

RESOLUTION NO. R2003-201

**A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF WELLINGTON, FLORIDA APPROVING A COOPERATIVE/COST SHARE AGREEMENT BETWEEN SOUTH FLORIDA WATER MANAGEMENT DISTRICT AND THE VILLAGE OF WELLINGTON FOR THE CONSTRUCTION OF WATER SYSTEM TO SERVICE RUSTIC RANCHES; AND PROVIDING AN EFFECTIVE DATE.**

**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**, South Florida Water Management District ("District") is the local sponsor of the Federal project known as the Canal C-51 West End/STA-1 East Project ("STA-1E"); and

**WHEREAS**, The Federal Government is currently constructing STA-1E which includes the construction of stormwater treatment areas, discharge canal, and seepage canal adjacent to the north and west boundaries of the Rustic Ranches subdivision; and

**WHEREAS**, the Village of Wellington and the District are pursuing the implementation of a project on the south side of the Rustic Ranches subdivision as part of the Comprehensive Everglades Restoration Project; and

**WHEREAS**, the Rustic Ranches subdivision is within the service area of the Village's water utilities system and there is capacity to provide water system service to Rustic Ranches and such water system service would facilitate the construction and operation of the STA-1E; and

**WHEREAS**, the Village Council and District believe that it is in their mutual interest to enter into an Agreement to extend the Village's existing water system to provide service to Rustic Ranches. The preliminary estimate for design and construction is Two Million Dollars (\$2,000,000.00); and

**WHEREAS**, the Village and the District agree that the Village of Wellington will fund that portion of the project to extend water service to the boundary of Rustic Ranches which results in an estimated cost share for the Village of One Million Dollars (\$1,000,000.00) and the district will fund that portion of the project within Rustic Ranches which results in an estimated cost share for the District on One Million Dollars (\$1,000,000.00) excluding acquisition of easements as required;

1           **WHEREAS**, a Cooperative/Cost Share Agreement between the District and the  
2 Village has been prepared and is attached hereto and Village staff recommends that  
3 Council accept and approve the Agreement as drafted.  
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5           **NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF THE**  
6 **VILLAGE OF WELLINGTON, FLORIDA, that:**  
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8           **SECTION 1.** The foregoing recitals are hereby affirmed and ratified.  
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10           **SECTION 2.** The Village Council hereby accepts and approves the Cooperative/Cost  
11 Share Agreement between the District and the Village and hereby authorizes the Mayor and  
12 Village Clerk to execute the Agreement which is attached at Exhibit "A".  
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14           **SECTION 3.** This Resolution shall become effective immediately upon adoption.  
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16           **PASSED AND ADOPTED** this 9<sup>th</sup> day of December, 2003.  
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18 **ATTEST:**

**VILLAGE OF WELLINGTON, FLORIDA**

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21 BY:   
22 Awilda Rodriguez, Village Clerk  
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20  
21 BY:   
22 Thomas M. Wenham, Mayor  
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24 **APPROVED AS TO FORM AND**  
25 **LEGAL SUFFICIENCY**

26  
27  
28 BY:   
29 Village Attorney  
30  
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**COOPERATIVE/COST SHARE AGREEMENT  
BETWEEN THE  
SOUTH FLORIDA WATER MANAGEMENT DISTRICT  
AND  
VILLAGE OF WELLINGTON  
FOR CONSTRUCTION OF WATER SYSTEM TO SERVICE RUSTIC RANCHES**

<sup>jb</sup> **THIS AGREEMENT**, made and entered into this 23<sup>rd</sup> day of January, 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 (**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 **AGREEMENT**; and

**WHEREAS**, the **DISTRICT** is the local sponsor of the Federal project known as the Canal C-51 West End/STA-1 East Project (STA-1E); and

**WHEREAS**, the Federal Government is currently constructing STA-1E which includes the construction of stormwater treatment areas, discharge canal, and seepage canal adjacent to the north and west boundaries of the Rustic Ranches Subdivision; and

**WHEREAS**, the **PARTIES** are also pursuing the implementation of a project on the south side of the Rustic Ranches subdivision as part of the Comprehensive Everglades Restoration Project; and

**WHEREAS**, the Rustic Ranches subdivision is within the service area of **WELLINGTON**'s water utilities system and there is capacity to provide water system service to Rustic Ranches; and

**WHEREAS**, such water system service would facilitate the construction and operation of the STA-1E Project; and

**WHEREAS**, the **PARTIES** believe that it is in their mutual interest to enter into an **AGREEMENT** to extend **WELLINGTON**'s existing water system to provide service to Rustic Ranches; and

**WHEREAS**, the preliminary estimate to design and construct the water system extension to provide service to the Rustic Ranches subdivision (**PROJECT**) is Two Million Dollars and No Cents (\$2,000,000.00), (**PROJECT COST**) excluding acquisition of easements as required; and

**WHEREAS** the **PARTIES** agree that **WELLINGTON** will fund that portion of the **PROJECT** to extend water service to the boundary of Rustic Ranches which results in an estimated cost share for the Village of One Million Dollars and No Cents (\$1,000,000.00) and the **DISTRICT** will fund that portion of the **PROJECT** within Rustic Ranches which results in an estimated cost share for the **DISTRICT** of One Million Dollars and No Cents (\$1,000,000.00) excluding acquisition of easements as required; 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

**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:

#### **ARTICLE 1 – RESPONSIBILITIES OF THE PARTIES**

1.1. The recitals set forth above are true and correct and hereby incorporated by reference.

1.2. **WELLINGTON** agrees to design, permit, and construct the water system to provide service to Rustic Ranches in accordance with **WELLINGTON**'s proposed plan dated August 18, 2003.

1.3. The **DISTRICT** agrees to provide funding for that portion of the **PROJECT** that lies within the boundaries of Rustic Ranches in an amount not to exceed One Million Dollars and No Cents (\$1,000,000.00).

1.4. In the event that the **DISTRICT** obtains funding towards this **PROJECT** from the U.S. **ARMY CORP OF ENGINEERS**, that funding received from the **CORPS** will be applied towards the **PROJECT COST** and reduce the **PARTIES** cost share equally.

1.5. The **PARTIES** anticipate that non-exclusive easements within Rustic Ranches subdivision (including roadways in the subdivision), can be obtained by **WELLINGTON** at no cost to the **DISTRICT** and/or **WELLINGTON** on a voluntary basis for the benefit of the project. The **DISTRICT** agrees to assist **WELLINGTON** in acquiring any necessary real property interests by obtaining all the title work that may be required to prepare the easements if necessary.

1.6. **WELLINGTON** shall not award a construction contract for work within the boundaries of Rustic Ranches subdivision until the necessary easements are obtained. **WELLINGTON** agrees to provide staff assistance to the **DISTRICT** in meeting with residents with respect to the acquisition of said easements.

1.7. **WELLINGTON** agrees to implement the water system project to Rustic Ranches in accordance with the attached project schedule. A monthly update, in the form of a letter report, shall be submitted to the **DISTRICT** that tracks the progress of the project and the expenditures of the **DISTRICT**'s and **WELLINGTON**'s funds.

1.8 If the **PROJECT** cannot be implemented in accordance with **WELLINGTON**'s proposed plan dated August 18, 2003, the plan and the cost share allocation can be revised in writing and approved by both parties. If the **PROJECT** can not be implemented in accordance with Proposed Plan, the agreement may be terminated and the unused portion of the funds shall be returned to the **DISTRICT** within 60 days of termination.

## **ARTICLE 2 – METHOD OF PAYMENT**

2.1. **WELLINGTON** shall provide monthly invoices to the **DISTRICT**. The **DISTRICT** will review **WELLINGTON**'s monthly invoices for approval. **WELLINGTON**'s invoices shall reference the **DISTRICT**'s Contract Number and shall be sent to the following **DISTRICT** address: South Florida Water Management District, Attn: Catherine E. Richards, Procurement Department, P.O. Box 24680, West Palm Beach, FL 33416-4680. **WELLINGTON** should not submit invoices to any other address at the **DISTRICT**.

2.2. All invoices shall be substantiated by supporting documentation.

2.3. The **DISTRICT** shall pay the full amount of the invoice within thirty days (30 days) following **DISTRICT**'s receipt and acceptance of the invoice.

## **ARTICLE 3 – TERM OF AGREEMENT**

3.1. The period of performance of this **AGREEMENT** shall commence on the last date of execution by the parties and shall continue until the completion of the water system project, but in no event longer than two (2) years, unless extended by mutual written agreement of both **PARTIES**.

## **ARTICLE 4 – TERMINATION**

4.1. Should either party fail to fulfill its obligations under this **AGREEMENT**, the other party shall have the right to terminate this **AGREEMENT** by giving written notice of any deficiency. The party in default shall then have one hundred twenty (120) 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 **AGREEMENT** at the expiration of the one hundred twenty (120) day time period.

4.2. Either party may terminate this **AGREEMENT** at any time prior to award of bid and execution of the contract for construction for convenience upon sixty (60) calendar days prior written notice to the other party. In the event of termination, all funds not expended by **WELLINGTON** for authorized work performed through the termination date shall be returned to the **DISTRICT**.

**ARTICLE 5 - NOTICE**

5.1. Notices related to this **AGREEMENT** will be satisfied by sending notice by certified U.S. mail to the following addresses of the parties:

As to the **DISTRICT**:

Mr. Jim Sturgis, Project Manager  
South Florida Water Management District  
3301 Gun Club Road  
West Palm Beach, FL 33416  
Phone: 561-682-6288

As to **WELLINGTON**:

Mr. Gary Clough, P.E.  
Director of Environmental & Engineering Services  
Village of Wellington  
14000 Greenbriar Boulevard  
Wellington, FL 33414  
Phone: 561-791-4112

5.2. All correspondence under this **AGREEMENT** shall reference the **DISTRICT'S** Contract Number CE040779.

**ARTICLE 6 – INDEMNIFICATION AND INSURANCE**

6.1. **WELLINGTON**, 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 **WELLINGTON** and the officers, employees, servants, and agents thereof. **WELLINGTON** 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 **WELLINGTON**, its officers and employees while acting within the scope of their employment during performance of under this **AGREEMENT**. This section is subject to 768.28 F.S.

6.2. In the event that **WELLINGTON** subcontracts any part or all of the work hereunder to any third party, **WELLINGTON** shall require each and every subcontractor to identify the **DISTRICT** as an additional insured on all insurance policies as required by **WELLINGTON**. Any contract awarded by **WELLINGTON** shall include a provision whereby **WELLINGTON's** subcontractor agrees to defend, indemnify, and pay on behalf, save and hold the **DISTRICT** harmless from all damages arising in connection with **WELLINGTON's** subcontract.

6.3. **WELLINGTON** 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.

**ARTICLE 7 - RELATIONSHIP BETWEEN THE PARTIES**

7.1. 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, WELLINGTON**, 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.

#### **ARTICLE 8 - STANDARDS OF COMPLIANCE**

8.1. 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**

8.2. **WELLINGTON**, 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 **WELLINGTON**, upon request, as to any such laws of which it has present knowledge.

#### **ARTICLE 9 - MAINTENANCE OF RECORDS**

9.1. **WELLINGTON** shall allow public access to all project documents and materials in accordance with the provisions of Chapter 119, Florida Statutes. Should **WELLINGTON** 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 **WELLINGTON**.

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

A. Maintenance of Records: **WELLINGTON** 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**, **WELLINGTON** shall extend the period of maintenance for all records relating to the **AGREEMENT** until the final disposition of the legal dispute, and all such records shall be made readily available to the **DISTRICT**.

**ARTICLE 10 - APPLICABLE LAW**

10.1. 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.

**ARTICLE 11 - GENERAL PROVISION**

11.1. **WELLINGTON** 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.

11.2. 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.

11.3. Should any term or provision of this **AGREEMENT** 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 **AGREEMENT**, to the extent that the **AGREEMENT** shall remain operable, enforceable and in full force and effect to the extent permitted by law.

11.4. 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.

11.5. 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.

11.6. 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**.

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

11.8. Notwithstanding any provisions of this **AGREEMENT** to the contrary, the parties shall not be held liable for any failure or delay in the performance of this **AGREEMENT** that arises from fires, floods, strikes, embargoes, acts of the public enemy, unusually severe weather, outbreak of war, restraint of Government, riots, civil commotion, force majeure, act of God, or for any other cause of the same character which is unavoidable through the exercise of due care and beyond the control of the parties. Failure to perform shall be excused during the continuance of such circumstances, but this **AGREEMENT** shall otherwise remain in effect.

11.9. This Agreement shall not be construed against the party who drafted the same.

11.10 This Agreement shall be construed in accordance with the laws of the State of Florida.

11.11 This Agreement is binding upon the parties hereto, their heirs, successors, and assignees.

**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**

**VILLAGE OF WELLINGTON**

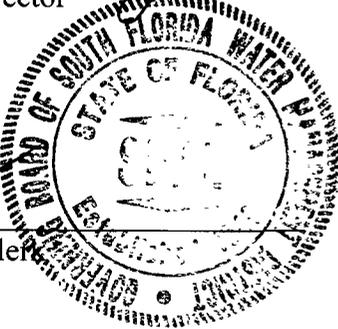
By: *Frank Hagedorn*  
Executive Director

By: *Thomas M. Wenham*  
**Thomas M. Wenham, Mayor**

ATTEST:

ATTEST:

By: *[Signature]*  
DISTRICT Clerk



By: *Awilda Rodriguez*  
**Awilda Rodriguez, Village Clerk**

Legal Form Approved:

Legal Form Approved:

By: *[Signature]*  
Office of Counsel

By: *Jeffrey S. Krutz*  
Village Attorney