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RESOLUTION NO. R2004-39

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF WELLINGTON, FLORIDA APPROVING AND AUTHORIZING THE MAYOR AND VILLAGE CLERK TO EXECUTE MEMORANDUM OF UNDERSTANDING NO. CP040318 WITH THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT CONCERNING THE FUNDING OF THE ACME BASIN B DISCHARGE PROJECT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Village of Wellington (hereinafter referred to as "Village") and South Florida Water Management District (hereinafter referred to as "SFWMD") have been jointly pursuing solutions and funding alternatives related to the Acme Basin B Discharge in light of the Everglades Forever Act; and

WHEREAS, the Parties acknowledge the need for improved water resource management facilities for the combined Basins A and B of the area now known as Wellington that provides regional multi-purpose objectives including environmental restoration, flood protection, water quality enhancement and recreation and desire to enter into a Memorandum of Understanding; and

WHEREAS, SFWMD and the Village acknowledge both parties are subject to the requirement of the Everglades Forever Act; and

WHEREAS, the Parties are desirous of pursuing the ACME Basin B Discharge Project (hereinafter referred to as "Project") of the Water Preserve Areas segment of the Comprehensive Everglades Restoration Plan to meet these multi-purpose objectives; and

WHEREAS, the Project includes a constructed natural area on Section 24 (as per the legal description attached to the Memorandum of Understanding) lands which will be used for flood attenuation, increase the spatial extent of natural areas and passive recreation opportunities; and

WHEREAS, the Village would agree to contribute up to Six Million Two Hundred Fifty Thousand Dollars (\$6,250,000.00), with a maximum of Three Million Dollars (\$3,000,000.00) in cash contributions, towards the ACME Basin B Discharge Project; and

WHEREAS, Village Staff recommends the Village Council approve and authorize the Mayor and Village Clerk to execute the Memorandum of Understanding on behalf of the Village. Such Memorandum of Understanding No. CP040318 is attached hereto as Exhibit "A".

1 **NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS**
2 **OF ACME IMPROVEMENT DISTRICT, FLORIDA** that:

3
4 **SECTION 1.** The foregoing recitals are hereby affirmed and ratified.

5
6 **SECTION 2.** The Village Council hereby approves the Memorandum of
7 Understanding No. CP040318 with South Florida Water Management District relating
8 to the Acme Basin B Discharge Project, attached hereto as Exhibit "A", and hereby
9 authorizes the Mayor and Village Clerk to execute the agreement.

10
11 **SECTION 3.** This Resolution shall become effective immediately upon adoption.

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13 **PASSED AND ADOPTED** this 10th day of February, 2004.

14
15 **ATTEST:**
16 **FLORIDA**

VILLAGE OF WELLINGTON,

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19 BY: Awilda Rodriguez
20 Awilda Rodriguez, Village Clerk

21
22
23 BY: Thomas M. Wenham
24 Thomas M. Wenham, Mayor

25
26 **APPROVED AS TO FORM AND**
27 **LEGAL SUFFICIENCY**

28
29 BY: Jeffrey S. Kurtz
Jeffrey S. Kurtz, Village Attorney

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE
SOUTH FLORIDA WATER MANAGEMENT DISTRICT
AND
VILLAGE OF WELLINGTON**

MOU No. CP040318

THIS MEMORANDUM OF UNDERSTANDING (“MOU”), made and entered into this 24 day of February, 2004, by and between the **SOUTH FLORIDA WATER MANAGEMENT DISTRICT**, 3301 Gun Club Road, West Palm Beach, Florida, 33406, a public corporation of the State of Florida, (**DISTRICT**) and the **VILLAGE OF WELLINGTON**, a municipal corporation of the State of Florida, acting solely or though its dependent special district Acme Improvement District (jointly referred to as **WELLINGTON**), 14000 Greenbriar Boulevard, Wellington, Florida, 33414, (hereinafter referred to collectively as “the Parties”).

WITNESSETH:

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, **WELLINGTON** is a municipal corporation chartered by the State of Florida and empowered to undertake the actions contemplated by this **MOU**; and

WHEREAS, the Parties acknowledge the need for improved water resource management facilities for the combined basins A and B of the area now known as **WELLINGTON** that provides regional multi-purpose objectives including environmental restoration, flood protection, water quality enhancement and recreation and desire to enter into this **MOU**; and

WHEREAS, the **DISTRICT** and **WELLINGTON** acknowledge both parties are subject to the requirements of the Everglades Forever Act; and

WHEREAS, the Parties are desirous of pursuing the ACME Basin B Discharge Project (“Project”) of the Water Preserve Areas (WPA) segment of the Comprehensive Everglades Restoration Plan (CERP) to meet these multi-purpose objectives; and

WHEREAS, the Project includes a constructed natural area on Section 24 (as per the attached legal description) lands which will be used for flood attenuation, increase the spatial extent of natural areas and passive recreation opportunities; and

WHEREAS, the Parties are desirous of **WELLINGTON** participating in the operation of the constructed natural area on Section 24 consistent with the CERP Project operational manual; and

WHEREAS, the Parties are desirous of completing a Project Implementation Report (PIR) for a selected plan that meets the multi-purpose Project objectives; and

WHEREAS, the Parties agree that it is necessary to complete the Project by the end of 2006; and

WHEREAS, the Design Agreement dated May 12, 2000, between the **DISTRICT** and the United States Army Corps of Engineers (USACE) contemplates that the **DISTRICT** will be the non-federal Sponsor for the Project; and

WHEREAS, the Parties agree that having local governments cost share on CERP Projects with direct local benefits to meet the 50 percent non-federal project cost share is fair and reasonable; and

WHEREAS, Section 163.01, Florida Statutes, allows governmental units to make the most efficient use of their powers by enabling them to cooperate with other governmental units on a basis of mutual advantage; and

WHEREAS, the Parties acknowledge the need to advance from the general requirements of the agreement executed on October 1, 2003 to the more specific requirements of this **MOU**; and

WHEREAS, the Governing Board of the **DISTRICT**, at its February 12, 2004 meeting, has authorized entering into this **MOU** with **WELLINGTON** and

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 recitals set forth above are true and correct and hereby incorporated by reference.
2. The **DISTRICT** agrees to proceed as the non-federal sponsor and continue to justify the Project under the Comprehensive Everglades Restoration Plan.
3. **WELLINGTON** agrees to continue implementation of its existing Best Management Practices (BMP) and phosphorus reduction programs. These programs were designed with a goal of achieving 50 ppb and will be periodically evaluated to incorporate new, improved or enhanced BMPs as appropriate.
4. The **DISTRICT** agrees to include **WELLINGTON** as a cooperative partner in the alternative selection, design and implementation of this Project.
5. **WELLINGTON** agrees to contribute up to \$6,250,000 to the **DISTRICT** that will be part of the state of Florida portion of the Project costs. This contribution will consist of not to exceed \$3,000,000 in cash and the remaining balance in qualifying in-kind work as determined by the Comprehensive Everglades Restoration Plan process. Payment by **WELLINGTON** of

the initial \$1,500,000 hereunder shall be made at time of execution of the construction contract for the Project, and the remaining \$1,500,000 if and when the infrastructure to be developed in the Project is Substantially Completed. WELLINGTON shall not be required to contribute more than the amounts set forth herein to enable the Project. Notwithstanding the foregoing, the DISTRICT and WELLINGTON shall continue to use their best efforts to secure State and Federal funding to defray the costs of this Project.

6. WELLINGTON agrees to provide the DISTRICT with access and use of its rights of way to the canal system to construct the Project as defined in the final Project design and does not materially interfere with WELLINGTON's drainage system. WELLINGTON shall provide the necessary permits to construct the Project in WELLINGTON's right of way as necessary. DISTRICT will construct all the improvements as identified by the Project, including, without limitation, those internal to the WELLINGTON/Acme system. Notwithstanding the foregoing, the Parties may agree that the DISTRICT subcontract with WELLINGTON for the construction of the contemplated improvements via a subsequent and separate agreement.

7. The DISTRICT agrees to provide WELLINGTON the opportunity to operate and maintain all or parts of the Project consistent with the CERP operation manual in order to provide WELLINGTON with the ability to meet recreational land requirements. Without limiting the generality of the foregoing, the DISTRICT has no objection to WELLINGTON's intention that the lands of all or parts of the Project (as per the attached legal description) shall be counted toward WELLINGTON's recreation and Open Space and the Conservation Element of WELLINGTON's Comprehensive Land Use Plan. Operation and maintenance of the facilities to be constructed hereunder shall be consistent with the CERP operation manual and shall be the subject of a subsequent and separate agreement between the Parties.

8. By entering into this MOU, the parties agree they have made their best efforts to be in full compliance with the Everglades Forever Act and CERP Plan. Accordingly, if other issues or future needs arise as a result of changes or amendments to the Everglades Forever Act, the parties shall work jointly and as full and complete partners to address such changes.

9. Should either party fail to fulfill its obligations under this MOU, the other party shall have the right to terminate this MOU by giving written notice of any deficiency. The party in default shall then have sixty (60) calendar days from receipt of notice to correct the deficiency. If the defaulting party fails to correct the deficiency within this time, the non-defaulting party shall have the option to terminate this MOU at the expiration of the sixty (60) day time period.

10. The Project Manager for the DISTRICT is Kathy Collins, at 3301 Gun Club Road, West Palm Beach, Florida 33301, telephone (561) 682-2534. The Project Manager for WELLINGTON shall be named at a later date, however, Gary Clough shall be the point of contact for all communications under this MOU until further notice.

11. This MOU shall commence on the last date of execution by the Parties and shall remain in effect for a period of 5 years unless earlier terminated by either party as provided for in paragraph 9 above or extended by mutual consent of both parties through a duly executed amendment.

12. The Parties to this **MOU** 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 **MOU**.

13. The Parties to this **MOU** shall maintain records and the other party shall have inspection and audit rights as follows:

A. Maintenance of Records: Each party shall maintain all financial and non-financial records and reports directly or indirectly related to this **MOU**. Such records shall be maintained and made available for inspection for a period of five years from the expiration or termination date of this **MOU**.

B. Examination of Records: Each party or its designated agent shall have the right to examine in accordance with generally accepted governmental auditing standards all records directly or indirectly related to this **MOU**. Such examination may be made only within five years from the expiration or termination date of this **MOU** and upon reasonable notice, time and place.

Records which relate to any litigation, appeals or settlements of claims arising from performance under this **MOU** shall be made available until a final disposition has been made of such litigation, appeals or claims.

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

15. Should any term or provision of this **MOU** be held, to any extent, invalid or unenforceable, as against any person, entity or circumstance during the term hereof, by force of any statute, law, or ruling of any forum of competent jurisdiction, such invalidity shall not affect any other term or provision of this **MOU**, to the extent that the **MOU** shall remain operable, enforceable and in full force and effect to the extent permitted by law.

16. Failures or waivers to insist on strict performance of any covenant, condition, or provision of this **MOU** 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 **MOU**. 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 **MOU** 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.

17. This **MOU** 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 **MOU**.

CP040318

18. This **MOU** may be amended only with the written approval of the Parties hereto through a duly executed amendment.

19. **BOTH PARTIES** recognize that any representations, statements or negotiations made by either staff does not suffice to legally bind upon either Party in a contractual relationship unless they have been reduced to writing and signed by an authorized Party representative. This **MOU** shall inure to the benefit of and shall be binding upon the Parties, their respective assigns, and successors in interest.

20. Any dispute arising under this **MOU** which cannot be readily resolved shall be submitted jointly to the signatories of this **MOU** 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.

21. Both parties shall allow public access to all project documents and materials in accordance with the provisions of Chapter 119, Florida Statutes. Should either party assert any exemptions to the requirement 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 party making such assertion.

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

IN WITNESS WHEREOF, the Parties or their duly authorized representatives hereby execute this MOU.

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

By: *Janice J. Saltzman*
for Frank Hayden, Director of Procurement
Date: 2/12/04

Office of Counsel Approved:
By: *Cathy Linton*
Date: 2/11/04

SFWMD Procurement Approved
By: *Nguyen*
Date: 2/11/04

VILLAGE OF WELLINGTON

By: *Thomas M. Wenham*
Mayor Thomas M. Wenham
Date: 2/24/04

ATTEST:
By: *Awilda Rodriguez*
Village Clerk Awilda Rodriguez

Legal Form Approved:
By: *Jeffrey S. Kurtz*
Village Attorney Jeffrey S. Kurtz