

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

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

RECITALS:

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

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

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

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

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

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

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

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

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

	DISTRICT	COUNTY
Name:	Francis Laroche Section Administrator Vegetation Management	Roland Ottolini, P.E. Director Lee County Division of Natural Resources
Street:	3301 Gun Club Road	1500 Monroe Street
City:	West Palm Beach	Fort Myers
State:	Florida	Florida
Zip:	33406	33901
Tel:	561-682-6193	

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

4. All notices to the COUNTY under this AGREEMENT must be in writing and sent by certified mail to (or their designee):

Director, Lee County Division of Natural Resources
P.O. Box 398
Fort Myers, FL 33902-0398

All notices to the DISTRICT under this AGREEMENT must also be in writing and sent by certified mail to:

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

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

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

6. The COUNTY has limited property interests for access, staging, and debris removal in proximity to the designated watercourses. Whenever possible, the DISTRICT will utilize existing COUNTY or DISTRICT legal interests for such purposes. In the alternative, the DISTRICT will identify the need for access or areas for staging and debris removal. Once identified by the DISTRICT, the COUNTY will use its best efforts to obtain or designate legal interests sufficient for such tasks.

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

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

9. It is the intent of the DISTRICT and the COUNTY that the DISTRICT will maintain the identified watercourses in a manner consistent with the annual joint review and evaluation of the needs by both the DISTRICT and the COUNTY. The COUNTY will coordinate an annual planning meeting between COUNTY staff and DISTRICT staff wherein the DISTRICT will notify the COUNTY of planned activities related to this AGREEMENT for the upcoming year. A primary purpose of the annual planning meeting is for the PARTIES to establish a prioritized list of projects for the coming year. The PARTIES may also explore cost-sharing water management plans for potential capital improvement projects. The PARTIES will cooperate to establish watercourse-specific parameters with respect to the amount or extent of the removal of vegetation, debris or other types of obstructions. In addition to the annual joint review, it is the expectation that the PARTIES will cooperate to coordinate projects and activities on an ongoing basis.

10. Notwithstanding any provisions of this AGREEMENT to the contrary, the PARTIES will not be held liable if failure or delay in the performance of this AGREEMENT arises from fires, floods, strikes, embargoes, acts of the public enemy, unusually severe weather, outbreak of war, restraint of Government, riots, civil commotion, *force majeure*,

act of God, or for any other cause of the same character which is unavoidable through the exercise of due care and beyond the control of the PARTIES.

11. The DISTRICT will be responsible for maintaining the natural conveyance capabilities of the watercourses subject to terms of this AGREEMENT. The DISTRICT does not assume any responsibility for navigational capabilities or to obtain permits.

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

13. The COUNTY retains the right, but not the obligation, to provide maintenance as the COUNTY may, in its sole discretion, deem necessary. The COUNTY will provide written notice to the DISTRICT of the COUNTY's decision to undertake any such maintenance, and the DISTRICT will not unreasonably object, oppose or seek to deny or prevent such efforts by the COUNTY.

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

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

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

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

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

19. The COUNTY and the DISTRICT further agree that nothing contained herein will be construed or interpreted as (1) denying to either party any remedy or defense available to such party under the laws of the State of Florida; (2) the consent of the State of Florida or its agents and agencies to be sued; or (3) a waiver of sovereign immunity of the State of Florida as provided in §768.28, Florida Statutes.

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

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

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

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

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

25. This AGREEMENT is solely for the benefit of the PARTIES herein. No person or entity other than the PARTIES will have any rights or privileges under this AGREEMENT in any capacity whatsoever, either as a third-party beneficiary or otherwise.

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

[End of provisions – signature page follows]

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

SOUTH FLORIDA WATER MANAGEMENT DISTRICT BY ITS GOVERNING BOARD

BY: _____
Signature

Printed Name
District Chair

APPROVED AS TO FORM FOR THE RELIANCE OF THE DISTRICT:

District Counsel

LEE COUNTY, FLORIDA, BY ITS BOARD OF COUNTY COMMISSIONERS

LINDA DOGGETT, CLERK

BY: _____
Signature

Printed Name
Deputy Clerk

BY: _____
Signature

Printed Name
Chair/Vice-Chair

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

Office of the Lee County Attorney

EXHIBIT A

Delineated/Name Watercourses

Bedman Creek

Hickey Creek

Orange River

Daughtrey Creek

Mullock Creek

Estero River (Including North and South Branches)

Halfway Creek

Spring Creek

Imperial River

Oak Creek

Leitner Creek

Kehl Canal

Cypress Creek