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CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

Memorandum

MIAMI-DADE COUNTY

Date: April 4, 2011

To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

Agenda Item No. 8(D)(1)(C)

Resolution R-232-11

Subject: Resolution Authorizing the Mayor or the Mayor's Designee to Negotiate and Execute an Agreement, and Amendments to that Agreement, with the South Florida Water Management District to Provide Financial Assistance in the Amount of $350,000 to Miami-Dade County to Design, Permit, and Construct a Water Control Structure in the Florida City Canal

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Recommendation
It is recommended that the Board of County Commissioners approve the attached resolution authorizing the Mayor or the Mayor's Designee to negotiate and execute an agreement and amendments to that agreement with the South Florida Water Management District (the "District") to provide financial assistance to Miami-Dade County to design, permit, and construct a water control structure in the Florida City Canal.

Scope
This agreement encompasses parts of Commission Districts 9.

Fiscal Impact/Funding Source
Under this agreement, the District will provide up to $350,000 to Miami-Dade County for the design, permitting and construction of a water control structure in the Florida City Canal.

The County has already authorized $137,000 for the design, permitting and construction of the above water control structure in the Florida City Canal and this $137,000 is from the County's approved operating budgets funded by the Stormwater Utility under Index Code NDE349068. The County has also already authorized additional project costs of $535,500, not included as part of this funding agreement, for the retrofit of five (5) existing culverts to improve water management in the vicinity of the Florida City Canal. The $535,500 County cost was authorized in the County's approved operating budgets funded by the Stormwater Utility under Index Code NDE349068. The County will fund $672,500 of the total project cost of $1,022,500.

Track Record/Monitor
The Director of the Department of Environmental Resources Management will monitor this contract.

Background
The Florida City Canal in south Miami-Dade County is a tributary to the L-31E and C-103 Canal systems which discharge through the SFWMD's water control structure S-20F into Biscayne Bay. To improve water management, the County proposes to construct a water control structure and retrofit existing culverts in the Florida City Canal at SW 107 Avenue. All constructed improvements are to be analyzed, designed, permitted, operated and maintained by the County.

The District and the County have joined forces to reduce over-drainage of the Florida City Canal while preserving existing flood protection and reducing pulse discharges to Biscayne Bay. The County's overall project plan includes construction of a water control structure in the Florida City Canal, and retrofitting five existing culverts adjacent to County owned lands, at an estimated total project cost of $1,022,500. The District's funding contribution will not exceed $350,000 under this agreement and is made exclusively for the tasks associated with the water control structure at SW 107 Avenue.

The County will perform the work in accordance with all applicable permit requirements and will be responsible for the operation and maintenance of the constructed improvements.

Assistant County Manager

MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez and Members, Board of County Commissioners

DATE: April 4, 2011

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Agenda Item No. 8(D)(1)(C)

Please note any items checked.

_____ "3-Day Rule" for committees applicable if raised

_____ 6 weeks required between first reading and public hearing

_____ 4 weeks notification to municipal officials required prior to public hearing

_____ Decreases revenues or increases expenditures without balancing budget

_____ Budget required

_____ Statement of fiscal impact required

_____ Ordinance creating a new board requires detailed County Manager's report for public hearing

✓ No committee review

_____ Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve

_____ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(D)(1)(C)
4-4-11

RESOLUTION NO. R-232-11

RESOLUTION AUTHORIZING THE MAYOR OR THE MAYOR'S DESIGNEE TO NEGOTIATE AND EXECUTE AN AGREEMENT, AND AMENDMENTS TO THAT AGREEMENT, WITH THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT TO PROVIDE FINANCIAL ASSISTANCE IN THE AMOUNT OF $350,000 TO MIAMI-DADE COUNTY TO DESIGN, PERMIT, AND CONSTRUCT A WATER CONTROL STRUCTURE IN THE FLORIDA CITY CANAL; AND AUTHORIZING THE MAYOR OR THE MAYOR'S DESIGNEE TO EXERCISE ANY AND ALL OTHER RIGHTS CONTAINED IN THIS AGREEMENT

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board authorizes the Mayor or the Mayor's designee to negotiate and execute an agreement with the South Florida Water Management District, in substantially the form attached hereto and made part hereof, to provide financial assistance in the amount of $350,000 to Miami-Dade County to design, permit, and construct a water control structure in the Florida City Canal; authorizes the Mayor or the Mayor's designee to execute amendments to this agreement for time extension and to accept additional funds that may become available for this agreement; and authorizes the Mayor or the Mayor's designee to exercise the provisions contained in this agreement.

The foregoing resolution was offered by Commissioner Audrey Edmonson, who moved its adoption. The motion was seconded by Commissioner Rebeca Sosa and upon being put to a vote, the vote was as follows:

Joe A. Martinez, Chairman			aye
Audrey M. Edmonson, Vice Chairwoman			aye
Bruno A. Barreiro	aye	Lynda Bell	aye
Jose "Pepe" Diaz	aye	Carlos A. Gimenez	aye
Sally A. Heyman	aye	Barbara J. Jordan	aye
Jean Monestime	aye	Dennis C. Moss	aye
Rebeca Sosa	aye	Senator Javier D. Souto	aye

The Chairperson thereupon declared the resolution duly passed and adopted this 4th day of April, 2011. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: DIANE COLLINS
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Abbie Schwaderer-Raurell

INVOICE REFERENCE NO. _____

SOUTH FLORIDA WATER MANAGEMENT DISTRICT
LOCAL GOVERNMENTAL AGREEMENT

AGREEMENT NO. 4600002341

BETWEEN THE

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

AND
MIAMI-DADE COUNTY

THIS AGREEMENT is entered into as of the _____ by and between the South Florida Water Management District (**DISTRICT**) and Miami-Dade County (**COUNTY**).

WHEREAS, the **DISTRICT** is a public corporation of the State of Florida, created by the Florida Legislature and given those powers and responsibilities enumerated in Chapter 373, Florida Statutes, to include entering into contracts with public agencies, private corporations or other persons; and

WHEREAS, the **DISTRICT** desires to provide financial assistance to the **COUNTY** to design, permit, construct, operate and maintain a water control structure in the Florida City Canal; and

WHEREAS, the **COUNTY** warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms and conditions of this **AGREEMENT**; and

WHEREAS, the Governing Board of the **DISTRICT**, at its March 10, 2011 meeting, approved entering into this **AGREEMENT** with the **COUNTY**;

NOW, THEREFORE, in consideration of the covenants and representations set forth herein and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

1. The **DISTRICT** agrees to contribute funds and the **COUNTY** agrees to perform the work set forth in Exhibit "A" attached hereto and made a part hereof, subject to availability of funds and in accordance with their respective authorities for design and construction of a water control structure in the Florida City Canal.

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2. The period of performance of this **AGREEMENT** shall commence on the date of execution of this **AGREEMENT** and shall continue through and including December 31, 2013.

3. The total **DISTRICT** contribution shall not exceed the amount of $350,000 as set forth in Exhibit "B.". The **DISTRICT** shall make payment upon completion and acceptance of the deliverables as described in the Payment and Deliverable Schedule set forth in Exhibit "B", which is attached hereto and made a part of this **AGREEMENT**. The **DISTRICT's** contribution is subject to adequate documentation to support actual expenditures within the not-to-exceed **AGREEMENT** funding limitation of $ 350,000. 00. In no event shall the **DISTRICT** be liable for any contribution hereunder in excess of this amount. In the event the **COUNTY** is providing a cost sharing contribution as provided for in paragraph 5 below, the **COUNTY** shall provide evidence that its minimum cost share has been met for each invoice submitted. The subject cost share documentation shall be included with each invoice. If the total consideration for this **AGREEMENT** is subject to multi-year funding allocations, funding for each applicable fiscal year of this **AGREEMENT** shall be subject to Governing Board budgetary appropriation. In the event the **DISTRICT** does not approve funding for any subsequent fiscal year, this **AGREEMENT** shall terminate upon expenditure of the current funding, notwithstanding other provisions in this **AGREEMENT** to the contrary. The **DISTRICT** shall notify the **COUNTY** in writing after the adoption of the final **DISTRICT** budget for each subsequent fiscal year if funding is not approved for the implementation of this **AGREEMENT**.

4. The **COUNTY** shall submit quarterly financial reports to the **DISTRICT** providing a detailed accounting of all expenditures incurred hereunder throughout the term of this **AGREEMENT**. The **COUNTY** shall report and document the amount of funds expended per month during the quarterly reporting period and the **AGREEMENT** expenditures to date within the maximum not-to-exceed **AGREEMENT** funding limitation.

5. The **COUNTY** shall cost share in the total amount of $137,000 in conformity with the laws and regulations governing the **COUNTY**. This amount represents the total COUNTY cost share for the design, permitting and construction of a water control structure in the Florida City Canal under this AGREEMENT. Additional cost to the COUNTY in the amount of $535,500 for the retrofit of five (5) existing culverts with riser siphons to enhance wetlands adjacent to Florida City Canal are not included as part of this AGREEMENT.

6. All work to be performed under this **AGREEMENT** is set forth in Exhibit "A", Statement of Work, which is attached hereto and made a part of this **AGREEMENT**. The **COUNTY** shall submit quarterly progress reports detailing the status of work to date for each task. The work specified in Exhibit "A" shall be under the direction of the **COUNTY** but shall be open to periodic review and inspection by either party. No work set forth in Exhibit "A" shall be performed beyond December 31, 2013 (completion date) unless authorized through execution of an amendment to cover succeeding periods.

7. The **COUNTY** is hereby authorized to contract with third parties (subcontracts) for services awarded through a competitive process required by Florida Statutes. The

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COUNTY shall not subcontract, assign or transfer any other work under this **AGREEMENT** without the prior written consent of the **DISTRICT's** Project Manager. The **COUNTY** agrees to be responsible for the fulfillment of all work elements included in any subcontract and agrees to be responsible for the payment of all monies due under any subcontract. It is understood and agreed by the **COUNTY** that the **DISTRICT** shall not be liable to any subcontractor for any expenses or liabilities incurred under the subcontract(s).

8. Both the **DISTRICT** and the **COUNTY** shall have joint ownership rights to all work items, including but not limited to, all documents, technical reports, research notes, scientific data, computer programs, including the source and object code, which are developed, created or otherwise originated hereunder by the other party, its subcontractor(s), assign(s), agent(s) and/or successor(s) as required by the Exhibit "A", Statement of Work. Both parties' rights to deliverables received under this **AGREEMENT** shall include the unrestricted and perpetual right to use, reproduce, modify and distribute such deliverables at no additional cost to the other party. Notwithstanding the foregoing, ownership of all equipment and hardware purchased by the **COUNTY** under this **AGREEMENT** shall be deemed to be the property of the **COUNTY** upon completion of this **AGREEMENT**. The **COUNTY** shall retain all ownership to tangible property.

9. The **COUNTY**, to the extent permitted by law, assumes any and all risks of personal injury, bodily injury and property damage attributable to negligent acts or omissions of the **COUNTY** and the officers, employees, servants and agents thereof. The **COUNTY** represents that it is self-funded for Worker's Compensation and liability insurance, covering bodily injury, personal injury and property damage, with such protection being applicable to the **COUNTY,** its officers and employees while acting within the scope of their employment during performance of under this **AGREEMENT**. In the event that the **COUNTY** subcontracts any part or all of the work hereunder to any third party, the **COUNTY** shall require each and every subcontractor to identify the **DISTRICT** as an additional insured on all insurance policies as required by the **COUNTY**. Any contract awarded by the **COUNTY** shall include a provision whereby the **COUNTY's** subcontractor agrees to indemnify, pay on behalf, and hold the **DISTRICT** harmless from all damages arising in connection with the **COUNTY's** subcontract.

10. The **COUNTY** and the **DISTRICT** further agree that nothing contained herein shall be construed or interpreted as (1) denying to either party any remedy or defense available to such party under the laws of the State of Florida; (2) the consent of the State of Florida, the **DISTRICT** or Miami-Dade County or its employees, agents and agencies to be sued; or (3) a waiver of sovereign immunity of the State of Florida, the **DISTRICT** or the Miami-Dade County beyond the waiver provided in Section 768.28, Florida Statutes.

11. The parties to this **AGREEMENT** are independent entities and are not employees or agents of the other party. Nothing in this **AGREEMENT** shall be interpreted to establish any relationship other than that of independent entities, between the **DISTRICT**, the **COUNTY**, their employees, agents, subcontractors or assigns, during or after the term of this **AGREEMENT**. The parties to this **AGREEMENT** shall not assign, delegate or otherwise transfer their rights and obligations as set forth in this **AGREEMENT** without the prior written consent of the other party. Any attempted assignment in violation of this provision shall be void.

12. The parties to this **AGREEMENT** assure that no person shall be excluded on the grounds of race, color, creed, national origin, handicap, age or sex, from participation in, denied the benefits of, or be otherwise subjected to discrimination in any activity under this **AGREEMENT**.

13. The **COUNTY**, its employees, subcontractors or assigns, shall comply with all applicable federal, state and local laws and regulations relating to the performance of this **AGREEMENT**. The **DISTRICT** undertakes no duty to ensure such compliance, but will attempt to advise the **COUNTY**, upon request, as to any such laws of which it has present knowledge.

14. Either party may terminate this **AGREEMENT** at any time for convenience without cause upon thirty (30) calendar days prior written notice to the other party. In the event of termination, all funds not expended by the **COUNTY** for authorized work performed through the termination date shall be returned to the **DISTRICT** within sixty (60) days of termination.

15. The **COUNTY** shall allow public access to all project documents and materials in accordance with the provisions of Chapter 119, Florida Statutes. Should the **COUNTY** assert any exemptions to the requirements of Chapter 119 and related Statutes, the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon the **COUNTY**.

16. The **COUNTY** shall maintain records and the **DISTRICT** shall have inspection and audit rights below. The **COUNTY** shall similarly require each subcontractor to maintain and allow access to such records for audit purposes:

    A. Maintenance of Records: The **COUNTY** shall maintain all financial and non-financial records and reports directly or indirectly related to the negotiation or performance of this **AGREEMENT** including supporting documentation for any service rates, expenses, research or reports. Such records shall be maintained and made available for inspection for a period of five (5) years from the expiration date of this **AGREEMENT**.

    B. Examination of Records: The **DISTRICT** or designated agent shall have the right to examine in accordance with generally accepted governmental auditing standards all records directly or indirectly related to this **AGREEMENT**. Such examination may be made only within five (5) years from the expiration date of this **AGREEMENT**.

    C. Extended Availability of Records for Legal Disputes: In the event that the **DISTRICT** should become involved in a legal dispute with a third party arising from performance under this **AGREEMENT**, the **COUNTY** shall extend the period of maintenance for all records relating to the **AGREEMENT** until the final disposition of the legal dispute. All such records shall be made readily available to the **DISTRICT**.

17. Whenever the **DISTRICT's** contribution includes state or federal appropriated funds, the **COUNTY** shall, in addition to the inspection and audit rights set forth in paragraph 16 above, maintain records and similarly require each subcontractor to maintain and allow

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access to such records in compliance with the requirements of the Florida State Single Audit Act and the Federal Single Audit Act, as follows:

A. Maintenance of Records: The **DISTRICT** shall provide the necessary information to the **COUNTY** as set forth in Exhibit "C". The **COUNTY** shall maintain all financial/non-financial records through:

(1) Identification of the state or federal awarding agency, as applicable
(2) Project identification information included in the Catalog of State Financial Assistance (CSFA) or the Catalog of Federal Financial Assistance (CFDA), as applicable
(3) Audit and accountability requirements for state projects as stated in the Single Audit Act and
applicable rules of the Executive Office of Governor, rules of the Chief Financial Officer and rules of the Auditor General and the State Projects Compliance Supplement
(4) Audit/accountability requirements for federal projects as imposed by federal laws and regulations
(5) Submission of the applicable single audit report to the **DISTRICT**, as completed per fiscal year

B. Examination of Records: The **DISTRICT** or designated agent, the state awarding agency, the state's Chief Financial Officer and the state's Auditor General and/or federal awarding agency shall have the right to examine the **COUNTY's** financial and non-financial records to the extent necessary to monitor the **COUNTY's** use of state or federal financial assistance and to determine whether timely and appropriate corrective actions have been taken with respect to audit findings and recommendations which may include onsite visits and limited scope audits.

18. All notices or other communication regarding this **AGREEMENT** shall be in writing and forwarded to the attention of the following individuals:

South Florida Water Management District
Attn: Maura Merkal, Project Manager
Attn: Rupert Giroux, Contract Specialist
Address:
3301 Gun Club Road
West Palm Beach, FL 33406
Telephone No. (561)682-2532
FAX No. (561) 682-5644

Miami-Dade County
Attn: Lee N. Hefty, Project Manager
Attn: Marina Blanco-Pape, P.E., Contract Specialist
Address:
701 NW 1 CT, Suite 5-104
Miami, FL 33136-3902
Telephone No. (305) 372-6754
FAX No. (305) 372-6759

19. Invoices, clearly marked "ORIGINAL", shall be sent to the attention of Accounts Payable at the **DISTRICT's** address specified below. All invoices shall reference the **AGREEMENT** and SAP Reference Numbers specified on page one of this **AGREEMENT**. In addition, a copy of the invoice shall be sent to the attention of the **DISTRICT's** Project Manager either at the address specified in paragraph 18 above or via Facsimile (FAX) using the FAX number also specified above.

South Florida Water Management District
Attention: Accounts Payable
P.O. Box 24682
West Palm Beach, Florida 33416-4682

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20. **COUNTY and DISTRICT** recognize that any representations, statements or negotiations made by **DISTRICT or COUNTY** staff do not suffice to legally bind **DISTRICT or COUNTY** in a contractual relationship unless they have been reduced to writing and signed by duly authorized **DISTRICT and COUNTY** representatives. This **AGREEMENT** shall inure to the benefit of and shall be binding upon the parties, their respective assigns, and successors in interest.

21. This **AGREEMENT** may be amended, extended or renewed only with the written agreement of the parties. The **DISTRICT** shall be responsible for initiating any amendments to this **AGREEMENT**, if required.

22. This **AGREEMENT**, and any work performed hereunder, is subject to the Laws of the State of Florida. Nothing in this **AGREEMENT** shall bind any of the parties to perform beyond their respective authority, nor does this **AGREEMENT** alter the legal rights and remedies which the respective parties would otherwise have, under law or at equity.

23. If any term or provision of this **AGREEMENT** is 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.

24. Failures or waivers to insist on strict performance of any covenant, condition, or provision of this **AGREEMENT** by the parties shall not be deemed a waiver of any of its rights or remedies, nor shall it relieve the other party from performing any subsequent obligations strictly in accordance with the terms of this **AGREEMENT**. No waiver shall be effective unless in writing and signed by the party against whom enforcement is sought. Such waiver shall be limited to provisions of this **AGREEMENT** specifically referred to therein and shall not be deemed a waiver of any other provision. No waiver shall constitute a continuing waiver unless the writing states otherwise.

25. Any dispute arising under this **AGREEMENT** which cannot be readily resolved shall be submitted jointly to the signatories of this **AGREEMENT** with each party agreeing to seek in good faith to resolve the issue through negotiation or other forms of non-binding alternative dispute resolution mutually acceptable to the parties. A joint decision of the signatories, or their designees, shall be the disposition of such dispute.

26. 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**.

27. Any inconsistency in this **AGREEMENT** shall be resolved by giving precedence in the following order:
    (a) Terms and Conditions outlined in preceding paragraphs 1 – 26
    (b) Exhibit "A" Statement of Work
    (c) Exhibit "B" Payment and Deliverable Schedule
    (d) all other exhibits, attachments and documents specifically incorporated herein by reference

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IN WITNESS WHEREOF, the parties by their duly authorized representatives hereby execute this **AGREEMENT** on the date first written above.

SOUTH FLORIDA WATER MANAGEMENT DISTRICT
BY ITS GOVERNING BOARD

By:_____
Jessica J. Flathmann, Director of Procurement

SFWMD PROCUREMENT APPROVED
By:

Date:

MIAMI-DADE COUNTY

By: _____

Title:_____
County Mayor or County Mayor's Designee

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EXHIBIT "B"

PAYMENT AND DELIVERABLES SCHEDULE

Total payment by the DISTRICT to the COUNTY shall not exceed the amount of **$350,000.** All invoices shall be accompanied by adequate documentation to support actual project expenditures incurred by the COUNTY within the not-to-exceed amounts specified below in accordance with Article 3 of the Agreement. Payment by the DISTRICT is further subject to receipt of all deliverables from the COUNTY to demonstrate completion of each project task in accordance with Exhibit "A" Statement of Work requirements. If the total consideration for this Agreement is subject to multi-year funding allocations, funding for each applicable fiscal year of this Agreement will be subject to the DISTRICT's Governing Board budgetary appropriation. In the event the DISTRICT does not approve funding for any subsequent fiscal year, this Agreement shall terminate upon expenditure of the current funding, notwithstanding other provisions in this Agreement to the contrary. The COUNTY is responsible for reviewing and approving deliverables to ensure that project objectives are met. The COUNTY is also responsible for overall project management, budget management, and quality control of the project. In the event of delays beyond the COUNTY'S control, the due dates listed in this Agreement Exhibit may be revised upon mutual written consent by the DISTRICT and the COUNTY Project Managers, provided however that the overall expiration date of the Agreement shall not change.

Task	Deliverable	Due Date	DISTRICT** Not-to-Exceed Payment
Task 1: Planning	Report on project alternatives evaluated, selected option, and modeling results prepared by a Florida Licensed Professional Engineer	April 2011	**$ 30,000**
Task 2: Survey	Complete survey documents	May 2011	**$ 10,000**
Task 3: Design	Two paper copies (24 inches tall x 36 inches wide) and one electronic (Portable Document Format) on a CD or DVD of final project construction plans (drawn to scale), specifications, and backup calculations all signed and sealed	July 2011	**$ 50,000**
Task 4: Permitting	Copies of submitted permit applications	July 2011	**$ 30,000**
Task 5.1: Construction Award	Construction contract award	March 2012	**$ 30,000**
Task 5.2: Construction Completion	Copy of signed and sealed as-built survey and record drawings including final certification statement by the engineer-of-record	February 2013	**$ 200,000**
Total:			**$ 350,000**

** 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 COUNTY are less than the not-to-exceed for a particular task, the COUNTY shall have the right to apply the unexpended balance towards a subsequent task. The COUNTY shall provide written notice of its decision to exercise this right. In no event shall the DISTRICT's total obligation exceed $350,000 as specified above.

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