannot resolve between themselves, the parties shall have the option to submit to non-binding mediation. The mediator or mediators shall be impartial, shall be selected by the parties, and the cost of the mediation shall be borne equally by the parties. The mediation process shall be confidential to the extent permitted by law.

6.5 The **DISTRICT** may order that all or part of the work stop if circumstances dictate that this action is in the **DISTRICT's** best interest. Such circumstances may include, but are not limited to, unexpected technical developments, direction given by the **DISTRICT's** Governing Board, a condition of immediate danger to **DISTRICT** employees, or the possibility of damage to equipment or property. This provision shall not shift responsibility for loss or damage, including but not limited to, lost profits or consequential damages sustained as a result of such delay, from the **ENTITY** to the **DISTRICT**. If this provision is invoked, the **DISTRICT** shall notify the **ENTITY** in writing to stop work as of a certain date and specify the reasons for the action, which shall not be arbitrary or capricious. The **ENTITY** shall then be obligated to suspend all work efforts as of the effective date of the notice and until further written direction from the **DISTRICT** is received. Upon resumption of work, if deemed appropriate by the **DISTRICT**, the **DISTRICT** shall initiate an amendment to this **AGREEMENT** to reflect any changes to Exhibit "C", Statement of Work and/or the project schedule.

6.6 The **DISTRICT** anticipates a total project cost as indicated on Page 1, with the balance of matching funds and/or in-kind services to be obtained from the **ENTITY** in the amount as specified on Page 1 of this **AGREEMENT**. In the event such **ENTITY** matching funding and/or in-kind services becomes unavailable, that shall be good and sufficient cause for the **DISTRICT** to terminate the **AGREEMENT** pursuant to Paragraph 6.2 above.



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ARTICLE 7 - RECORDS RETENTION/ OWNERSHIP

7.1 The **ENTITY** shall maintain records and the **DISTRICT** shall have inspection and audit rights as follows:

A. Maintenance of Records: The **ENTITY** 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 years from completing performance and receiving final payment under this **AGREEMENT**.

B. Examination of Records: The **DISTRICT** or its 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 years from the date of final payment under this **AGREEMENT** and upon reasonable notice, time and place.

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 **ENTITY** shall extend the period of maintenance for all records relating to the **AGREEMENT** until the final disposition of the legal dispute, and all such records shall be made readily available to the **DISTRICT**.

7.2 The **DISTRICT** shall retain exclusive title, copyright and other proprietary rights in 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 **ENTITY**, its subcontractor(s), assign(s), agent(s) and/or successor(s) as required by the Exhibit "C", Statement of Work (the "Work"). In consideration for the **DISTRICT** entering into this **AGREEMENT**, and other good and valuable consideration the sufficiency and receipt in full of which is hereby acknowledged by the **ENTITY**, the

ENTITY hereby assigns, transfers, sells and otherwise grants to the **DISTRICT** any and all rights it now has or may have in the Work (the "Grant"). This Grant shall be self-operative upon execution by the parties hereto, however the **ENTITY** agrees to execute and deliver to the **DISTRICT** any further assignments or other instruments necessary to evidence the Grant, without the payment of any additional consideration by the **DISTRICT**. The **ENTITY** may not disclose, use, license or sell any work developed, created, or otherwise originated hereunder to any third party whatsoever. This paragraph shall survive the termination or expiration of this **AGREEMENT**.

7.3 The **ENTITY** represents and warrants that proprietary software, if any, to be provided to the **DISTRICT** by the **ENTITY** hereunder, as specifically identified in Exhibit "C", Statement of Work shall have been developed solely by or for the **ENTITY**, or lawfully acquired under license from a third party, including the right to sublicense such software. The **ENTITY** shall include copyright or proprietary legends in the software and on the label of the medium used to transmit the software. The **ENTITY** shall grant to the **DISTRICT** a perpetual, non-transferable, non-exclusive right to use the identified software without an additional fee. The **DISTRICT** acknowledges that title to the software identified in Exhibit "C" shall remain with the Licensor.

7.4 Any equipment purchased by the **ENTITY** with **DISTRICT** funding under this **AGREEMENT** shall be returned and title transferred from the **ENTITY** to the **DISTRICT** immediately upon termination or expiration of this **AGREEMENT** upon the written request of the **DISTRICT** not less than thirty (30) days prior to **AGREEMENT** expiration or termination. Equipment is hereby defined as any non-consumable items purchased by the **DISTRICT** with a value equal to or greater than \$500.00 and with a normal expected life of one (1) year or more. The **ENTITY** will maintain any such equipment in good working condition while in its possession and will return the equipment to the **DISTRICT** in good condition, less normal wear and tear. The **ENTITY** will use its best efforts to safeguard the equipment throughout the period of



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performance of this **AGREEMENT**. However the **DISTRICT** will not hold the **ENTITY** liable for loss or damage due to causes beyond the **ENTITY**'s reasonable control. In the event of loss or damage, the **ENTITY** shall notify the **DISTRICT** in writing within five (5) working days of such occurrence.

7.5 The **DISTRICT** has acquired the right to use certain software under license from third parties. For purposes of this **AGREEMENT**, the **DISTRICT** may permit the **ENTITY** access to certain third party owned software on **DISTRICT** computer systems. The **ENTITY** acknowledges the proprietary nature of such software and agrees not to reproduce, distribute or disclose such software to any third party. Use of or access to such software shall be restricted to designated **DISTRICT** owned systems or equipment. Removal of any copy of licensed software is prohibited.

ARTICLE 8 - STANDARDS OF COMPLIANCE

8.1 The **ENTITY**, 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 **ENTITY**, upon request, as to any such laws of which it has present knowledge.

8.2 The **ENTITY** hereby assures that no person shall be discriminated against on the grounds of race, color, creed, national origin, handicap, age, or sex, in any activity under this **AGREEMENT**. The **ENTITY** shall take all measures necessary to effectuate these assurances.

8.3 The laws of the State of Florida shall govern all aspects of this **AGREEMENT**. In the event it is necessary for either party to initiate legal action regarding this **AGREEMENT**, venue shall be in the Fifteenth Judicial Circuit for claims under state law and in the Southern District of Florida for any claims which are justiciable in federal court.

8.4 The **ENTITY**, by its execution of this **AGREEMENT**, acknowledges and attests that neither it, nor any of its suppliers, subcontractors, or

consultants who shall perform work which is intended to benefit the **DISTRICT** is a convicted vendor or, if the **ENTITY** or any affiliate of the **ENTITY** has been convicted of a public entity crime, a period longer than 36 months has passed since that person was placed on the convicted vendor list. The **ENTITY** further understands and accepts that this **AGREEMENT** shall be either void by the **DISTRICT** or subject to immediate termination by the **DISTRICT**, in the event there is any misrepresentation or lack of compliance with the mandates of Section 287.133, Florida Statutes. The **DISTRICT**, in the event of such termination, shall not incur any liability to the **ENTITY** for any work or materials furnished.

8.5 The **ENTITY** shall be responsible and liable for the payment of all of its FICA/Social Security and other applicable taxes resulting from this **AGREEMENT**.

8.6 The **ENTITY** warrants that it has not employed or retained any person, other than a bona fide employee working solely for the **ENTITY**, to solicit or secure this **AGREEMENT**. Further the **ENTITY** warrants that it has not paid or agreed to pay any person, other than a bona fide employee working solely for the **ENTITY**, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the awarding or making of this **AGREEMENT**. For breach of this provision, the **DISTRICT** may terminate this **AGREEMENT** without liability and, at its discretion, deduct or otherwise recover the full amount of such fee, commission, percentage, gift, or other consideration.

8.7 The **ENTITY** shall allow public access to all project documents and materials in accordance with the provisions of Chapter 119, Florida Statutes. Should the **ENTITY** 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 **ENTITY**.

8.7.1 Pursuant to Sections 119.07(3)(o), and 240.241 Florida Statutes, data processing software obtained by an agency under a license agreement which prohibits its disclosure and which software is a trade secret, as defined in Sections 812.081(c),



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Florida Statutes is exempt from the disclosure provisions of the Public Records law. However, the parties hereto agree that if a request is made of the **DISTRICT**, pursuant to Chapter 119, Florida Statute, for public disclosure of proprietary property being licensed to the **ENTITY** (Licensee) hereunder, the **DISTRICT** shall advise the **ENTITY** (Licensee) of such request and, as between the **DISTRICT** and the **ENTITY** (Licensee), it shall be the **ENTITY**'s (Licensee's) sole burden and responsibility to immediately seek and obtain such injunctive or other relief from the Courts and to immediately serve notice of the same upon the Licensor to protect the Licensor's claimed exemption under the Statute.

8.8 The **ENTITY** shall make reasonable efforts to obtain any necessary federal, state, local, and other governmental approvals, as well as all necessary private authorizations and permits, prior to the commencement of performance of this **AGREEMENT**. A delay in obtaining permits shall not give rise to a claim by the **ENTITY** for additional compensation. If the **ENTITY** is unable to obtain all necessary permits in a timely manner, either party may elect to terminate this **AGREEMENT**, each party to bear its own costs, notwithstanding other provisions of this **AGREEMENT** to the contrary.

8.9 Pursuant to Section 216.347, F.S., the **ENTITY** is prohibited from the expenditure of any funds under this **AGREEMENT** to lobby the Legislature, the judicial branch, or another state agency.

8.10 The **DISTRICT** is a governmental entity responsible for performing a public service and therefore has a legitimate interest in promoting the goals and objectives of the agency. The work under this **AGREEMENT** involves a project consistent with these goals and objectives. Consequently, the **DISTRICT** is desirous of satisfactorily completing and successfully promoting this project with the cooperation of its **ENTITY**. Therefore, as the **DISTRICT'S ENTITY** for this project, the **ENTITY** assures the **DISTRICT** that the **ENTITY**, its employees, subcontractors and assigns will refrain from acting adverse to the **DISTRICT'S** legitimate interest in promoting the goals and objectives of this project. The **ENTITY** agrees to take all reasonable measures necessary to effectuate these assurances. In

the event the **ENTITY** determines it is unable to meet or promote the goals and objectives of the project, it shall have the duty to immediately notify the **DISTRICT**. Upon such notification the **DISTRICT**, in its discretion, may terminate this **AGREEMENT**.

ARTICLE 9 - RELATIONSHIP BETWEEN THE PARTIES

9.1 The **ENTITY** shall be considered an independent contractor and neither party shall be considered an employee or agent of the other party. Nothing in this **AGREEMENT** shall be interpreted to establish any relationship other than that of independent contractor between the parties and their respective employees, agents, subcontractors, or assigns during or after the performance on this **AGREEMENT**. Both parties are free to enter into contracts with other parties for similar services.

9.2 It is the intent and understanding of the Parties that this **AGREEMENT** is solely for the benefit of the **ENTITY** and the **DISTRICT**. No person or entity other than the **ENTITY** or the **DISTRICT** shall have any rights or privileges under this **AGREEMENT** in any capacity whatsoever, either as third-party beneficiary or otherwise.

9.3 The **ENTITY** shall not assign, delegate, or otherwise transfer its rights and obligations as set forth in this **AGREEMENT** without the prior written consent of the **DISTRICT**. Any attempted assignment in violation of this provision shall be void.

9.4 The **ENTITY** shall not pledge the **DISTRICT'S** credit or make the **DISTRICT** a guarantor of payment or surety for any contract, debt, obligation, judgement, lien, or any form of indebtedness.

9.5 The **DISTRICT** assumes no duty with regard to the supervision of the **ENTITY** and the **ENTITY** shall remain solely responsible for compliance with all safety requirements and for the safety of all persons and property at the site of contract performance.

ARTICLE 10 - MBE PARTICIPATION

10.1 The **ENTITY** hereby acknowledges that no Minority Business Enterprises (MBE) participation



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goal has been established for this **AGREEMENT**; however, both parties agree to provide the other advance notice of competitive contracts that may result from this **AGREEMENT** along with timelines for public notice and award of such contracts. In the event subsequent competitive contract awards do result in M/WBE participation, such participation shall be reported to the other party. Both the **ENTITY** and the **DISTRICT** will ensure compliance with the provisions of their respective program, laws, ordinances and policies and will support the other's initiatives to the extent allowed by law.

ARTICLE 11 - YEAR 2000 COMPLIANCE

Article 11 is hereby deleted.

ARTICLE 12 - GENERAL PROVISIONS

12.1 Notwithstanding any provisions of this **AGREEMENT** to the contrary, the parties shall not be held liable for any failure or delay in the performance of this **AGREEMENT** that 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. Failure to perform shall be excused during the continuance of such circumstances, but this **AGREEMENT** shall otherwise remain in effect. This provision shall not apply if the "Statement of Work" of this **AGREEMENT** specifies that performance by **ENTITY** is specifically required during the occurrence of any of the events herein mentioned.

12.2 In the event any provisions of this **AGREEMENT** shall conflict, or appear to conflict, the **AGREEMENT**, including all exhibits, attachments and all documents specifically incorporated by reference, shall be interpreted as a whole to resolve any inconsistency.

12.3 Failures or waivers to insist on strict performance of any covenant, condition, or provision of this **AGREEMENT** by the parties, their successors and assigns 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.

12.4 Should any term or provision of this **AGREEMENT** be held, to any extent, invalid or unenforceable, as against any person, entity 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.

12.5 This **AGREEMENT** may be amended only with the written approval of the parties hereto.

12.6 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**. The **ENTITY** recognizes that any representations, statements or negotiations made by **DISTRICT** staff do not suffice to legally bind the **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.

ARTICLE 13 - SAFETY REQUIREMENTS

13.1 The **ENTITY** shall require appropriate personal protective equipment in all operations where there is exposure to hazardous conditions.

13.2 The **ENTITY** shall instruct employees required to handle or use toxic materials or other harmful substances regarding their safe handling and use, including instruction on the potential hazards,



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personal hygiene and required personal protective measures. A Material Safety Data Sheet (MSDS) shall be provided by the **ENTITY** to the **DISTRICT** on each chemical product used.

13.3 The **ENTITY** shall comply with the standards and regulations set forth by the Occupational Safety and Health Administration (OSHA), the Florida Department of Labor and Employment Security and all other appropriate federal, state, local or **DISTRICT** safety and health standards.

13.4 It is the **ENTITY'S** sole duty to provide safe and healthful working conditions to its employees and those of the **DISTRICT** on and about the site of **AGREEMENT** performance.

13.5 The **ENTITY** shall initiate and maintain an accident prevention program which shall include, but shall not be limited to, establishing and supervising programs for the education and training of employees in the recognition, avoidance, and prevention of unsafe conditions and acts.

13.6 The **ENTITY** shall erect and maintain, as required by existing conditions and performance of the **AGREEMENT**, reasonable safeguards for safety and protection, including posting of danger signs and other warnings, against hazards.

13.7 The **ENTITY** shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to:

13.7.1 employees on the work and other persons who may be affected thereby; including pedestrians, visitors, or traveling public;

13.7.2 the work, materials, and equipment to be incorporated therein; whether in storage on or off the site, under care, custody or control of the **ENTITY**, or the **ENTITY'S** subcontractors; and

13.7.3 other properties at the site or adjacent thereto; such as trees, shrubs, lawns, walks, utilities, pavement, roadways, structures, building, vehicles, and equipment not designated for removal, relocation or replacement in the course of work.

13.8 The **ENTITY** shall provide first aid services and

medical care to its employees.

13.9 The **ENTITY** shall develop and maintain an effective fire protection and prevention procedures and good housekeeping practices on the work site throughout the **AGREEMENT**.

13.10 *Emergencies:* In emergency affecting safety of persons or property on or about the site or as a result of the work; the **ENTITY** shall act, timely and with due diligence, to prevent threatened damage, injury, or loss.

13.11 *Environmental:* When the **ENTITY**, **ENTITY'S** subcontractors, or subcontractors, use petroleum products, hazardous chemicals, or any other chemicals used on or about the site, the **ENTITY** shall be responsible for handling these chemical constituents in accordance with federal, state and local regulations during the terms of the **AGREEMENT**. For accidental discharges or releases onto the floor, air, ground, surface waters, ground waters, it shall be the **ENTITY'S** sole responsibility to respond immediately to clean the site, at his expense, to the complete satisfaction of federal, state, local regulatory agencies and to the **DISTRICT** requirements.

13.12 The **DISTRICT** may order the **ENTITY** to halt operations under the **AGREEMENT**, at the **ENTITY'S** expense, if a condition of immediate danger to the public and/or **DISTRICT** employees, equipment, or property exist. This provision shall not shift the responsibility or risk of loss for injuries or damage sustained from the **ENTITY** to the **DISTRICT**; and the **ENTITY** shall remain solely responsible for compliance with all federal, state and local safety requirements, provisions of this section, and safety of all persons and property on or about the site.

EXHIBIT "C"
STATEMENT OF WORK
TOWN OF MIAMI LAKES
LOCAL FLOOD MITIGATION STRATEGY PROJECT

1.0 INTRODUCTION AND BACKGROUND

The Town of Miami Lakes's (TOWN) Stormwater System Improvement Plan is funded by the 2001/2002 legislature General Appropriation Act funds from the Florida Department of Environmental Protection (FDEP) through Special Appropriation 1747A to support the development of Local (Flood) Mitigation Strategies (LMS) in Miami-Dade County. These funds are administered through the South Florida Water Management DISTRICT (DISTRICT) and dispersed and managed at the local level.

The TOWN was incorporated in December 2000. Miami-Dade County currently operates all stormwater management improvements and programs. To address flood protection activities for its residents, critical issues exist regarding creating a stormwater utility, a stormwater master plan, and joining federal flood insurance programs.

2.0 OBJECTIVE

As provided for in Chapter 403.0891 F. S. and Chapter 24-61 of the Miami-Dade County Code, and to address environmental protection and adequate flood protection, the TOWN has approved the establishment and implementation of a Stormwater Utility and the development of a Stormwater Management Master Plan. In addition to protecting the environmental quality of its many lakes, the primary objective of establishing the Utility is to address the flooding that occurs in the TOWN.

3.0 SCOPE OF WORK

The TOWN of Miami Lakes shall hire and manage a consultant who will complete the following tasks:

- Task 1. Project Initiation and Management
- Task 2. Create a Stormwater Utility
- Task 3. Join the Community Rating System (CRS)
- Task 4. Data Compilation
- Task 5. Create a Stormwater Management Master Plan and Implement Local Projects.

4.0 WORK BREAKDOWN STRUCTURE

At the end of each task the TOWN shall deliver 5 copies of the task deliverables to the DISTRICT. The DISTRICT shall distribute the copies to the Local Mitigation Strategies Group and FDEP (Review Group) for their review and comments. Review comments and/or questions, if any, will be returned to the TOWN within 14 days. The TOWN shall

be responsible for properly addressing any and all comments/questions and concerns from the Review Group, at which time, the deliverable will be deemed complete.

Accordingly, the TOWN will hire a consulting firm who will perform the following functions for the TOWN:

Task 1. Project Initiation and Management.

This task will ensure that the different components of the project are integrated through proper management of the administrative components, the preparation, issuance and evaluation of requests for proposals, and overall monitoring and oversight of the functions to be performed.

Deliverable: Project Management Plan

Task 2. Create a Stormwater Utility.

This task will allow TOWN officials a dedicated source of funds, allow control over those funds, and will enable the TOWN to prioritize drainage improvement projects at the local level. The consultant will need to determine what the drainage needs for the TOWN are, develop a standard fee for residential and commercial buildings, create a billing system, ensure adequate legal authority exists to enforce collections, and create enforcement protocol.

Deliverable: Stormwater Utility Management Report to include drainage needs, recommended standard fee, description of billing system, legal authority on collection enforcement and enforcement protocol.

Task 3. Join the Community Rating System (CRS)

This task involves ensuring the community is in good standing with the NFIP, by requiring submittal and is keeping Elevation Certificates for new construction and substantial improvements and damages, and documenting activities the community is doing to improve flood protection.

Deliverable: Certificate of good standing with CRS.

Task 4. Data Compilation

This task involves an inventorying of existing stormwater drainage systems, compiling elevation and topographical data and using the compiled data to map and model the entire community to determine its overall drainage needs.

(a) **Data Collection** – Existing stormwater and drainage data, reports, plans, etc., will be collected and reviewed, historical flood complaints will be collected and analyzed.

- (b) **Drainage System Inventory** – Field inventory of existing drainage structures and accessible drainage systems.
- (c) **Drainage Atlas** – Preparation of an AutoCAD-based drainage atlas to include the type, size and general location of the storm sewer components identified in items a and b above.
- (d) **Basin and Sub-basin Delineation** – Based on available survey elevation data and other sources to be provided by the TOWN, delineate the sub-basins within the TOWN.

Deliverable: A data compilation report to include the appropriate exhibits evidencing completion of each item described in this task.

Task 5. Create a Stormwater Management Master Plan

The Master Plan shall include the items described in Task 4 and the following:

- (a) **Hydrologic and Hydraulic Modeling** – Analysis of existing systems and their capacity to handle the 5 year – 1 hour, 5 year – 24 hour, 25 year – 72 hour and 100 year – 72 hour storm events.
- (b) **Analysis of Needed Improvement** – Identify and analyze alternatives for improvements needed for deficiencies identified in item (a) above. Compare alternatives and make recommendations for TOWN approval.
- (c) **Stormwater Capital Improvements Plan (CIP)** – Develop an optional Capital Improvement Program to implement the improvements identified in Item (b) above.

Deliverable: Copy of the Stormwater Management Plan to include all items denoted under this task.

5.0 ENTITY IN-KIND CONTRIBUTION

The TOWN shall contribute in-kind services in the amount of \$5,000.00 which include staff time and professional fees associated with this project.

EXHIBIT "D"
PAYMENT AND DELIVERABLES SCHEDULE

Total payment by the DISTRICT shall not exceed the amount of **\$150,000.00**. All invoices shall be accompanied by adequate documentation to support actual expenditures incurred by the TOWN within the not-to-exceed amounts specified below in accordance with Article 3.2 of the Agreement. Payment by the DISTRICT is further subject to receipt of quarterly progress reports and financial statements from the TOWN with documentation to demonstrate completion of each project task in accordance with Exhibit "C" Statement of Work requirements. The TOWN is responsible for reviewing and approving deliverables from the consultant to ensure that project requirements are met. The TOWN is also responsible for project management, budget management and quality control with the consultant.

Task	Deliverable	*Due Date	Town Contribution	**DISTRICT Not-to-Exceed Payment
Task 1. Project Initiation and Management	Project Management Plan	90 days	\$5,000.00	\$5,000.00
Task 2. Create a Stormwater Utility	Stormwater Utility Management Report	180 days		\$15,000.00
Task 3. Join the Community Rating System (CRS)	Certificate of good standing with CRS.	150 days		\$5,000.00
Task 4. Data Compilation	Data Compilation Report	300 days		\$90,000.00
Task 5. Create a Stormwater Management Master Plan and implementation of local drainage projects	Stormwater Management Plan	360 days		\$35,000.00
Total Not-To-Exceed Amount				\$150,000.00

* All dates are referenced from the date of contract execution.

** The DISTRICT shall only be obligated to pay for documented actual expenditures within the not-to-exceed amounts specified above. In the event actual expenditures by the TOWN are less than the not-to-exceed for a particular task, the TOWN shall have the right to apply the unexpended balance towards a subsequent task. The TOWN shall provide written notice of its decision to exercise this right. In no event shall the DISTRICT's total obligation exceed \$150,000.00 as specified above.

WEISS SEROTA HELFMAN
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TELEPHONE (954) 763-4242 • TELECOPIER (954) 764-7770

*OF COUNSEL

May 2, 2002

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VIA FEDERAL EXPRESS

Betty Arguelles, Town Clerk
Town of Miami Lakes
6853 Main Street
Miami Lakes, Florida 33014

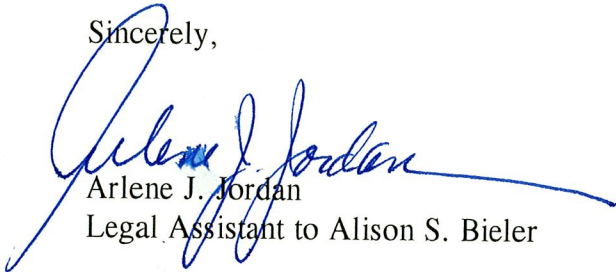
**Re: South Florida Water Management District
Agreement No. C-13159 (Revised)
Local Flood Mitigation Strategy Project**

Dear Betty:

Attached please find a copy of a letter from Johanna Labrada of the South Florida Water Management District which is self-explanatory, together with two (2) copies of the revised subject agreement for the next council meeting's agenda on May 14, 2002.

If you should have any questions, please do not hesitate to contact Alison S. Bieler.

Sincerely,


Arlene J. Jordan
Legal Assistant to Alison S. Bieler

702.001
Enclosures

02-70



SOUTH FLORIDA WATER MANAGEMENT DISTRICT

3301 Gun Club Road, West Palm Beach, Florida 33406 • (561) 686-8800 • FL WATS 1-800-432-2045 • TDD (561) 697-2574
Mailing Address: P.O. Box 24680, West Palm Beach, FL 33416-4680 • www.sfwmd.gov

ADM 28-06

April 24, 2002

Alison S. Bieler
Weiss Serota Helfman Pastoriz & Guedes, P.A.
2665 South Bayshore Drive
Suite 420
Miami, FL 33133

**Subject: Agreement No. C-13159 (Revised)
Local Flood Mitigation Strategy Project**

Dear Alison:

Enclosed are two (2) copies of the revised subject agreement. Please disregard any previous copies received from the District. The enclosed documents must be signed and dated by an individual with signature authority from the Town of Miami Lakes.

Kindly return both copies to my attention. Please include documentation to demonstrate official delegation of signature authority on behalf of the Town. A fully signed agreement will be returned to you upon execution by the District.

Note that this agreement is not binding on the parties until it is approved by appropriate level of authority within the District and executed by both parties.

Your cooperation and timely response will be greatly appreciated. Should there be any questions, please contact me at (561) 682-2720.

Sincerely,

A handwritten signature in cursive script that reads "Johanna Labrada".

Johanna Labrada
Contract Specialist
Procurement Department

/JL
Enclosure

EXPRESS MAILED

c: Raul Pellegrino, 3710

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