

7. **CONSENT AGENDA**

- j. **RESOLUTION 08-112 APPROVING BUDGET AMENDMENT/TRANSFER NO. 2008-067 AND PROVIDING AN EFFECTIVE DATE** (to appropriate \$45,000 from the South Florida Water Management District to the Public Works Department for NPDES water quality analysis and future storm water projects identification. This grant replaces funds currently budgeted by the City for this activity. The City's required match of \$45,000 is included in the FY08 budget. No new or additional funds are being appropriated by this amendment)

RESOLUTION NO. 08-112

APPROVING BUDGET AMENDMENT/TRANSFER NO. 2008-067 AND PROVIDING AN EFFECTIVE DATE

NOW, THEREFORE, BE IT RESOLVED by City Council of the City of Sanibel, Florida:

SECTION 1. The revised General Fund for fiscal year 2007-2008, Budget Amendment/Transfer BA 2008-067 true copy of which is attached hereto as Exhibit A and incorporated herein by this reference, is hereby approved and accepted.

SECTION 2. Effective date.

This resolution shall take effect immediately upon adoption.

DULY PASSED AND ENACTED by the Council of the City of Sanibel, Florida this 26th day of August 2008.

AUTHENTICATION:

Mick Denham, Mayor

Pamela Smith, City Clerk

APPROVED AS TO FORM:


Kenneth B. Cuyler, City Attorney

Date

8/21/08

Vote of Councilmembers:

Denham _____
Ruane _____
Jennings _____
Johnston _____
Pappas _____

Date filed with City Clerk: _____

ORIGINAL



SOUTH FLORIDA WATER MANAGEMENT DISTRICT LOCAL GOVERNMENTAL AGREEMENT

AGREEMENT NO. 4600001431

BETWEEN THE

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

AND

CITY OF SANIBEL

THIS AGREEMENT is entered into as of the JUL 30 2008 by and between the South Florida Water Management District (**DISTRICT**) and the City of Sanibel (**CITY**).

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 **CITY** for the City of Sanibel Water Quality Analysis and future Storm Water Projects Identification; and

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

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 **CITY** 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 the project in support of the City of Sanibel Water Quality Analysis and future Storm Water Projects Identification.
2. The period of performance of this **AGREEMENT** shall commence on the date of execution of this **AGREEMENT** and shall continue for a period of one (1) year.
3. The total **DISTRICT** contribution shall not exceed the amount of Forty Five Thousand Dollars and No Cents (\$45,000.00). The **DISTRICT** will provide the full amount based on 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 \$45,000.00. In no event shall the **DISTRICT** be liable for any contribution hereunder in excess of this amount. 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 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** will notify the **CITY** in writing after the adoption of the final **DISTRICT** budget for each subsequent fiscal year if funding is not approved for this **AGREEMENT**.

4. The **CITY** shall submit quarterly financial reports to the **DISTRICT** providing a detailed accounting of all expenditures incurred hereunder throughout the term of this **AGREEMENT**. The **CITY** 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 **CITY** shall cost share in an amount of Forty Five Thousand dollars (\$45,000.00).
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 **CITY** 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 **CITY** but shall be open to periodic review and inspection by either party. No work set forth in Exhibit "A" shall be performed beyond the expiration date, unless authorized through execution of an amendment to cover succeeding periods.
7. The **CITY** is hereby authorized to contract with third parties (subcontracts) for services awarded through a competitive process required by Florida Statutes. The **CITY** shall not subcontract, assign or transfer any other work under this **AGREEMENT** without the prior written consent of the **DISTRICT's** Project Manager. The **CITY** 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 **CITY** 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 **CITY** 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 **CITY** under this **AGREEMENT** shall be deemed to be the property of the **CITY** upon completion of this **AGREEMENT**. The **CITY** shall retain all ownership to tangible property.
9. The **CITY**, 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 **CITY** and the officers, employees, servants and agents thereof. The **CITY** 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 **CITY**, its officers and employees while acting within the scope of their employment during performance of under this **AGREEMENT**. In the event that the **CITY** subcontracts any part or all of the work hereunder to any third party, the **CITY** shall require each and every subcontractor to identify the **DISTRICT** as an additional insured on all insurance policies as required by the **CITY**. Any contract awarded by the **CITY** shall include a provision whereby the **CITY's** subcontractor agrees to indemnify, pay on behalf, and hold the **DISTRICT** harmless from all damages arising in connection with the **CITY's** subcontract.
10. The **CITY** 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 or its agents and agencies to be sued; or (3) a waiver of sovereign immunity of the State of Florida 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 parties. Nothing in this **AGREEMENT** shall be interpreted to establish any relationship other than that of independent entities, between the **DISTRICT**, the **CITY**, 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 parties. 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 **CITY**, 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 **CITY**, 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 upon thirty (30) calendar days prior written notice to the other party. In the event of termination, all funds not expended by the **CITY** for authorized work performed through the termination date shall be returned to the **DISTRICT** within sixty (60) days of termination.
15. The **CITY** shall allow public access to all project documents and materials in accordance with the provisions of Chapter 119, Florida Statutes. Should the **CITY** 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 **CITY**.
16. The **CITY** shall maintain records and the **DISTRICT** shall have inspection and audit rights below. The **CITY** shall similarly require each subcontractor to maintain and allow access to such records for audit purposes:
 - A. Maintenance of Records: The **CITY** 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 **CITY** 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 **CITY** 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 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 **CITY** as set forth in Exhibit "C". The **CITY** 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 **CITY**'s financial and non-financial records to the extent necessary to monitor the **CITY**'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: Clyde Dabbs, Project Manager
Telephone No. (239) 338-2929 X 7759

City of Sanibel
Attn: Rob Loflin, Director Natural Resources
Telephone No. (239) 472-3700

Attn: Patrick Wiener, Contract Specialist
Telephone No. (561) 682-6220

Address:
City of Sanibel
800 Dunlop Road
Sanibel, Fl 33967

Address:
P.O. Box 24680
3301 Gun Club Road
West Palm Beach, FL 33416-4680

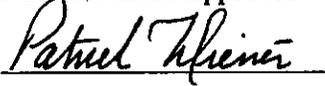
19. **CITY** recognizes that any representations, statements or negotiations made by **DISTRICT** staff do not suffice to legally bind **DISTRICT** in a contractual relationship unless they have been reduced to writing and signed by an authorized **DISTRICT** representative. This **AGREEMENT** shall inure to the benefit of and shall be binding upon the parties, their respective assigns, and successors in interest.
20. This **AGREEMENT** may be amended, extended or renewed only with the written approval of the parties. The **DISTRICT** shall be responsible for initiating any amendments to this **AGREEMENT**, if required.
21. This **AGREEMENT**, and any work performed hereunder, is subject to the Laws of the State of Florida. Nothing in this **AGREEMENT** will 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.
22. Should any term or provision of this **AGREEMENT** be held, to any extent, invalid or unenforceable, as against any person, **CITY** 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.
23. 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.
24. 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.
25. 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**.
26. Any inconsistency in this **AGREEMENT** shall be resolved by giving precedence in the following order:
(a) Terms and Conditions outlined in preceding paragraphs 1 – 24
(b) Exhibit "A" Statement of Work
(c) all other exhibits, attachments and documents specifically incorporated herein by reference

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

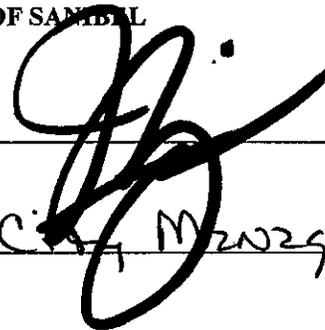
SOUTH FLORIDA WATER MANAGEMENT DISTRICT

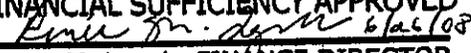
By: 
Frank Hayden, Director of Procurement *FM*

SFWMD Procurement Approved

By: 
Date: 6-10-2008 *pm*

CITY OF SANibel

By: 
Title: City Manager

FINANCIAL SUFFICIENCY APPROVED
 6/26/08
Renee M. Lynch, FINANCE DIRECTOR

APPROVED AS TO FORM:

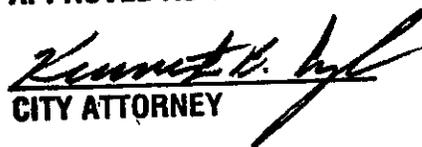

CITY ATTORNEY

Exhibit "A"
Statement of Work
Water Quality Analysis and Future Storm water Projects Identification

1.0 Introduction

This program is an essential component in the City's efforts to identify and assess the needs for updates and retrofits to the City's storm water system and to implement those needed improvements. As a result of a recent history of severe algae blooms surrounding the island due to over-nitrifications, these efforts are essential in trying to improve local water quality.

2.0 Objective

This program implements the City of Sanibel's commitment to minimizing pollutant discharges from storm water run-off. It involves sampling for water quality in the interior waterways of Sanibel Island including the Sanibel River and using the results of this testing to determine needs for improvements including filter marshes, weir structures and swale construction. It includes data analysis and reports regarding the functioning of City's storm water treatment system.

3.0 Deliverable Schedule

The total cost of the project is \$90,000. The South Florida Water Management District's contribution to the project will not exceed \$45,000. The City of Sanibel will provide cost match dollars of \$45,000.

EXHIBIT "B"

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 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.

Water Quality Analysis	Project will start June 2008	Monthly Invoices that document expenditures to date and cost match is met per each invoice.	\$45,000	\$45,000
Complete Project	Project will be complete by June 2009	Statement on Official City of Sanibel Letterhead that project is complete and final FY09 Report		
Total Project Costs			\$90,000	

The District shall only be obligated to pay for documented actual expenditures within the not-to-exceed amount specified in the contract language. In the event actual expenditures by the City of Sanibel are less than the identified amount for a particular task, the City of Sanibel shall have the right to apply the unexpended balance towards a subsequent task. The City of Sanibel shall provide written notice of its decision to exercise this right. In no event shall the District's total obligation exceed \$45,000.00 as specified above.

The City of Sanibel shall provide evidence its minimum 50% cost share has been met for each invoice submitted. The subject cost share documentation will be included with each invoice and will be sent to the appropriate District project manager. Without the 50% cost match documentation the invoice will not be paid.