

OFFICE OF THE COUNTY ATTORNEY



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Katharine M. Zamboni, Assistant County Attorney
Alexandria C. Nicodemi, Assistant County Attorney

MEMORANDUM

DATE: July 31, 2018

TO: Sia Mollanazar, P.E., Deputy Director – Engineering Services, Public Works Department

THROUGH: Mitchell O. Palmer, County Attorney *MOP 7-31-18*

FROM: Katharine M. Zamboni, Assistant County Attorney *KMZ*

RE: **SWFWMD Cooperative Agreement for the Collection of Near Real-Time Stream and Rainfall Data
Request for Legal Services; CAO Matter No. 2018-0273**

The Public Works Department requested legal review of a draft Cooperative Agreement between Manatee County and the Southwest Florida Water Management District (SWFWMD), which provides for access to near real-time stream and rainfall data collection.

Brief Answer:

I have reviewed the Cooperative Agreement, as revised by SWFWMD, dated July 26, 2018, and find it to be legally sufficient

Discussion:

On May 31, 2018, I sent SWFWMD comments and suggested edits to the initial draft Cooperative Agreement, dated May 2, 2018. As a result of my correspondence with SWFWMD's attorney, SWFWMD agreed to incorporate a number of revisions affecting paragraph 2, as well as paragraphs 7 and 10, and the County's signature block. On July 26, 2018, SWFWMD transmitted a revised version of the Cooperative Agreement to the County.

* Board Certified in Construction Law

** Board Certified in City, County, & Local Government Law

Conclusion:

The revised Cooperative Agreement provided by SWFWMD is legally sufficient and consistent with the County's Floodplain Management Ordinance No. 13-39, by supporting the modernization of floodplain data that will be submitted to the Federal Emergency Management Agency.

I trust this response adequately addresses your request. Should you have any further questions, please do not hesitate to contact this Office

KMZ

Copies to: Ed Hunzeker, County Administrator
Dan Schlandt, Deputy County Administrator
Cheri Coryea, Deputy County Administrator
Chad Butzow, P.E., Interim Director, Public Works Department
Thomas Gerstenberger, P.E., Stomwater Engineering Division Manager, Public Works Department
Kenneth Kohn, P.E., Project Engineer II, Public Works Department
Francisca Backenstross, Sr. Administrative Specialist, Public Works Department



An Equal Opportunity Employer

Southwest Florida Water Management District

2379 Broad Street, Brooksville, Florida 34604-6899
(352) 796-7211 or 1-800-423-1476 (FL only)
WaterMatters.org

Bartow Office
170 Century Boulevard
Bartow, Florida 33830-7700
(863) 534-1448 or
1-800-492-7862 (FL only)

Sarasota Office
6750 Fruitville Road
Sarasota, Florida 34240 9711
(941) 377-3722 or
1-800-320-3503 (FL only)

Tampa Office
7601 U.S. 301 North (Fort King Highway)
Tampa, Florida 33637-6759
(813) 985-7481 or
1-800-836-0797 (FL only)

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Hernando, Marion

Michelle Williamson
Hillsborough

Brian J. Armstrong, P.G.
Executive Director

July 26, 2018

Mr. Kenneth Kohn, P.E.
Manatee County Public Works Department
Stormwater Management Division
1022 26th Avenue East
Bradenton, FL 34208

Subject: Cooperative Agreement-Provide Access to Near Real Time District
Data Collection, Agreement No. 15MA0000001-R

Dear Mr. Kohn:

Enclosed are two originals of the above-referenced agreement between the Southwest Florida Water Management District and Manatee County. Please have both originals signed, dated and return the executed originals to my attention.

If you have any questions, please contact me at extension 4284 at the Brooksville office.

Sincerely,

Granville Kinsman, P.G.
Manager
Hydrologic Data Section
Data Collection Bureau

GK/lc
Enclosures (2)

RECEIVED

JUL 30 2018

PUBLIC WORKS
ENGINEERING DIVISION

**COOPERATIVE AGREEMENT
BETWEEN THE
SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT
AND
MANATEE COUNTY
TO
PROVIDE ACCESS TO NEAR REAL-TIME COUNTY DATA COLLECTION**

This COOPERATIVE AGREEMENT is made and entered into 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, hereinafter referred to as the "DISTRICT," and MANATEE COUNTY, a political subdivision of the State of Florida, whose address is 1112 Manatee Avenue West, Bradenton, Florida 34205, hereinafter referred to as the "COUNTY."

WITNESSETH:

WHEREAS, the DISTRICT and the COUNTY entered into an agreement effective December 15, 2015 (Agreement No. 15MA0000001), as amended June 1, 2016 and October 12, 2017, hereinafter referred to as the "Existing Agreement," that allowed the COUNTY to electronically access certain data in near real-time data, hereinafter referred to as the "PROJECT;" and

WHEREAS, the DISTRICT and the COUNTY wish to terminate the Existing Agreement and replace it with this Agreement to include provisions that reflect a change in PROJECT scope and responsibilities.

NOW, THEREFORE, the DISTRICT and the COUNTY, in consideration of the mutual terms, covenants and conditions set forth herein, hereby mutually agree as follows:

1. **PROJECT MANAGER AND NOTICES.** Each party hereby designates the employee set forth below as its respective Project Manager. Project Managers shall assist with PROJECT coordination and shall be the party's prime contact person. Notices or reports shall be sent to the attention of the parties' Project Manager by U.S. mail, postage paid, to the parties' addresses as set forth below:

Project Manager for the DISTRICT:
Granville Kinsman, P. G.
Southwest Florida Water Management District
2379 Broad Street
Brooksville, Florida 34609

Project Manager for the COUNTY:
Kenneth Kohn
Manatee County Public Works
1022 26th Avenue East
Bradenton, Florida 34208

2. **SPECIFIC PROJECT-RELATED PROVISIONS.** The COUNTY shall establish and maintain seventeen surface water and rainfall monitoring sites and one rain gauge to collect near real-time data using an electronic data collection and transmission system and provide such near real-time data to the DISTRICT's electronic data collection and transmission system.

- 2.1 The COUNTY shall submit to the DISTRICT data from the COUNTY'S sites through electronic data transfer of 15 – minute measurements on an hourly schedule. The COUNTY will bear the costs for all data transmissions from these sites, and provide a secure transfer method for the DISTRICT to obtain data from these sites.
- 2.2 The parties agree to consider all data collected through the COUNTY'S and the DISTRICT'S electronic data collection and transmission systems as provisional data, subject to verification and change by the parties.
- 2.3 Neither the COUNTY nor the DISTRICT shall be liable for missing data due to malfunctions or system failures.
- 2.4 The COUNTY shall not be liable for the accuracy, availability or interpretation of any data received by the DISTRICT from the near real-time data collection sites.
- 2.5 The COUNTY shall purchase and install the equipment and materials necessary to instrument the telemetry sites to DISTRICT standards. The COUNTY shall only purchase equipment set forth by the DISTRICT specifications. Programming and configuration of equipment will conform to DISTRICT standards. No substitutions will be allowed without written approval of the DISTRICT. The COUNTY shall maintain ownership of the equipment it has purchased.
- 2.6 The DISTRICT will be responsible for calibration and preventive maintenance of the COUNTY'S equipment at sites that have been set up to work with the COUNTY'S and DISTRICT'S electronic data collection and transmission systems. The DISTRICT will conduct monthly data verification visits to ensure data are being accurately measured, and identify any problems that need to be addressed. The DISTRICT will notify the COUNTY if data or equipment problems are detected.
- 2.7 The COUNTY will be responsible for repairing and replacing all components required to maintain station operability and data accuracy. The COUNTY or its contractors will calibrate all rain gauges at least annually and provide the test and calibration records to the DISTRICT. The COUNTY or its contractors will provide the DISTRICT all records of any physical, programming or measurement change made to the COUNTY'S equipment within five working days of the change.
- 2.8 The DISTRICT has established permanent elevation benchmarks at each of the following eight (8) data collection sites: Gamble Creek at Mulholland Road, Frog Creek at 1-75 (Buffalo Road), Braden River at River Club Boulevard, Cypress Strand at Kay Road Northeast, Government Hammock at North River Village, Palma Sola Drain at 75th Street West, Pearce Drain at 63rd Avenue East, and Wares Creek at DeSoto Square Mall; and surveyed them to establish elevations relative to the North American Vertical Datum of 1988 (NAVD88). Water level elevation data will be measured relative to the NAVD88 datum. Copies of the signed and sealed survey for the benchmarks have been provided to the COUNTY Project Manager.

- 2.9 The COUNTY has established two (2) permanent elevation benchmarks within 50 feet of each of the following nine (9) sites: Mill Creek at 131st Street, Bowlees Creek at 63rd Avenue, Warners Bayou at Riverview Boulevard, Sugarhouse/Glenn Creek at 27th Street East, Wares Creek at 12th Avenue West, McMullen Creek at 28th Avenue East, Bowlees Creek at 44th Avenue East, Gap Creek at 45th Street East, and Slaughter Drain at Erie Road surface water monitoring sites; delivered a certified survey report publishing elevation relative to the North American Vertical Datum of 1988 (NAVD88); and installed direct-reading USGS Style A staff gauge calibrated to the NAVD88 datum within the identified channels. Water level elevation data will be measured relative to the NAVD88 datum. Copies of the signed and sealed survey for the benchmarks and staff gauge have been provided to the DISTRICT Project Manager.
3. **CONTRACT PERIOD.** This Agreement shall be effective upon execution by both parties and shall remain in effect until terminated by either party in accordance with Paragraph 9, **TERMINATION** of this Agreement. Upon execution of this Agreement by both parties, the Existing Agreement shall terminate.
 4. **CONTINGENCY.** Both parties' performance obligations under this Agreement are contingent upon their respective Board's appropriation of funds in each fiscal year of this Agreement.
 5. **ACCESS.** The COUNTY hereby grants permission to the DISTRICT and any of its agents, contractors, employees, or any other individual that is performing any of the DISTRICT'S obligations under this Agreement, to enter upon the COUNTY'S real property to access the eighteen stations identified in Exhibit "A".
 6. **LIABILITY.** Each party hereto agrees to indemnify and hold the other harmless, to the extent allowed under Section 768.28, F.S., from all claims loss, damage and expense, including attorneys' fees and costs, and attorneys' fees and costs on appeal, arising from the negligent acts or omissions of the indemnifying party's officers, employees, contractors and agents related to its performance under this Agreement. This provision shall survive the expiration or termination of this Agreement.
 7. **PROJECT RECORDS AND DOCUMENTS.** The parties recognize and agree that the parties are subject to the Public Records provisions of Chapter 119, Florida Statutes, and that all documents, papers, letters and other materials made or received by either party in conjunction with the PROJECT are subject to such provisions.
 8. **DISTRICT RECOGNITION.** The COUNTY shall recognize the DISTRICT'S participation in any reports, models, or other documents intended for public distribution resulting from this Agreement.
 9. **TERMINATION.** This Agreement may be terminated by either party without cause upon fifteen (15) days written notice to the other party. Termination shall be effective upon the fifteenth (15th) day after the non-terminating party's receipt of said notice.

10. **ASSIGNMENT.** Neither party may assign or transfer its rights or obligations under this Agreement, including any operation or maintenance duties related to the PROJECT, without prior written consent of the other party.
11. **THIRD PARTY BENEFICIARIES.** Nothing in this Agreement shall be construed to benefit any person or entity not a party to this Agreement.
12. **MODIFICATIONS.** This Agreement constitutes the entire agreement between the parties and may be amended only in writing, signed by all parties to this Agreement.

The remainder of this page intentionally left blank.

IN WITNESS WHEREOF, the parties hereto, or their lawful representatives, have executed this Agreement on the day and year set forth next to their signatures below.

SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT

By: _____
Sandra A. Will, P. G. Date
Data Collection Bureau Chief

MANATEE COUNTY, a political subdivision of the State of Florida
By: its Board of County Commissioners

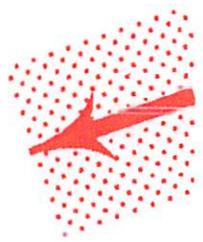
By: _____
Chairperson

Date

ATTEST: ANGELINA COLONNESO
CLERK OF THE CIRCUIT COURT AND COMPTROLLER

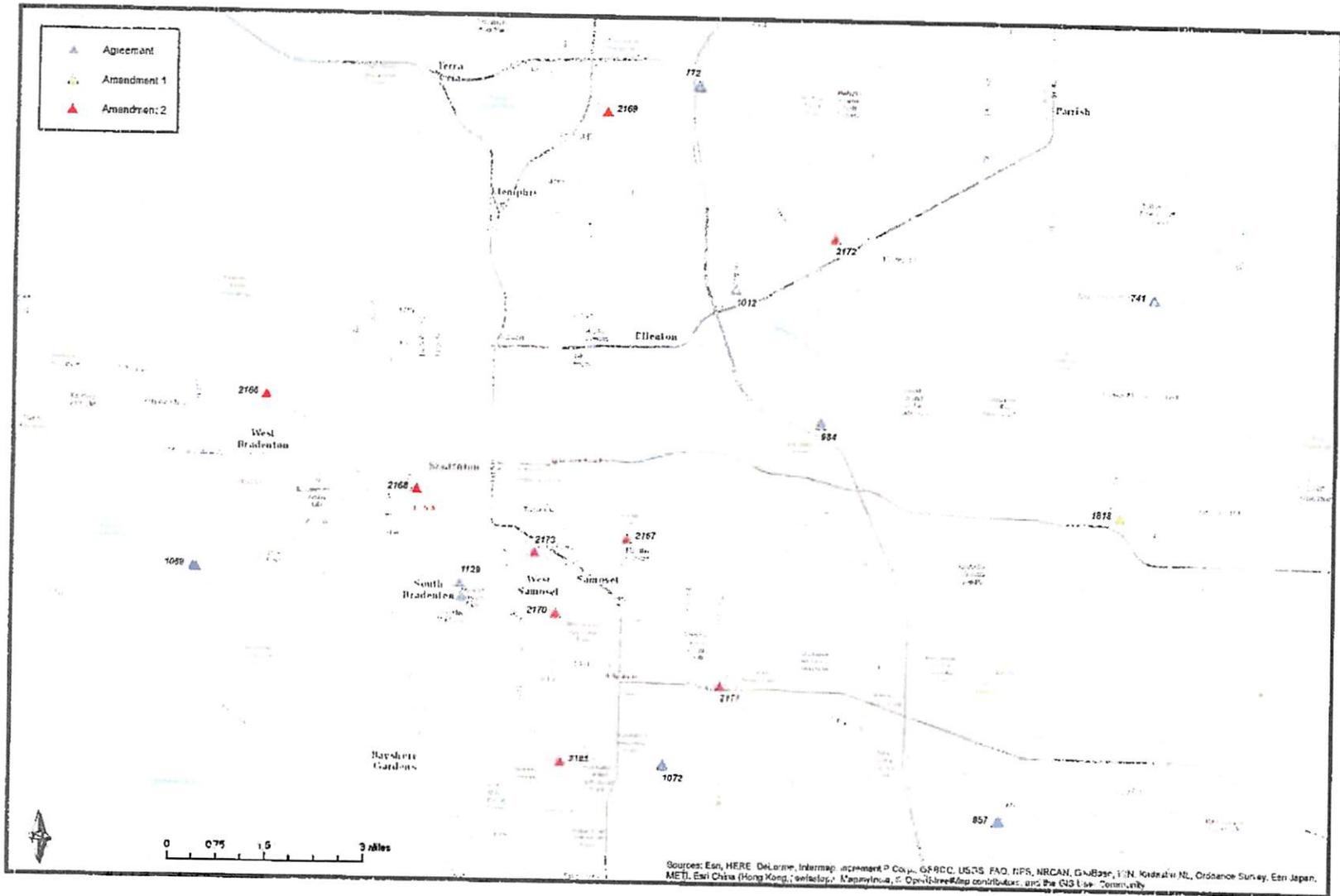
By: _____
Deputy Clerk

COOPERATIVE AGREEMENT
BETWEEN THE
SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT
AND
MANATEE COUNTY
TO
PROVIDE ACCESS TO NEAR REAL-TIME COUNTY DATA COLLECTION



DISTRICT APPROVAL	INITIALS	DATE
LEGAL	_____	_____
RISK MGMT	_____	_____
CONTRACTS	_____	_____
BUREAU CHIEF	_____	_____
DIRECTOR	_____	_____
GOVERNING BOARD	_____	_____

Exhibit "A"



Station (Map) ID	Site Name	Stage Site ID	Rainfall Site ID
741	GAMBLE CREEK AT MULHOLLAND ROAD	25767	25768
772	FROG CREEK AT I-75 (BUFFALO ROAD)	26254	26255
957	BRADEN RIVER AT RIVER CLUB BOULEVARD	26251	26250
984	CYPRESS STRAND AT KAY ROAD NORTHEAST	25769	25770
1012	GOVERNMENT HAMMOCK AT NORTH RIVER VILLAGE	26205	25771
1069	PALMA SOLA DRAIN AT 75th STREET WEST	26206	26238
1072	PEARCE DRAIN AT 63rd AVENUE EAST	26253	26252
1129	WARES CREEK AT DESOTO SQUARE MALL	26208	26207
1818	MILL CREEK AT 131st STREET	869132	869133
2165	BOWLEES CREEK AT 63rd AVENUE	890042	890043
2166	WARNERS BAYOU AT RIVERVIEW BOULEVARD	890044	890045
2167	SUGARHOUSE/GLENN CREEKS AT 27th STREET EAST	890046	890047
2168	WARES CREEK AT 12th AVENUE WEST	890048	890049
2169	McMULLEN CREEK AT 28th AVENUE EAST	890050	890051
2170	BOWLEES CREEK AT 44th AVENUE EAST	890052	890053
2171	GAP CREEK AT 45th STREET EAST	890054	890055
2172	SLAUGHTER DRAIN AT ERIE ROAD	890056	890057
2173	MANATEE COUNTY PUBLIC WORKS	---	890053