

FIRST AMENDMENT  
TO AGREEMENT BETWEEN THE  
SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT  
AND  
MANATEE COUNTY  
FOR  
WARES CREEK PROJECT (K253)

This FIRST AMENDMENT entered into and effective this 1<sup>st</sup> day of October, 2009 by and between the SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT, a public corporation of the State of Florida, whose address is 2379 Broad Street, Brooksville, Florida 34604-6899, for itself and on behalf of the Manasota Basin Board, hereinafter collectively referred to as the "DISTRICT," and MANATEE COUNTY, a political subdivision of the State of Florida, whose address is 1112 Manatee Avenue, Post Office Box 1000, Bradenton, Florida 34206-1000, hereinafter referred to as the "COUNTY."

WITNESSETH:

WHEREAS, the DISTRICT and the COUNTY entered into an Agreement dated February 1, 2004 (Original Agreement), for channel improvements on an approximately 15,500-foot-long section of Wares Creek and the East Branch of Cedar Hammock to reduce flood damage and for the acquisition of rights-of-way and easements necessary for the construction of conveyance system improvements along a 15,500 foot-long section of Wares Creek to reduce flood damage; and

WHEREAS, the parties hereto wish to amend the Original Agreement to extend the contract period; revise the scope of work; and revise the PROJECT funding to reflect the most recent cost estimate submitted to the DISTRICT by the COUNTY and to incorporate language governing the use or sale of the dewatering site after the PROJECT is complete.

NOW THEREFORE, in consideration of the mutual terms, covenants and conditions contained herein, the parties hereby mutually agree to amend the Original Agreement, dated February 1, 2004, as follows:

1. The fifth "WHEREAS" clause is hereby amended to delete the words "Project Cooperation Agreement (PCA)" and insert the words "Project Partnership Agreement (PPA)."
2. Paragraph 3, Funding, is hereby replaced in its entirety with the following paragraphs to decrease the total cost of the PROJECT by \$8,261,344:
3. FUNDING. The parties anticipate that the total cost of the PROJECT will be Forty-Six Million Nine Hundred Three Thousand Six Hundred Fifty-Six Dollars (\$46,903,656). The parties further anticipate that the USACE will fund a PROJECT cost share of Eighteen Million Seven Hundred Thousand Dollars (\$18,700,000). If the USACE agrees to fund the PROJECT, the local sponsor, the COUNTY, will be responsible for a PROJECT cost share of Twenty-Eight Million Two Hundred Three Thousand Six Hundred Fifty-Six Dollars (\$28,203,656).

The DISTRICT agrees to fund PROJECT costs up to Twelve Million Five Hundred Seventy-Six Thousand Eight Hundred Twenty-Eight Dollars (\$12,576,828) subject to Paragraphs 3.1 and 3.5 below, and will have no obligation to pay any costs beyond this maximum amount. The COUNTY agrees to fund PROJECT costs up to Twelve Million Five Hundred Seventy-Six Thousand Eight Hundred Twenty-Eight Dollars (\$12,576,828) and will be responsible for all costs in excess of the anticipated total PROJECT cost. It is anticipated that the Florida Department of Environmental Protection will fund the remaining Three Million Fifty Thousand Dollars (\$3,050,000). The COUNTY will be the lead party to this Agreement and pay PROJECT costs prior to requesting reimbursement from the DISTRICT. The DISTRICT and the COUNTY, by mutual written agreement, may provide additional funding or reduce the PROJECT scope.

3. Paragraph 3.1 is hereby amended by deleting the second sentence and inserting the following sentence:

The DISTRICT will reimburse the COUNTY for 50 percent of all allowable costs in each DISTRICT approved invoice received from the COUNTY up to the maximum DISTRICT contribution, as set forth above, of Twelve Million Five Hundred Seventy-Six Thousand Eight Hundred Twenty-Eight Dollars (\$12,576,828).

4. Paragraph 3.5 is hereby amended by deleting the first sentence and inserting the following sentence:

The COUNTY hereby recognizes that the DISTRICT has approved Ten Million Nine Hundred Sixteen Thousand Five Hundred Thirty-Six Dollars (\$10,916,536) for the PROJECT through Fiscal Year 2008.

5. Paragraph 3.6 is hereby replaced in its entirety with the following paragraph:

3.6 In the event the COUNTY sells any of the property acquired through this Agreement, the COUNTY agrees to repay to the DISTRICT the amount paid by the DISTRICT for the purchase of the property under this Agreement, or fifty percent (50%) of the sale price, whichever is greater. The COUNTY shall repay the DISTRICT the amount paid by the DISTRICT for the purchase of the property, or any portion thereof, if:

- (1) In the case of property other than the de-watering site, the COUNTY puts such property to any primary use other than flood protection; and
- (2) In the case of property acquired as the de-watering site for the PROJECT, the COUNTY puts such property to any permanent primary use other than to serve the PROJECT.

For purposes of this provision, utilization of property for utilities, recreational access or environmental mitigation or enhancement shall be considered incidental to use of the property for flood protection or to serve the PROJECT, if such uses are compatible with the authorized purposes of this Agreement. Any use of the de-watering site for a period of exceeding one (1) year without the written consent of the DISTRICT shall be considered a permanent use.

Prior to selling the property or using the property for purposes that are not explicitly authorized under this Agreement, the COUNTY will provide written notice to the DISTRICT. This provision will survive the expiration of this Agreement and will remain in effect in perpetuity.

6. Paragraph 4, Contract Period, is hereby amended to extend the expiration date of December 31, 2012, in the Original Agreement to December 31, 2013.
7. Paragraph 14, Compliance With District Rules & Regulations, is hereby amended by inserting the words "procured by the COUNTY" after the word "services" in the second line of the paragraph.
8. Exhibit "A," Paragraph 5, Completion Dates, is hereby amended to complete land acquisition by June 2011.
9. Exhibit "B," Subparagraph A of Project Description, is hereby amended by adding the words "or land acquisition" after the word "easements" on the third line.
10. Exhibit "B," Subparagraph A of Project Description is further amended by adding Subparagraph 3 as follows:
  3. Condemnation or purchase in fee simple ownership of the dewatering site authorized in the PROJECT permit issued by the Florida Department of Environmental Protection.
11. The Project Schedule section of Exhibit "B" is hereby amended by replacing the timelines set forth below in their entirety:

<u>Activity</u>	<u>Completion Date</u>
Real Estate Acquisition	June 2011
Plans and Specifications	October 2009
PROJECT Construction	December 2012
Closeout	December 2013

12. Exhibit "B," Subparagraph B of Project Deliverables is hereby amended to delete the words "Project Cooperative Agreement" and replace with "Project Partnership Agreement."
13. The Project Costs section of Exhibit "B" is hereby replaced in its entirety with the following:

**PROJECT COSTS**

Total cost for the project is estimated at \$46,903,656 which includes right-of-way acquisition and construction. The estimated non-Federal share of the PROJECT is \$28,203,656 and includes right-of-way and easement acquisition and the COUNTY'S cash contribution to initiate construction.

14. The Exhibit "B" Project Budget is hereby replaced in its entirety with the following:

**PROJECT BUDGET**

	DISTRICT	NON-FEDERAL		FEDERAL USACE	TOTAL
		FDEP	COUNTY		
Manatee Avenue to Cortez Road Land and Easement Acquisition	\$11,439,328	\$3,050,000	\$11,439,328	\$0	\$25,928,656
Manatee River to Cortez Road Construction / Dredging	\$1,137,500	\$0	\$1,137,500	\$18,700,000	\$20,975,000
<b>TOTAL</b>	<b>\$12,576,828</b>	<b>\$3,050,000</b>	<b>\$12,576,828</b>	<b>\$18,700,000</b>	<b>\$46,903,656</b>

Note: The COUNTY anticipates receiving \$3,050,000 from the Florida Department of Environmental Protection. The COUNTY anticipates receiving \$500,000 from the City of Bradenton toward their funding share for acquisition.

15. The terms, covenants and conditions set forth in the Original Agreement that have not been specifically amended herein, will continue in existence, are hereby ratified, approved and confirmed, and will remain binding upon the parties hereto.


The remainder of this page left blank intentionally.

IN WITNESS WHEREOF, the parties hereto have executed this FIRST AMENDMENT on the day and year set forth next to their signatures below.

SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT

By:  6-22-08  
David L. Moore, Executive Director Date

MANATEE COUNTY

By:  6/8/10  
Ed Hunzeker Date  
County Administrator

FIRST AMENDMENT  
TO AGREEMENT BETWEEN THE  
SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT  
AND  
MANATEE COUNTY  
FOR  
WARES CREEK PROJECT (K253)

DISTRICT APPROVAL	INITIALS	DATE
LEGAL	<u>MCM</u>	<u>10/14/09</u>
RISK MGMT	<u>N/A</u>	
CONTRACTS	<u>gmr</u>	<u>10/16/09</u>
DEPT DIRECTOR	<u>02/08</u>	<u>10/20/09</u>
DEPUTY EXEC DIR	<u>02</u>	<u>10/20/09</u>
GOVERNING BOARD	<u>N/A</u>	<u>gmr</u>

# MANATEE COUNTY GOVERNMENT

## AGENDA MEMORANDUM

<b>SUBJECT</b>	First Amendment to Cooperative Funding Agreement with SWFWMD for Wares Creek	<b>TYPE AGENDA ITEM</b>	Consent
<b>DATE REQUESTED</b>	June 8, 2010	<b>DATE SUBMITTED/REVISED</b>	June 1, 2010
<b>BRIEFINGS? Who?</b>	N/A	<b>CONSEQUENCES IF DEFERRED</b>	N/A
<b>DEPARTMENT/DIVISION</b>	County Attorney's Office	<b>AUTHORIZED BY TITLE</b>	Tedd N. Williams, Jr., County Attorney <i>TNW</i>
<b>CONTACT PERSON TELEPHONE/EXTENSION</b>	William E. Clague, Deputy County Attorney; Ext. 3750 <i>WEC 6/6/10</i>	<b>PRESENTER/TITLE TELEPHONE/EXTENSION</b>	William E. Clague, Deputy County Attorney; Ext. 3750
<b>ADMINISTRATIVE APPROVAL</b>		<i>TNW 6/7/10</i>	

**ACTION DESIRED**  
INDICATE WHETHER 1) REPORT; 2) DISCUSSION; 3) FORM OF MOTION; OR 4) OTHER ACTION REQUIRED

I move to authorize the County Administrator or his designee to execute the First Amendment to Cooperative Funding Agreement with SWFWMD for the Wares Creek dredging project.

**ENABLING/REGULATING AUTHORITY**  
Federal/State law(s), administrative ruling(s), Manatee County Comp Plan/Land Development Code, ordinances, resolutions, policy

Section 125.01 and 215.245 of Florida Statutes.

**BACKGROUND/DISCUSSION**

The U.S. Army Corps of Engineers ("USACOE") proposes to undertake a flood control dredging project upon a 15,500-foot section of Wares Creek and the East Branch of Cedar Hammock Canal (the "Project"), which will provide flood control and drainage benefits. Pursuant to a Project Partnership Agreement ("PPA") to be entered into between the USACOE and the County, the County will act as local sponsor of the Project, providing the required local share for the Project with funds of the County, and funds provided to the County pursuant to separate agreements with the City of Bradenton ("City"), the Florida Department of Environmental Protection and the Southwest Florida Water Management District ("SWFWMD").

The County and SWFWMD have entered into an agreement for the Wares Creek Project (K253), dated as of March 3, 2008 (SWFWMD Agreement No. 06C0000084) ("Original SWFWMD Agreement"), providing for SWFWMD participation in the cost of the Project. The Original SWFWMD Agreement must be amended to reflect changes to the scope and design of the Project and to clarify SWFWMD's funding of certain project costs, pursuant to a First Amendment to the Original SWFWMD Agreement.

COUNTY ATTORNEY REVIEW	
<b>Check appropriate box</b>	
<input type="checkbox"/>	<b>REVIEWED</b> Written Comments: <input type="checkbox"/> Attached <input type="checkbox"/> Available from Attorney (Attorney's initials: _____)
<input type="checkbox"/>	<b>NOT REVIEWED (No apparent legal issues.)</b>
<input type="checkbox"/>	<b>NOT REVIEWED (Utilizes exact form or procedure previously approved by CAO.)</b>
<input checked="" type="checkbox"/>	<b>OTHER</b> CAO Agenda Item

<b>ATTACHMENTS:</b> (List in order as attached)	<b>INSTRUCTIONS TO BOARD RECORDS:</b> <i>6/9/10 TW</i>
1. Form of First Amendment to Cooperative Funding Agreement	Please provide County Attorney's Office with two (2) executed originals of the Amendment, one to be returned to Board Records upon execution by SWFWMD.

<b>COST:</b>	\$45,500,000.00 (total) \$10,989,000.00 (County)	<b>SOURCE (ACCT # &amp; NAME):</b>	
<b>COMMENTS:</b>		<b>AMT./FREQ. OF RECURRING COSTS: (ATTACH FISCAL IMPACT STATEMENT)</b>	

FIRST AMENDMENT  
TO AGREEMENT BETWEEN THE  
SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT  
AND  
MANATEE COUNTY  
FOR  
WARES CREEK PROJECT (K253)

This FIRST AMENDMENT entered into and effective this 1<sup>st</sup> day of October, 2009 by and between the SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT, a public corporation of the State of Florida, whose address is 2379 Broad Street, Brooksville, Florida 34604-6899, for itself and on behalf of the Manasota Basin Board, hereinafter collectively referred to as the "DISTRICT," and MANATEE COUNTY, a political subdivision of the State of Florida, whose address is 1112 Manatee Avenue, Post Office Box 1000, Bradenton, Florida 34206-1000, hereinafter referred to as the "COUNTY."

WITNESSETH:

WHEREAS, the DISTRICT and the COUNTY entered into an Agreement dated February 1, 2004 (Original Agreement), for channel improvements on an approximately 15,500-foot-long section of Wares Creek and the East Branch of Cedar Hammock to reduce flood damage and for the acquisition of rights-of-way and easements necessary for the construction of conveyance system improvements along a 15,500 foot-long section of Wares Creek to reduce flood damage; and

WHEREAS, the parties hereto wish to amend the Original Agreement to extend the contract period; revise the scope of work; and revise the PROJECT funding to reflect the most recent cost estimate submitted to the DISTRICT by the COUNTY and to incorporate language governing the use or sale of the dewatering site after the PROJECT is complete.

NOW THEREFORE, in consideration of the mutual terms, covenants and conditions contained herein, the parties hereby mutually agree to amend the Original Agreement, dated February 1, 2004, as follows:

1. The fifth "WHEREAS" clause is hereby amended to delete the words "Project Cooperation Agreement (PCA)" and insert the words "Project Partnership Agreement (PPA)."
2. Paragraph 3, Funding, is hereby replaced in its entirety with the following paragraphs to decrease the total cost of the PROJECT by \$8,261,344:
3. FUNDING. The parties anticipate that the total cost of the PROJECT will be Forty-Six Million Nine Hundred Three Thousand Six Hundred Fifty-Six Dollars (\$46,903,656). The parties further anticipate that the USACE will fund a PROJECT cost share of Eighteen Million Seven Hundred Thousand Dollars (\$18,700,000). If the USACE agrees to fund the PROJECT, the local sponsor, the COUNTY, will be responsible for a PROJECT cost share of Twenty-Eight Million Two Hundred Three Thousand Six Hundred Fifty-Six Dollars (\$28,203,656).



The DISTRICT agrees to fund PROJECT costs up to Twelve Million Five Hundred Seventy-Six Thousand Eight Hundred Twenty-Eight Dollars (\$12,576,828) subject to Paragraphs 3.1 and 3.5 below, and will have no obligation to pay any costs beyond this maximum amount. The COUNTY agrees to fund PROJECT costs up to Twelve Million Five Hundred Seventy-Six Thousand Eight Hundred Twenty-Eight Dollars (\$12,576,828) and will be responsible for all costs in excess of the anticipated total PROJECT cost. It is anticipated that the Florida Department of Environmental Protection will fund the remaining Three Million Fifty Thousand Dollars (\$3,050,000). The COUNTY will be the lead party to this Agreement and pay PROJECT costs prior to requesting reimbursement from the DISTRICT. The DISTRICT and the COUNTY, by mutual written agreement, may provide additional funding or reduce the PROJECT scope.

3. Paragraph 3.1 is hereby amended by deleting the second sentence and inserting the following sentence:

The DISTRICT will reimburse the COUNTY for 50 percent of all allowable costs in each DISTRICT approved invoice received from the COUNTY up to the maximum DISTRICT contribution, as set forth above, of Twelve Million Five Hundred Seventy-Six Thousand Eight Hundred Twenty-Eight Dollars (\$12,576,828).

4. Paragraph 3.5 is hereby amended by deleting the first sentence and inserting the following sentence:

The COUNTY hereby recognizes that the DISTRICT has approved Ten Million Nine Hundred Sixteen Thousand Five Hundred Thirty-Six Dollars (\$10,916,536) for the PROJECT through Fiscal Year 2008.

5. Paragraph 3.6 is hereby replaced in its entirety with the following paragraph:

3.6 In the event the COUNTY sells any of the property acquired through this Agreement, the COUNTY agrees to repay to the DISTRICT the amount paid by the DISTRICT for the purchase of the property under this Agreement, or fifty percent (50%) of the sale price, whichever is greater. The COUNTY shall repay the DISTRICT the amount paid by the DISTRICT for the purchase of the property, or any portion thereof, if:

- (1) In the case of property other than the de-watering site, the COUNTY puts such property to any primary use other than flood protection; and
- (2) In the case of property acquired as the de-watering site for the PROJECT, the COUNTY puts such property to any permanent primary use other than to serve the PROJECT.

For purposes of this provision, utilization of property for utilities, recreational access or environmental mitigation or enhancement shall be considered incidental to use of the property for flood protection or to serve the PROJECT, if such uses are compatible with the authorized purposes of this Agreement. Any use of the de-watering site for a period of exceeding one (1) year without the written consent of the DISTRICT shall be considered a permanent use.

Prior to selling the property or using the property for purposes that are not explicitly authorized under this Agreement, the COUNTY will provide written notice to the DISTRICT. This provision will survive the expiration of this Agreement and will remain in effect in perpetuity.

6. Paragraph 4, Contract Period, is hereby amended to extend the expiration date of December 31, 2012, in the Original Agreement to December 31, 2013.
7. Paragraph 14, Compliance With District Rules & Regulations, is hereby amended by inserting the words "procured by the COUNTY" after the word "services" in the second line of the paragraph.
8. Exhibit "A," Paragraph 5, Completion Dates, is hereby amended to complete land acquisition by June 2011.
9. Exhibit "B," Subparagraph A of Project Description, is hereby amended by adding the words "or land acquisition" after the word "easements" on the third line.
10. Exhibit "B," Subparagraph A of Project Description is further amended by adding Subparagraph 3 as follows:
  3. Condemnation or purchase in fee simple ownership of the dewatering site authorized in the PROJECT permit issued by the Florida Department of Environmental Protection.
11. The Project Schedule section of Exhibit "B" is hereby amended by replacing the timelines set forth below in their entirety:

<u>Activity</u>	<u>Completion Date</u>
Real Estate Acquisition	June 2011
Plans and Specifications	October 2009
PROJECT Construction	December 2012
Closeout	December 2013

12. Exhibit "B," Subparagraph B of Project Deliverables is hereby amended to delete the words "Project Cooperative Agreement" and replace with "Project Partnership Agreement."
13. The Project Costs section of Exhibit "B" is hereby replaced in its entirety with the following:

PROJECT COSTS

Total cost for the project is estimated at \$46,903,656 which includes right-of-way acquisition and construction. The estimated non-Federal share of the PROJECT is \$28,203,656 and includes right-of-way and easement acquisition and the COUNTY'S cash contribution to initiate construction.

14. The Exhibit "B" Project Budget is hereby replaced in its entirety with the following:

PROJECT BUDGET

	<u>NON-FEDERAL</u>			<u>FEDERAL</u>	<u>TOTAL</u>
	<u>DISTRICT</u>	<u>FDEP</u>	<u>COUNTY</u>	<u>USACE</u>	
Manatee Avenue to Cortez Road Land and Easement Acquisition	\$11,439,328	\$3,050,000	\$11,439,328	\$0	\$25,928,656
Manatee River to Cortez Road Construction / Dredging	\$1,137,500	\$0	\$1,137,500	\$18,700,000	\$20,975,000
<b>TOTAL</b>	<b>\$12,576,828</b>	<b>\$3,050,000</b>	<b>\$12,576,828</b>	<b>\$18,700,000</b>	<b>\$46,903,656</b>

Note: The COUNTY anticipates receiving \$3,050,000 from the Florida Department of Environmental Protection. The COUNTY anticipates receiving \$500,000 from the City of Bradenton toward their funding share for acquisition.

15. The terms, covenants and conditions set forth in the Original Agreement that have not been specifically amended herein, will continue in existence, are hereby ratified, approved and confirmed, and will remain binding upon the parties hereto.

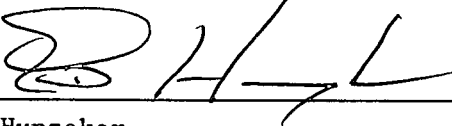
The remainder of this page left blank intentionally.

IN WITNESS WHEREOF, the parties hereto have executed this FIRST AMENDMENT on the day and year set forth next to their signatures below.

SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT

By: \_\_\_\_\_  
David L. Moore, Executive Director Date

MANATEE COUNTY

By:  6/8/10  
Ed Hunzeker Date  
County Administrator

Attest:

By: \_\_\_\_\_  
R. B. Shore Date  
Clerk of the Circuit Court

FIRST AMENDMENT  
TO AGREEMENT BETWEEN THE  
SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT  
AND  
MANATEE COUNTY  
FOR  
WARES CREEK PROJECT (K253)

DISTRICT APPROVAL	INITIALS	DATE
LEGAL	MBM	10/14/09
RISK MGMT	N/A	
CONTRACTS	gmk	10/16/09
DEPT DIRECTOR	gmk	10/25/09
DEPUTY EXEC DIR	gmk	10/26/09
GOVERNING BOARD	N/A	gmk

FIRST AMENDMENT  
TO AGREEMENT BETWEEN THE  
SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT  
AND  
MANATEE COUNTY  
FOR  
WARES CREEK PROJECT (K253)

This FIRST AMENDMENT entered into and effective this 1<sup>st</sup> day of October, 2009 by and between the SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT, a public corporation of the State of Florida, whose address is 2379 Broad Street, Brooksville, Florida 34604-6899, for itself and on behalf of the Manasota Basin Board, hereinafter collectively referred to as the "DISTRICT," and MANATEE COUNTY, a political subdivision of the State of Florida, whose address is 1112 Manatee Avenue, Post Office Box 1000, Bradenton, Florida 34206-1000, hereinafter referred to as the "COUNTY."

WITNESSETH:

WHEREAS, the DISTRICT and the COUNTY entered into an Agreement dated February 1, 2004 (Original Agreement), for channel improvements on an approximately 15,500-foot-long section of Wares Creek and the East Branch of Cedar Hammock to reduce flood damage and for the acquisition of rights-of-way and easements necessary for the construction of conveyance system improvements along a 15,500 foot-long section of Wares Creek to reduce flood damage; and

WHEREAS, the parties hereto wish to amend the Original Agreement to extend the contract period; revise the scope of work; and revise the PROJECT funding to reflect the most recent cost estimate submitted to the DISTRICT by the COUNTY and to incorporate language governing the use or sale of the dewatering site after the PROJECT is complete.

NOW THEREFORE, in consideration of the mutual terms, covenants and conditions contained herein, the parties hereby mutually agree to amend the Original Agreement, dated February 1, 2004, as follows:

1. The fifth "WHEREAS" clause is hereby amended to delete the words "Project Cooperation Agreement (PCA)" and insert the words "Project Partnership Agreement (PPA)."
2. Paragraph 3, Funding, is hereby replaced in its entirety with the following paragraphs to decrease the total cost of the PROJECT by \$8,261,344:
3. FUNDING. The parties anticipate that the total cost of the PROJECT will be Forty-Six Million Nine Hundred Three Thousand Six Hundred Fifty-Six Dollars (\$46,903,656). The parties further anticipate that the USACE will fund a PROJECT cost share of Eighteen Million Seven Hundred Thousand Dollars (\$18,700,000). If the USACE agrees to fund the PROJECT, the local sponsor, the COUNTY, will be responsible for a PROJECT cost share of Twenty-Eight Million Two Hundred Three Thousand Six Hundred Fifty-Six Dollars (\$28,203,656).

The DISTRICT agrees to fund PROJECT costs up to Twelve Million Five Hundred Seventy-Six Thousand Eight Hundred Twenty-Eight Dollars (\$12,576,828) subject to Paragraphs 3.1 and 3.5 below, and will have no obligation to pay any costs beyond this maximum amount. The COUNTY agrees to fund PROJECT costs up to Twelve Million Five Hundred Seventy-Six Thousand Eight Hundred Twenty-Eight Dollars (\$12,576,828) and will be responsible for all costs in excess of the anticipated total PROJECT cost. It is anticipated that the Florida Department of Environmental Protection will fund the remaining Three Million Fifty Thousand Dollars (\$3,050,000). The COUNTY will be the lead party to this Agreement and pay PROJECT costs prior to requesting reimbursement from the DISTRICT. The DISTRICT and the COUNTY, by mutual written agreement, may provide additional funding or reduce the PROJECT scope.

3. Paragraph 3.1 is hereby amended by deleting the second sentence and inserting the following sentence:

The DISTRICT will reimburse the COUNTY for 50 percent of all allowable costs in each DISTRICT approved invoice received from the COUNTY up to the maximum DISTRICT contribution, as set forth above, of Twelve Million Five Hundred Seventy-Six Thousand Eight Hundred Twenty-Eight Dollars (\$12,576,828).

4. Paragraph 3.5 is hereby amended by deleting the first sentence and inserting the following sentence:

The COUNTY hereby recognizes that the DISTRICT has approved Ten Million Nine Hundred Sixteen Thousand Five Hundred Thirty-Six Dollars (\$10,916,536) for the PROJECT through Fiscal Year 2008.

5. Paragraph 3.6 is hereby replaced in its entirety with the following paragraph:

3.6 In the event the COUNTY sells any of the property acquired through this Agreement, the COUNTY agrees to repay to the DISTRICT the amount paid by the DISTRICT for the purchase of the property under this Agreement, or fifty percent (50%) of the sale price, whichever is greater. The COUNTY shall repay the DISTRICT the amount paid by the DISTRICT for the purchase of the property, or any portion thereof, if:

- (1) In the case of property other than the de-watering site, the COUNTY puts such property to any primary use other than flood protection; and
- (2) In the case of property acquired as the de-watering site for the PROJECT, the COUNTY puts such property to any permanent primary use other than to serve the PROJECT.

For purposes of this provision, utilization of property for utilities, recreational access or environmental mitigation or enhancement shall be considered incidental to use of the property for flood protection or to serve the PROJECT, if such uses are compatible with the authorized purposes of this Agreement. Any use of the de-watering site for a period of exceeding one (1) year without the written consent of the DISTRICT shall be considered a permanent use.

Prior to selling the property or using the property for purposes that are not explicitly authorized under this Agreement, the COUNTY will provide written notice to the DISTRICT. This provision will survive the expiration of this Agreement and will remain in effect in perpetuity.

6. Paragraph 4, Contract Period, is hereby amended to extend the expiration date of December 31, 2012, in the Original Agreement to December 31, 2013.
7. Paragraph 14, Compliance With District Rules & Regulations, is hereby amended by inserting the words "procured by the COUNTY" after the word "services" in the second line of the paragraph.
8. Exhibit "A," Paragraph 5, Completion Dates, is hereby amended to complete land acquisition by June 2011.
9. Exhibit "B," Subparagraph A of Project Description, is hereby amended by adding the words "or land acquisition" after the word "easements" on the third line.
10. Exhibit "B," Subparagraph A of Project Description is further amended by adding Subparagraph 3 as follows:
  3. Condemnation or purchase in fee simple ownership of the dewatering site authorized in the PROJECT permit issued by the Florida Department of Environmental Protection.
11. The Project Schedule section of Exhibit "B" is hereby amended by replacing the timelines set forth below in their entirety:

<u>Activity</u>	<u>Completion Date</u>
Real Estate Acquisition	June 2011
Plans and Specifications	October 2009
PROJECT Construction	December 2012
Closeout	December 2013

12. Exhibit "B," Subparagraph B of Project Deliverables is hereby amended to delete the words "Project Cooperative Agreement" and replace with "Project Partnership Agreement."
13. The Project Costs section of Exhibit "B" is hereby replaced in its entirety with the following:

#### PROJECT COSTS

Total cost for the project is estimated at \$46,903,656 which includes right-of-way acquisition and construction. The estimated non-Federal share of the PROJECT is \$28,203,656 and includes right-of-way and easement acquisition and the COUNTY'S cash contribution to initiate construction.

14. The Exhibit "B" Project Budget is hereby replaced in its entirety with the following:

PROJECT BUDGET

	<u>NON-FEDERAL</u>			<u>FEDERAL</u>	<u>TOTAL</u>
	<u>DISTRICT</u>	<u>FDEP</u>	<u>COUNTY</u>	<u>USACE</u>	
Manatee Avenue to Cortez Road Land and Easement Acquisition	\$11,439,328	\$3,050,000	\$11,439,328	\$0	\$25,928,656
Manatee River to Cortez Road Construction / Dredging	\$1,137,500	\$0	\$1,137,500	\$18,700,000	\$20,975,000
<b>TOTAL</b>	<b>\$12,576,828</b>	<b>\$3,050,000</b>	<b>\$12,576,828</b>	<b>\$18,700,000</b>	<b>\$46,903,656</b>

Note: The COUNTY anticipates receiving \$3,050,000 from the Florida Department of Environmental Protection. The COUNTY anticipates receiving \$500,000 from the City of Bradenton toward their funding share for acquisition.

15. The terms, covenants and conditions set forth in the Original Agreement that have not been specifically amended herein, will continue in existence, are hereby ratified, approved and confirmed, and will remain binding upon the parties hereto.

The remainder of this page left blank intentionally.



IN WITNESS WHEREOF, the parties hereto have executed this FIRST AMENDMENT on the day and year set forth next to their signatures below.

SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT

By: \_\_\_\_\_  
David L. Moore, Executive Director Date

MANATEE COUNTY

By: \_\_\_\_\_  
Ed Hunzeker Date  
County Administrator

Attest:

By: \_\_\_\_\_  
R. B. Shore Date  
Clerk of the Circuit Court

FIRST AMENDMENT  
TO AGREEMENT BETWEEN THE  
SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT  
AND  
MANATEE COUNTY  
FOR  
WARES CREEK PROJECT (K253)

DISTRICT APPROVAL	INITIALS	DATE
LEGAL	MBM	10/14/09
RISK MGMT	N/A	
CONTRACTS	gmk	10/16/09
DEPT DIRECTOR	gmk	10/22/09
DEPUTY EXEC DIR	gmk	10/26/09
GOVERNING BOARD	N/A	gmk

# MEMORANDUM



County Administrator's Office  
1112 Manatee Avenue West  
Bradenton, FL 34205

## MANATEE COUNTY FLORIDA

Phone: 941.745.3717  
Fax: 941.745.3790  
[www.mymanatee.org](http://www.mymanatee.org)

**DATE:** June 8, 2010  
**TO:** Ed Hunzeker, County Administrator  
**FROM:** Marianne Lopata, Agenda Coordinator  
**SUBJECT:** **AGENDA UPDATE FOR MEETING OF JUNE 8, 2010**

### CHANGES TO CONSENT AGENDA

#### ADMINISTRATOR

5. **Grants Administration Policy**  
*ATTACHED: Revised procedures*

#### ATTORNEY

- \* 8. **Wares Creek Dredging Project**  
*Revised agenda memo (provided to Board Records) to authorize County Administrator or designee to execute agreement with Southwest Florida Water Management District*

#### PROPERTY MANAGEMENT

34. **Parcel at Port Manatee**  
*ATTACHED: Agenda Memorandum (revised by County Attorney's Office) and memo from Rodney C. Wade, Deputy County Attorney*

### CHANGES TO ADVERTISED PUBLIC HEARINGS

#### NEIGHBORHOOD SERVICES

50. **CDBG 2010/11 Annual Action Plan**  
*ACTION DESIRED MODIFIED TO: Defer adoption of Resolution and review proposed activities and receive public comments pertaining to the Community Development Block Grant 2010/11 Annual Action Plan*

#### ATTORNEY

54. **Ordinance 10-52 Pain Management Ordinance**  
*ATTACHED: Substitute ordinances (Option A: boundaries include entire County; Option B: boundaries include unincorporated areas only)*

### CHANGE TO REGULAR AGENDA

#### PUBLIC WORKS

55. **Transportation Project Priority Funding**  
*ATTACHED: Revised Page B (with addition of estimated costs and Project 7); and Page C (with additional project and map)*

*Replaced*

# MANATEE COUNTY GOVERNMENT AGENDA MEMORANDUM

<b>SUBJECT</b>	First Amendment to Cooperative Funding Agreement with SWFWMD for Wares Creek	<b>TYPE AGENDA ITEM</b>	Consent
<b>DATE REQUESTED</b>	June 8, 2010	<b>DATE SUBMITTED/REVISED</b>	June 1, 2010
<b>BRIEFINGS? Who?</b>	N/A	<b>CONSEQUENCES IF DEFERRED</b>	N/A
<b>DEPARTMENT/DIVISION</b>	County Attorney's Office	<b>AUTHORIZED BY TITLE</b>	Tedd N. Williams, Jr., County Attorney <i>JWW</i>
<b>CONTACT PERSON TELEPHONE/EXTENSION</b>	William E. Clague, Deputy County Attorney; Ext. 3750 <i>WEC 6/1/10</i>	<b>PRESENTER/TITLE TELEPHONE/EXTENSION</b>	William E. Clague, Deputy County Attorney; Ext. 3750
<b>ADMINISTRATIVE APPROVAL</b>		<i>JWW 6/1/10</i>	

**ACTION DESIRED**  
INDICATE WHETHER 1) REPORT; 2) DISCUSSION; 3) FORM OF MOTION; OR 4) OTHER ACTION REQUIRED

I move to approve execution of the First Amendment to Cooperative Funding Agreement with SWFWMD for the Wares Creek dredging project.

**ENABLING/REGULATING AUTHORITY**  
Federal/State law(s), administrative ruling(s), Manatee County Comp Plan/Land Development Code, ordinances, resolutions, policy

Section 125.01 and 215.245 of Florida Statutes.

**BACKGROUND/DISCUSSION**

The U.S. Army Corps of Engineers ("USACOE") proposes to undertake a flood control dredging project on the East Branch of Cedar Hammock Canal (the "Project"), which will provide flood control and drainage ("PPA") to be entered into between the USACOE and the County, the County will act as local sponsor of the Project with funds of the County, and funds provided to the County pursuant to separate agreement with the U.S. Department of Environmental Protection and the Southwest Florida Water Management District ("SWFWMD").

The County and SWFWMD have entered into an agreement for the Wares Creek Project (K253), dated as of 06C00000084 ("Original SWFWMD Agreement"), providing for SWFWMD participation in the cost of the Project and to clarify SWFWMD's funding of the Project. The County is proposing to amend the Original SWFWMD Agreement to reflect changes to the scope and design of the Project and to clarify SWFWMD's funding of the Project.

*County Administrator to sign.*

*Change to be added to the update memo.*

*DAJ*

COUNTY ATTORNEY REVIEW	
Check appropriate box	
<input type="checkbox"/>	<b>REVIEWED</b> Written Comments: <input type="checkbox"/> Attached <input type="checkbox"/> Available from Attorney (Attorney's initials: _____)
<input type="checkbox"/>	<b>NOT REVIEWED (No apparent legal issues.)</b>
<input type="checkbox"/>	<b>NOT REVIEWED (Utilizes exact form or procedure previously approved by CAO.)</b>
<input checked="" type="checkbox"/>	<b>OTHER</b> CAO Agenda Item

<b>ATTACHMENTS: (List in order as attached)</b>	<b>INSTRUCTIONS TO BOARD RECORDS:</b>
1. Form of First Amendment to Cooperative Funding Agreement	Please provide County Attorney's Office with two (2) executed originals of the Amendment, one to be returned to Board Records upon execution by SWFWMD.

**AGENDA MEMORANDUM** (continued)

<b>COST:</b>	\$45,500,000.00 (total) \$10,989,000.00 (County)	<b>SOURCE (ACCT # &amp; NAME):</b>	
<b>COMMENTS:</b>		<b>AMT./FREQ. OF RECURRING COSTS: (ATTACH FISCAL IMPACT STATEMENT)</b>	