



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)  
TDD only: 1-800-231-6103 (FL only)  
On the Internet at [WaterMatters.org](http://WaterMatters.org)

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

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

**Tampa Service Office**  
7601 Highway 301 North  
Tampa, Florida 33637-6759  
(813) 985-7481 or  
1-800-836-0797 (FL only)

- Ronald E. Oakley**  
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Hillsborough
  
- David L. Moore**  
Executive Director
- William S. Bilenky**  
General Counsel

July 29, 2010



Mr. Bradley Arnold  
County Administrator, Sumter County  
910 North Main Street, Room 201  
Bushnell, Florida 33513

Subject: Quitclaim Deeds Related to the Agreement for the Transfer of Property to Sumter County - SWF Parcel No. 19-528-146S

Dear Mr. Arnold:

Enclosed you will find two fully executed quitclaim deeds for the purpose of completing the transfer of title over the Lake Panasoffkee spoil site from the Southwest Florida Water Management District to Sumter County. Please record the documents with the Sumter County Clerk of Courts and inform me when this process is complete. The District has retained an original copy of each deed for its records.

It is fortunate that the District and the County have been able to coordinate efforts that will result in long-term recreational benefits for the public. Thank you for your cooperation and good luck with the County's development plans for the property.

As always, please feel free to contact me if you have any questions or would like to discuss the matter in further detail. I can be reached at 352-796-7211, extension 4581 or via email at [chuck.lane@watermatters.org](mailto:chuck.lane@watermatters.org).

Sincerely,

Chuck Lane  
Senior Land Use Specialist  
Land Resources Department

CL:sp  
Attachments (2)

cc: Eric Sutton  
Mike Holtkamp  
Will Miller

Copy To:

Comms	_____	Pub Wks Div	_____
Co Atty	_____	Bldg & Dev Div	_____
Co Fin	_____	Admin Div	_____
Other	_____	Com Svcs Div	_____

This Document Prepared By and Return to:  
Southwest Florida Water Management District  
Land Resources Department  
2379 Broad Street  
Brooksville, Florida 34604-6899

Lake Pan Spoil Site Surplus  
SWF Parcel No. 19-528-146S

## **QUIT CLAIM DEED**

**THIS DEED**, made this \_\_\_\_ day of \_\_\_\_\_, 2010, by Southwest Florida Water Management District, a public corporation created by Chapter 61-691, Laws of Florida as amended whose address is 2379 Broad Street, Brooksville, Florida 34604-6899, referred to as the "Grantor", and Sumter County a political subdivision of the State of Florida, whose mailing address is 910 North Main Street, Bushnell, Florida 33513, hereinafter referred to as the "Grantee".

**WHEREAS**, Grantor and Grantee entered into an Agreement for the Transfer of Property to Sumter County on May 26, 2009, recorded with the Sumter County Clerk of the Circuit Court in official records book 2080 and page 284 (Agreement), and amended on June 22, 2010, recorded in official records book 2207 and page 35, to set forth their respective rights and responsibilities with respect to the District's conveyance of the Property to the County and to establish the parameters of the use of the Property thereafter.

**WITNESSETH** that the Grantor, for and in consideration of Ten Dollars (\$10.00) and other good and valuable considerations to them in hand paid by the Grantee, receipt whereof is hereby acknowledged, has remised, released and quitclaimed, and by these presents does remise, release and quitclaim unto the Grantee, its successors and assigns forever, all the right, title interest claim and demand which the said party of the first part has in and to the following real property, situate lying and being in the County of Sumter, State of Florida and described in Exhibit "A" attached hereto and incorporated herein by reference (the "Property").

**TO HAVE AND TO HOLD** the same, together with all the hereditaments and appurtenances thereunto belonging or anywise appertaining to the Grantor provided the following: the Property will not be used for the construction and operation of any type or classification of landfill; construction or placing of buildings, roads, signs, utilities or other structures and facilities on or above the ground is prohibited on that portion of the Property between the toe of the west slope of the existing western berm to the western boundary line of the Property described in Exhibit "B" incorporated herein and attached hereto; the Agreement is attached hereto as Exhibit "C" and is hereby incorporated and made a part of this Quitclaim Deed. The District will have the right to enter the Property at its sole discretion for the purpose of removing material from the Property until September 30, 2018, in accordance with the Agreement as amended. All covenants, terms, and agreements herein contained run with the land and shall inure to the benefit of and be binding upon the parties hereto and their respective executors, administrators, personal representatives, heirs, successors and assigns.

**IN WITNESS WHEREOF**, the Grantor has caused these presents to be executed in its name by its Governing Board acting by the Chair of said board, the day and year first above written.

Lake Pan Spoil Site Surplus  
SWF Parcel No. 19-528-146S

**Signed, sealed and delivered in the presence of:**

ATTEST: *H. Paul Senft, Jr.*  
H. Paul Senft, Jr., Secretary  
Southwest Florida Water Management District

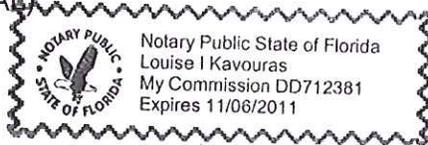
(OFFICIAL SEAL)

BY: *Ronald E. Oakley*  
Ronald E. Oakley, Chairman  
Southwest Florida Water Management District

STATE OF FLORIDA  
COUNTY OF HERNANDO

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of JULY, 2010 by Ronald E. Oakley and H. Paul Senft, Jr., Chairman and Secretary, respectively, of the Southwest Florida Water Management District. They are personally known to me.

(SEAL)



*Louise I. Kavouras*  
Notary Public

Print Name: LOUISE I. KAVOURAS  
Commission Number: DD 712381  
Expiration Date: 11-6-2011

APPROVED BY:	INITIALS	DATE
ATTORNEY	<u><i>PS</i></u>	<u>6/10/10</u>
MANAGER	<u><i>WWS</i></u>	<u>6-11-10</u>
DIRECTOR	<u><i>es</i></u>	<u>6/15/10</u>
DEPUTY EXEC DIR	<u><i>W</i></u>	<u>6-21-10</u>

EXHIBIT "A"

Legal Description 19-528-146S (formerly Parcel No. 19-528-135)

THE SOUTH 1/2 OF SECTION 16, TOWNSHIP 20 SOUTH, RANGE 22 EAST, SUMTER COUNTY, FLORIDA, LYING WEST OF INTERSTATE HIGHWAY No. 75;

AND

ALL OF SECTION 21, TOWNSHIP 20 SOUTH, RANGE 22 EAST, LYING WEST OF INTERSTATE HIGHWAY No. 75, LESS THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION;

AND

THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 21, TOWNSHIP 20 SOUTH, RANGE 22 EAST, SUMTER COUNTY, FLORIDA, LESS THOSE PARCELS TAKEN BY STATE ROAD DEPARTMENT OF FLORIDA IN EMINENT DOMAIN PROCEEDING AND DESCRIBED AS FOLLOWS:

BORROW PIT No. 3 LEFT (WEST) STATION 632+33 BEING THE EAST 1300 FEET OF THE WEST 1310 FEET OF THE SOUTH 1300 FEET, EXCEPT THE WEST 300 FEET OF THE NORTH 250 FEET THEREOF, OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 21, TOWNSHIP 20 SOUTH, RANGE 22 EAST, ALSO HAUL ROAD FOR BORROW PIT No. 3 (PART) THE SOUTH 50 FEET OF THAT PART OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 21, TOWNSHIP 20 SOUTH, RANGE 22 EAST LYING EAST OF BORROW PIT No. 3 AS DESCRIBED ABOVE, ALSO BORROW PIT No. 3-A LEFT (WEST) STATION 632+33 THE EAST 900 FEET OF THE WEST 1310 FEET OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 EXCEPT THE SOUTH 1300 FEET THEREOF OF SECTION 21, TOWNSHIP 20 SOUTH, RANGE 22 EAST.

Approved by the Survey Section 04-23-09

Remainder of this page intentionally left blank.

## EXHIBIT "B"

Legal Description 19-528-147P

Those portions of the Southwest 1/4 of Section 16, Township 20, Range 22 and the Northwest 1/4 of Section 21, Township 20, Range 22, Sumter County, Florida, described as follows:

Commence at the Northwest corner of the Southwest 1/4 of said Section 16 and run thence S.00°16'47"W. along the West line of Southwest 1/4 of said Section 16, a distance of 100.00 feet for a Point of Beginning; thence S.89°47'33"E. along a line 100.00 feet South of and parallel with the North line of the Southwest 1/4 of said Section 16, a distance of 175.00 feet; thence S.00°16'47"W., a distance of 1101.98 feet; thence S.18°23'51"W., a distance of 246.23 feet; thence S.17°40'28"W., a distance of 113.73 feet; thence S.00°17'44"W., a distance of 1110.10 feet; thence S.10°52'49"W., a distance of 86.84 feet; thence S.00°07'29"W., a distance 1448.03 feet; thence S.07°07'51"E., a distance of 503.91 feet; thence S.00°09'58"W., a distance of 566.57 feet; thence N.89°48'19"W., a distance of 118.49 feet to an of intersection with the West line of Northwest 1/4 of said Section 21, thence N.00°17'11"E. along the West line of the Northwest 1/4 of said Section 21, a distance of 2605.44 feet to the Southwest corner of the Southwest 1/4 of said Section 16, thence N.00°16'47"E. along the West line of Southwest 1/4 of said Section 16, a distance of 2548.79 feet to the Point of Beginning.

Containing 491,706 Square Feet or 11.29 Acres more or less.

Approved by the Survey Section 04-24-09

Remainder of this page intentionally left blank.

EXHIBIT "C"

Rec 375.50

R → County

Agreement for the Transfer of Property to Sumter County  
SWF Parcel No. 19-528-146S

**AGREEMENT FOR THE TRANSFER OF PROPERTY TO SUMTER COUNTY**

**THIS AGREEMENT**, made and entered into this 26 day of May, 2009 by and between the Southwest Florida Water Management District, a public corporation, whose mailing address is 2379 Broad Street, Brooksville, Florida 34604-6899, hereinafter referred to as the "District" and Sumter County, a political subdivision of the State of Florida, whose mailing address is 910 North Main Street, Bushnell, Florida 33513, hereinafter referred to as the "County".

**WITNESSETH**

**WHEREAS**, The District is the owner in fee simple of certain property in Sumter County, Florida, known as the Lake Panasoffkee Spoil Site (Property) and more particularly described in Exhibit "A" attached hereto; and

**WHEREAS**, the County has requested that the District convey fee title to the Property to the County for the purpose of establishing a public shooting range, a public trap and skeet range, a police training facility, and a receiving wetland for the treatment of wastewater or discharge of reclaimed water; and

**WHEREAS**, the proposed public shooting range, public trap and skeet range police training facility, and receiving wetland for the treatment of wastewater or discharge of reclaimed water would serve a public benefit; and

**WHEREAS**, per Subsection 373.056 (4), Florida Statutes, (F.S.), the District is authorized to convey to any governmental entity land or rights in land not required for its purposes under such terms and conditions as its Governing Board may determine; and

**WHEREAS**, the District has utilized the property to store spoil material (Material) recovered from a completed dredging project; and

**WHEREAS**, the Material has saleable value; and

**WHEREAS**, on September 30, 2008, the District entered into an agreement with Fletcher Marine, Inc. (FMI Agreement) for the removal of a portion of the Material from a portion of the Property.

**NOW THEREFORE**, incorporating the above-referenced recitals as if stated herein and recognizing them as true and correct, and for and in consideration of ten dollars and no cents (\$10.00) and other good and valuable consideration, the

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receipt and sufficiency of which is hereby acknowledged, the District and the County hereby agree as follows:

1. **Purpose:** The District and the County enter into this Agreement For the Transfer of Property to Sumter County (Agreement) to set forth their respective rights and responsibilities with respect to the District's conveyance of the Property to the County and to establish the parameters of the use of the Property thereafter. The District will convey the Property to the County via quitclaim deed. The quitclaim deed will be subject to this Agreement.

2. **Title:** Per Section 373.099, F.S., the District may not warrant title to any property sold, leased, released or conveyed. The County will be solely responsible for determining whether the Property is free and clear of all leases, liens and encumbrances excluding such encumbrances as may be agreed to by the parties.

3. **Land Use:**

A. The County agrees that the Property will be used for a public trap and skeet range and may be used for a public shooting range and a police training facility. A portion of the Property may also be used to serve as a treatment wetland for the application of wastewater or to serve as a receiving wetland for the discharge of reclaimed water as defined by Rule 62.611, Florida Administrative Code. The Property will not be used at any time for any purpose that does not provide a benefit to the general public. If the County uses or promotes use of the Property that does not provide a benefit to the general public the County will be considered to be in default of this Agreement and the District will be entitled to receive compensation in accordance with paragraph 7 below. As of the date of this Agreement the Property is zoned A10C. If the Property is rezoned the District will have sixty (60) days from the date it receives notice of the approved rezoning of the Property said notice including a copy of the final rezoning resolution passed by the Sumter County Board of County Commissioners after public hearing to request compensation pursuant to paragraph 7 of this Agreement. If the District fails to make a timely request for compensation then it will be deemed to have waived its right to compensation for any use of the Property that may be authorized pursuant to the proposed zoning classification. Copies of the current Sumter County Comprehensive Plan and Sumter County Land Development Code including all use matrix charts are stored by each party to this Agreement at their respective offices identified in paragraph 16 below.

B. The County agrees to the inclusion of a deed restriction prohibiting the use of all or a portion of the Property for the construction and operation of any type or classification of landfill in the deed conveying the Property

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to the County from the District. The County further agrees to the inclusion of a deed restriction extending over that portion of the Property between the toe of the west slope of the existing western berm to the western boundary line of the Property that prohibits the construction or placing of buildings, roads, signs, utilities or other structures and facilities on or above the ground.

4. **Best Management Practices for Environmental Stewardship of Florida Shooting Ranges:** All activities associated with the use of the Property for a public shooting range, a public trap and skeet range and a police training facility will be conducted in accordance with the provisions of Section 790.333, F.S.

5. **Surface and Groundwater Monitoring:** The County agrees to assume responsibility for any surface and groundwater monitoring requirements that may exist beyond October 31, 2009, pursuant to the Amendment to Purchase/Sale Agreement For Perpetual Conservation Easement and Fee Interest and Supplemental Agreement to Specifications between the District and the C. Herman Beville Ranch, Ltd. By C. Herman Beville Properties, Inc. General Partner, dated September 17, 2003, attached hereto as Exhibit "B".

6. **FMI Agreement:** The District and the County agree that the District will assign the FMI Agreement to the County, and the County will accept all rights, duties, liabilities and benefits of the FMI Agreement, which is attached hereto and incorporated herein as Exhibit "C". The District will also have the right to remove Material, at no cost, consistent and concurrent with the removal of Material by Fletcher Marine, Inc., pursuant to the FMI Agreement and for an additional period not to exceed five (5) years following the expiration of the FMI Agreement. The District agrees to coordinate its activities to remove Material from the Property with the County. The District will conduct such activities in a manner so as not to disrupt or interfere with the County's development and use of the Property as intended herein.

7. **Sale or Transfer of Property:** The District and the County agree that if the County sells, transfers, or exchanges all or a part of the Property the sale, transfer, or exchange will be subject to the District's Governing Board approval and with terms agreeable to the District as provided in paragraph 3. Furthermore, the District is entitled to receive compensation for the parcel or parcels sold, transferred or exchanged in accordance with the terms herein. The County will acquire appraisals in accordance with District policy and procedure to determine the fair market value of the parcel or parcels. If the County sells or transfers all or a part of the Property for more than the fair market value the District will be entitled to receive the full amount of the sale price for the parcel or parcels transferred or sold. The District will not be responsible for any costs or expenses

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associated with the sale or transfer of all or a part of the Property by the County. The provisions of this paragraph will also apply to the County's transfer or sale of all or a part of the berm material existing on the Property.

8. **Interstate 75 Expansion:** The District and the County agree that all or part of the Property may be transferred at no cost to the Florida Department of Transportation (DOT) as may be necessary for the future expansion of Interstate 75, including the protective berm within the proposed right-of-way. Such transfer shall not be construed as a default of this Agreement by the County that entitles the District to receive compensation in accordance with paragraph 7.

9. **Future Lake Panasoffkee Dredging:** The County agrees that if, in the future, the District is required to conduct or decides to conduct a dredging project for restoration purposes because the environmental condition of Lake Panasoffkee has deteriorated and warrants a dredging project for restoration purposes, the County will in good faith aid and assist the District in its effort to locate and acquire spoil material disposal sites.

10. **Signage:** The County will place public information signage at all designated public entrances to the Property identifying the District as a contributing partner in making the Property available for use by the public. District logos and other artwork will be provided as necessary to the County by the District. County signage not related to District activities will be maintained by the County.

11. **Taxes and Assessments:** As fee owner of the Property, the County will be solely responsible for payment of any taxes, assessments or fees of any kind assessed or levied lawfully on the Property or the improvements thereon to the extent applicable.

12. **Default:** The County's default in complying with any term or condition of this Agreement or any amendments thereto, will be considered a breach of this Agreement. Upon the County's breach of this Agreement, the District may, at its sole discretion, choose to receive payment from the County equal to the fair market value of the Property at the time of the County's breach of this Agreement. Appraisals will be acquired in accordance with District policy and procedure to determine the fair market value of the Property. To receive payment of fair market value, the District will provide the County with written notice of its intent to receive payment and such notification shall describe the term or condition with which the County has failed to comply. The County will have sixty (60) days after receiving such notice to remedy the default or provide the District with a written plan to remedy the default. If within sixty (60) days after receiving such notice the County has neither remedied its default, nor provided the District an



acceptable written plan to remedy its default, The County shall pay the District an amount equal to the fair market value of the Property.

13. **Indemnification:** 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 attorney fees and costs and attorney 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 does not constitute a waiver of either party's sovereign immunity under Section 768.28, F.S. or extend either party's liability beyond the limits established in Section 768.28, F.S. The County further agrees that it will indemnify and hold the District harmless from any and all claims, loss, costs, expenses, fines, damages to persons or property and any and all environmental clean-up and restoration costs that may result from the County's use of the Property as a public trap and skeet range, a public shooting range and a police training facility, as contemplated by this Agreement. This indemnification of the District will extend to contamination on land adjacent to the Property whether owned by the District or a third party. This provision shall not be construed to suggest that the County has accepted any duty to directly indemnify any entity other than the District.

14. **Assignment:** Neither the District nor the County may assign any of its rights under this Agreement, voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law, or any other manner without the prior written consent of the other party.

15. **Recording:** This Agreement shall be recorded with the Clerk of the Court of Sumter County as the clerk to the Board of County Commissioners.

16. **Notices:** Any and all notices, requests or other communications relating to this Agreement or the performance of the parties hereto will be deemed to have been duly given if in writing and if transmitted by hand delivery with receipt therefore, over-night delivery or by registered mail posted prior to the expiration date for such notice, return receipt requested and first class postage prepaid. Such written notice will be addressed as follows:

To the County: Sumter County Administrator  
Board of County Commissioners  
910 North Main Street  
Bushnell, Florida 33513



Agreement for the Transfer of Property to Sumter County  
SWF Parcel No. 19-528-146S

To the District: Land Use and Protection Manager  
Land Resources Department  
Southwest Florida Water Management District  
2379 Broad Street  
Brooksville, Florida 34604-6899

17. **Entire Agreement:** This Agreement contains the entire agreement between the parties with respect to the Property. There are no promises, agreements, conditions, undertakings, warranties or representations, oral, written, express or implied between the parties other than as set forth herein and in the respective quitclaim deed.

18. **Miscellaneous:** Only an instrument in writing signed by both parties may modify this Agreement. This Agreement will run with the land and be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns. The waiver of any breach of any term or condition hereof will not be deemed a waiver of any other or subsequent breach, whether of like or of different nature. The captions contained herein are not part of this Agreement, are only for the convenience of the parties and do not modify, amplify or give full notice of any of the terms, covenants and conditions of any article, paragraph, clause or provision of this Agreement. This Agreement will be interpreted and construed in accordance with the laws of the State of Florida. The invalidity or unenforceability of any provision hereof will not affect the validity or enforceability of the remainder of this Agreement.

19. **Dispute Resolution:** The County and the District agree that prior to initiating litigation to resolve any dispute related to a party's performance under this Agreement or an interpretation of this Agreement they will attempt to resolve such dispute through intergovernmental cooperation and mediation if an alternate dispute resolution procedure is not required by state law.

20. **Venue and Applicable Law:** All claims, counterclaims, disputes and other matters in question between the parties to this Agreement, arising out of or relating to this Agreement or the breach of it, if an alternate dispute resolution procedure is not required by state law, will be decided in accordance with the laws of the State of Florida and by a court of competent jurisdiction within the State of Florida and venue will lie in the County of Hernando.

21. **Survivability.** The terms of this agreement shall survive the closing of the transfer of the Property between the District and the County.

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Agreement for the Transfer of Property to Sumter County  
SWF Parcel No. 19-528-146S

**IN WITNESS WHEREOF**, the **Grantor** has caused these presents to be executed in its name by its Governing Board acting by the Chair of said board, the day and year first above written.

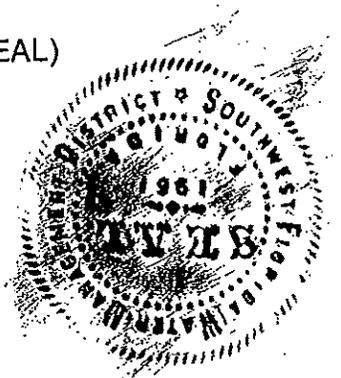
**SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT**

ATTEST: *Jennifer E. Crossley*  
Jennifer E. Crossley, Secretary

(OFFICIAL SEAL)

BY: *Neil Combee*  
Neil Combee, Chair

Date: \_\_\_\_\_



**SUMTER COUNTY BOARD OF COUNTY COMMISSIONERS**



By: *Connie Webb*  
Name: CONNIE WEBB

By: *Garry Breedon*  
Name: GARRY BREEDEN

Title: Deputy Clerk

Title: CHAIRMAN

MAY 26 2009

Date: \_\_\_\_\_

Reviewed as to form and legal sufficiency

*David M. [Signature]*  
County Attorney's Office Date

APPROVED BY:	INITIALS	DATE
ATTORNEY	<i>JW</i>	5/19/09
MANAGER	<i>WJM</i>	5/11/09
DIRECTOR	<i>SA</i>	20/09/09
	<i>Q</i>	5/19/09

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EXHIBIT A

THE SOUTH 1/2 OF SECTION 16, TOWNSHIP 20 SOUTH, RANGE 22 EAST, SUMTER COUNTY, FLORIDA, LYING WEST OF INTERSTATE HIGHWAY No. 75;

AND

ALL OF SECTION 21, TOWNSHIP 20 SOUTH, RANGE 22 EAST, SUMTER COUNTY, FLORIDA, LYING WEST OF INTERSTATE HIGHWAY No. 75.

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EXHIBIT B

AMENDMENT TO PURCHASE/SALE AGREEMENT FOR  
PERPETUAL CONSERVATION EASEMENT AND FEE INTEREST  
AND SUPPLEMENTAL AGREEMENT TO SPECIFICATIONS

THIS AMENDMENT to the Purchase/Sale Agreement for Perpetual Conservation Easement and Fee Interest dated January 22, 2003 and amended on February 14, 2003, is made by C. Herman Beville Ranch, Ltd., the Seller under the Agreement (hereinafter referred to as "Beville") and the Southwest Florida Water Management District, the Buyer under the terms of the Agreement (hereinafter referred to as "District"), a public corporation created by Chapter 61-691, Laws of Florida, as amended, parties to such agreement, this 17 day of September, 2003. This document shall be referenced herein as "this Amendment". The parties intend for this Amendment to become part of the terms of the Agreement.

BACKGROUND:

On January 20, 2003, the parties entered into the Purchase/Sale Agreement for Perpetual Conservation Easement and Fee Interest, which agreement was amended by instrument dated February 14, 2003 (collectively referred to herein as "the Agreement"). Paragraph 28 of the Agreement requires the District to prepare certain specifications for the development of dikes and retention berms, monitoring wells and drainage system together with planting of sod, vegetation and foliage upon the development site proposed for the Fee Parcel. Under the terms of the Agreement, such specifications are to be approved by Beville.

The parties hereto understand that the purpose of the proposed improvements on the Fee Parcel is intended as a disposal site for the water and material that will be removed from Lake Panasoffkee as an integral part of the restoration of Lake



Panasoffkee. District will utilize the Fee Parcel as a retention and disposal site for the material that is removed from Lake Panasoffkee as part of the Lake Panasoffkee Restoration Project. The material so removed from Lake Panasoffkee will necessarily contain with it large quantities of water that will be stored on the Fee Parcel and thereafter released periodically from the Polishing Area as shown in the Drawings and Plans hereafter referenced. The release of such water will flow onto the Conservation Easement Parcel and through the ditches, drainage areas and wetlands of the Conservation Easement Parcel.

The purpose of this Amendment is to provide Beville with contractual rights of protection and measures of assurance that any and all discharges, releases or seepages from the Fee Parcel will not have a material adverse impact on the Conservation Easement Parcel or the use and enjoyment of the Conservation Easement Parcel. It is the intent of the parties that this Amendment not replace any of Beville's legal rights under State Statute, Federal Statute, any governmental rules or regulations, common law or equity, but is intended only to add to and supplement those legal rights.

District has submitted to Beville the following plans, drawings, maps, documents, specifications, and writings, to wit:

- a. Aerial photograph entitled Wetland Area and Staff Gage Locations attached as Exhibit A.
- b. Aerial photograph entitled Ditch Crossing Replacement locations attached as Exhibit B.

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c. Request for Bid #0308 consisting of 36 pages, including attachment A entitled "Technical Specifications", consisting of 103 pages, and attachment B entitled "Special Provisions to the Technical Specifications", consisting of 11 pages, as amended by addenda #1-5, all of which is hereinafter referred to as "the Specification".

d. Final Construction Plans dated February 2003, prepared by PB Water referenced as RFB 0308 and signed and sealed by a licensed professional engineer on March 10, 2003 (revised 8/1/03 at D-2 and 8/4/03 at G-3, G-4 and C-22) (hereinafter referred to as "Plans" or "Drawings").

e. Aerial photographs of portions of the Fee Parcel and Conservation Easement Parcel (which is contemplated to be the area of the drainage system of intended discharge from the Fee Parcel) consisting of 5 sheets dated January 13 – February 15, 1983 and evidencing the topographical elevations and contours with hand-drawn "red line" of the intended high water mark for the Conservation Easement Parcel (hereinafter referred to as the "High Water Mark Map").

f. Landscape Buffer Plan illustrated on an aerial photograph of the Fee Parcel with visual overlay of portions of the intended landscape plan (hereinafter referred to as "Landscape Buffer Plan").

g. Infrared aerial photography of the Fee Parcel and adjoining lands and entitled Ground water and Surface Water Discharge Monitoring Network identifying the intended locations of piezometer, staff gauges and ground water monitoring wells (hereinafter referred to as "Water Monitoring Map").

The Specifications and Plans provided by District to Beville are hereby approved subject to the terms and conditions of this Amendment to the Agreement.

The parties hereby stipulate and agree that:

1. Incorporation of Recitals and Documents. All of the recitals set forth above are true and correct and are incorporated by reference herein including the Plans, Drawings, maps, documents, Specifications enumerated at a-g above (hereinafter collectively referenced to as the "Project Plans"), which Project Plans are incorporated as part of this Amendment.
2. Survives Closing. This Amendment shall survive the closing of the Conservation Easement Parcel and the Fee Parcel.
3. Nonrestriction of Rights. This Agreement does not supplant, modify, restrict or limit the legal rights in law or in equity of Beville, its successors or assigns, but shall provide Beville with additional and supplemental contractual rights as expressed in this Amendment.
4. Construction of CDF. District shall develop and construct on the Fee Parcel certain improvements (hereinafter referred to as the "Confined Disposal Facility" or "CDF") and maintain and operate such CDF in accordance with this Amendment, in accordance with the Project Plans, in accordance with all permitting requirements, and in accordance with all applicable laws, rules, and regulations of any local, state or federal government or any of their respective agencies. Additionally, District agrees that the development and construction of the CDF on the Fee Parcel shall include, at a minimum, planting of sod, trees, and foliage in accordance with the "Landscape Buffer Plan". As a modification to such Landscape Buffer Plan, the District agrees to: 1) plant sod rather than seed and mulch on the outside perimeter embankments of the CDF on the 4:1 slope as illustrated on sheet D-2 of the Plans, and 2) plant trees, in addition to



those illustrated on the Landscape Buffer Plan as follows: Continue the planting of slash pines along the western boundary of the Fee Parcel as far south as the oak tree line. The Landscape Buffer Plan shall be completed as soon as reasonably practical following construction of the CDF.

The parties hereto agree that the District's development and construction of the CDF on the Fee Parcel shall not in any way materially hinder or otherwise have a material adverse effect on Beville's operation of a cattle ranch or Beville's quiet enjoyment of the Conservation Easement Parcel or any other property right granted or retained by Beville under the Agreement or the Perpetual Conservation Easement (Exhibit B) of the Agreement, including, but not limited to, Beville's interest in any easement retained or granted pursuant to the terms of the Agreement and/or the Perpetual Conservation Easement or this Amendment. District shall perform or cause to be performed all construction and development of the CDF on the Fee Parcel in compliance with the terms and conditions of the Project Plans.

5. Maintenance and Repairs to Drainage System. To the extent the maintenance activities described below are exempt under the District's Environmental Resource Permitting rules (Chapters 40D-4, 40D-40 and 40D-400 F.A.C.) on or before completion of the CDF, District shall complete certain repairs and maintenance (described below) on the Conservation Easement Parcel that will maintain historic water flow through the ditches, drainage systems and wetlands of the Conservation Easement Parcel to allow Beville, at its discretion, to utilize such water for Beville's benefit and purpose as and where desired by Beville. The improvements described in this paragraph will include, but are not limited to, the removal of deteriorated structures and



culverts from the ditches and drainage system generally identified on Exhibit B. The improvements will also include, but are not limited to, installation of new culverts at four locations more particularly identified on Exhibit B that will allow for vehicular crossing of ditches and drainage areas and the removal of "shoaling" and the repair and maintenance of the drainage system and ditches that are anticipated to receive the water flow of the water discharge from the CDF as shown on the illustration marked Exhibit A (such ditches being generally located along the location of the illustrated staff gauge location) and on the Water Monitoring Map.

6. Paved Easements. The District shall, before commencement of any construction of the CDF, of construct on the access easement referenced below an asphalt road as follows: 20 feet in width in accordance with the specifications applicable to Cold Mix Open-Graded Asphalt Base and Final Dressing as set forth on Exhibit C, which exhibit is attached solely for the purpose of defining the specification for construction. The District shall maintain such road, at the District's expense, until completion of the Lake Panasoffkee project and make such road in like new condition within 60 days after such completion. Thereafter, maintenance shall be the responsibility of Beville. Such road shall be centered on the easement granted by the District to Beville pursuant to paragraph 27 of the Agreement. Further, the District shall, before commencement of any construction of the CDF, construct and perpetually maintain at its expense an asphalt road as follows: 20 feet in width in accordance with the specifications applicable to Cold Mix Open-Graded Asphalt Base and Final Dressing as set forth on Exhibit C, which exhibit is attached solely for the purpose of defining the

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specification for construction; centered on the access easement granted by Beville to the District from County Road 482 to the Northwest gate of the Fee Parcel.

7. General Non-adverse Impact to Beville. Notwithstanding any of the specific restrictions and limitations set forth herein, District shall not, by reason of any discharge from the Fee Parcel onto the Conservation Easement Parcel cause a material adverse impact to the use and enjoyment by any owner of the Conservation Easement Parcel.

8. Cessation of Operations. In addition to the specific restrictions and limitations for discharge from the CDF as set forth in this Amendment, Beville may require the District to cease discharge from the CDF should any discharge have a material adverse impact on the use and enjoyment of the Conservation Easement Parcel. Beville shall give written notice to the District, including a description of any adverse impact. The District shall have five (5) days after receipt of such notice to cease discharge or cure the cause of such adverse impact.

9. Surface and Ground Water Plan. The District shall implement a surface water and a ground water monitoring plan, approved by the Department of Environmental Protection, prior to any discharge from the CDF. The plan shall be designed to monitor effects of surface water discharges and ground water quality at the boundary of the Fee Parcel and the Conservation Easement Parcel which may be impacted by the placement of water and dredged material from Lake Panasoffkee on the Fee Parcel in the CDF or caused by the release of water or material from the CDF. The plan shall be designed to protect the Conservation Easement Parcel from detrimental effects 1) of excessive quantities of surface water flow onto the



Conservation Easement Parcel, 2) of excessive levels of turbidity of any discharge, 3) from the rate of water flow from the CDF, 4) from the ground water quality or 5) from any other potential adverse affects to the Conservation Easement Parcel. The Plan shall be implemented so as to comply with all permit requirements, governmental regulations and rules and with the terms of the Agreement and this Amendment.

10. Monitoring Devices. The District shall, within thirty (30) days of completion of the CDF and before any discharge, install and maintain monitoring devices that shall include, but not be limited to, piezometers (to measure ground water), staff gauges (to measure surface water), and monitoring wells (to test ground water quality) that will satisfactorily monitor ground water mounding and surface water levels on the Conservation Easement Parcel and that will monitor ground water quality and turbidity levels prior to discharge and during periods of discharge. The location of such monitoring devices shall be as set forth on an aerial photograph of the drainage area of the Conservation Easement Parcel and Fee Parcel entitled Ground Water and Surface Water Discharge Monitoring Network and made a part of this Agreement by reference; provided, however, that there shall be installed as least one additional staff gauge as shown on Exhibit A.

Readings of all water monitoring devices shall be available to Beville at all times and Beville may at any time require split samples of any test or measurement made by the District as part of the monitoring plan or in compliance with this Amendment. The District may periodically examine and provide maintenance to monitors upon notice to Beville, but such examinations shall be limited to reasonable times at the discretion of Beville.

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11. Turbidity. The District may not discharge from the CDF at any time that the turbidity level at the point of discharge (which point of discharge shall only be the Polishing Pond as illustrated in the Drawings) exceeds 29 nephelometric turbidity units over ambient levels as measured in Annie Marsh Pond before commencement of any discharge. A benchmark measurement of the ambient levels in Annie Marsh Pond shall be made at least 60 days prior to any discharge from the CDF and the results of such measurement shall be provided to Beville, who may have the right to challenge such benchmark measurement with Beville's own measurements. If such a challenge is made and the parties cannot agree as to the benchmark, then the parties shall choose a third party to take such measurement and the average of the three measurements shall determine the benchmark. The District shall regularly and systematically monitor turbidity levels in Nephelometric Turbidity Units (NTU), which shall be collected from the discharge point of the CDF twice daily (at least 4 hours apart) during periods of discharge and analyzed in compliance with the following conditions:

- a. Samples at the discharge point from the polishing pond will be "grab" samples.
- b. All turbidity analyses will be performed using a Hach Pocket Turbidimeter Analysis System, or equivalent device. The instrument must be calibrated prior to each monitoring event or in accordance with the manufacturer's recommendations.
- c. All turbidity monitoring reports provided by the District to the Department of Environmental Protection (DEP) will be submitted to Beville with any narrative reports required by DEP.

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d. The following measures will be taken immediately by the District whenever turbidity levels, caused by surface discharges from the polishing cell at the CDF exceed allowable turbidity levels:

i. Immediately cease all work contributing to the water quality violation.

ii. Implement corrective actions, as needed, to prevent the continued violation of water quality standards.

12. Water Quality. Prior to a surface water discharge from the CDF, the District shall collect and analyze a water sample from within the polishing cell in order to characterize the quality of water before discharge. An initial sample will be collected, analyzed for parameters listed below, and results reported to Beville. Samples will be collected quarterly for as long as discharge is required from the CDF.

- Parameters
- Turbidity (NTU)
- Copper (ug/l)
- Iron (ug/l)
- PH (standard units)

The sample will be collected from within the polishing cell and will be taken in a manner which will result in a representative sample of water quality within the polishing cell. All measurements and analyses for each parameter will be made using approved methods providing a Practical Quantification Limit (PQL) below the water quality standard for the parameter as listed in Rule 62-302, F.A.C. No discharge may be made from the CDF if the constituents listed exceed the following parameters:

- Turbidity 29 NTU above the Annie Marsh Pond benchmark
- Pit 6.5 to 8.5
- Copper 14.2 micrograms/liter based on an average hardness of 124 mg/l as CaCO<sub>3</sub>



Iron 1000 micrograms/liter

Ground water and surface water quality on the Conservation Easement Parcel showing "contaminants" exceeding the limits described above shall be conclusively construed as a contamination and as having a material adverse impact on the ground water or surface water of the Conservation Easement Parcel.

The District may not maintain, collect, or store material or water from Lake Panasoffkee at the CDF or discharge from the CDF if such is a material cause of ground water or surface water contamination to the Conservation Easement Parcel.

Should the collection of water or other disposal material from Lake Panasoffkee on the Fee Parcel or should discharge from the CDF contaminate or have a material adverse impact on the quality of ground water or surface water on the Conservation Easement Parcel or if the readings from the ground water monitoring devices evidence that the ground water at the tested site exceeds the parameters set forth above, then Beville may, at its sole discretion, require the District to:

- i. Immediately cease all work contributing to the water quality violation.
- ii. Implement corrective actions, as needed, to prevent the continued violation of water quality standards.

13. Water Discharge Quantity Limits. The parties agree that any discharge from the CDF onto the Conservation Easement Parcel shall not materially contribute to a high water mark on the Conservation Easement Parcel that exceeds the limits set forth on Tables 1 and 2 below.

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If 1) the water level elevation(s) in any of the nine downstream wetlands systems down gradient from the CDF, as shown on Exhibit A or on the Water Monitoring Maps, reach the "Limiting Elevation" set forth in Table 1 below or 2) if the water level elevations in any of the nine downstream wetland systems down gradient from the CDF as shown in Exhibit A or on the Water Monitoring Maps, has not dropped below the "Limiting Elevation" set forth in Table 2 for a period of 90 days within any 365 day period (so as to provide a hydro period on the subject parcel), then Beville, at its sole discretion, may require the District to cease all discharge from the CDF and the District may not resume discharging from the CDF until the water level(s) has receded below the "Limiting Elevation(s)" for the affected wetland system as required by this paragraph.

Table 1

Wetland System	Staff Gauge	Limiting Elevation	SHW Elevation
1	1	52.85 <sup>1</sup>	52.73
2	1	52.85 <sup>1</sup>	52.47
3	1	52.85 <sup>1</sup>	52.58
4	1	52.85 <sup>1</sup>	52.57
5	2	52.25	52.25
6	3	51.90	51.90
7	4	50.37	50.37
8	5	50.09	50.09
9	6	49.62	49.62

<sup>1</sup> Average drip line elevation of the live oak tree on the northwest edge of Wetland 4.

Table 2

Wetland System	Staff Gauge	Limiting Elevation
1	1	52.25
2	2	52.25
3	3	52.25
4	4	52.25
5	5	51.75

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6	6	51.40
7	7	49.87
8	8	49.59
9	9	49.12

14. Water Flow Rate. The parties agree that any discharge from the Fee Parcel onto the Conservation Easement Parcel shall not be a material cause to an erosion or scouring of the ditches or drainage system on the Fee Parcel. District represents and warrants that the maximum rate at which the District will discharge water from the Confined Disposal Facility (CDF) through the Polishing Area water control structure is ten cubic feet per second (10 cfs) as measured at the control structure riser by the following equation:

$$Q=3.3*L*H^{1.5}$$

Where: L= the width of discharge over the riser flashboards (feet)  
H=the depth of water discharging over the riser flashboards (feet)  
Q= discharge (cubic feet per second)

Example: for 3 inches of water flowing over the flashboards across the entire width of the 6-foot wide riser, the discharge would be:

$$Q=3.3*6*(3/12)^{1.5} = 3.3*6*0.125 = 2.46 \text{ cfs}$$

District further represents and warrants that such discharge rate will not have any adverse material impact on the Conservation Easement Parcel or Beville's use and enjoyment of the Conservation Easement Parcel nor will it cause erosion or scouring of the ditches or drainage system of the Conservation Easement Parcel. If the flow rate of water from the CDF through the drainage system, ditches, and wetlands causes erosion or scouring, then Beville, in its sole discretion, may require the District to immediately cease the discharge of water from the CDF until all repairs are made to the ditches and



drainage system and require a reduction in flow rate to prevent such erosion and scouring.

15. Modification to Conservation Easement Parcel. The legal description of the Conservation Easement Parcel identified in the Agreement is amended by the removal of a ten acre tract from said Conservation Easement Parcel. The parties acknowledge and agree that a utility and access easement across the Conservation Easement Parcel will be granted to said ten (10) acre tract prior to closing.

16. Copies Provided. The District will provide to Beville copies of all reports and submittals made by the District to any governmental agency, local, state or federal, relative to any discharge from the CDF, including, but not limited to, turbidity levels, erosion control, water discharge amounts and levels or any other matter that may have a material impact on the Conservation Easement Parcel.

17. Operations in Accordance with Law. The District shall conduct all operations of the Lake Panasoffkee project, including, but not limited to, discharge from the CDF in accordance with, and not in violation of, any permit, advisory rule, regulation, or law of any local, state, or federal government or quasi governmental agency, department or of any county or municipality, State of Florida or United States.

18. Construction Schedule. The District shall provide to Beville all construction schedule(s) for the CDF and all work, duties and responsibilities required herein.

19. Specific Performance and Injunctive Relief. The parties recognize and agree that any breach of the terms of this Amendment may give rise to irreparable harm and damage for which money damages would not be an adequate remedy.



Accordingly, the parties agree that, in addition to all remedies at law or remedies provided by this Amendment, any non-breaching party shall be entitled to enforce the terms of this Amendment by specific performance and/or injunctive relief without the necessity of proving inadequacy of money damage or the inadequacy of remedies at law for the relief or remedy of specific performance, injunctions and temporary restraining orders.

20. Indemnification. The District assumes full responsibility and indemnifies and holds harmless Beville, its partners, representatives, agents, directors, and owners from all liability, loss, damage or deficiency, including reasonable attorneys fees and costs, for meeting State water quality standards at the point where surface water discharge from the CDF meets State waters. Additionally, the District indemnifies and holds harmless Beville, its partners, representatives, agents, directors, owners from all liability, loss, damage or deficiency, including reasonable attorneys fees and costs, resulting from or arising out of:

- a. any misrepresentation or warranty made by District under this Amendment.
- b. any breach of the terms or covenants of this Amendment.
- c. the acts or failure to act by District, its agents, representatives or contractors in discharging the duties and responsibilities of the District under the terms of this Amendment, including, but not limited to, all work related activities performed by the District under this Amendment.

21. Agreement to Remain in Effect. Except as specifically stated herein, the terms of the Amendment shall remain in full force and effect.



22. Ambiguities Construed. Any inconsistencies or ambiguities of this Amendment and the provisions of the Agreement that survive closing shall be construed in favor of protection of the Conservation Easement Parcel and the owner's quiet enjoyment and use of that property.

23. Binding Effect. The covenants herein contained shall bind, and the benefits and advantages hereof shall inure to, the respective heirs, personal representatives, successors and assigns of the parties hereto; provided, however, that the District shall not assign this Amendment without the prior approval of Beville unless required by law.

24. Notices. Any notice which must or may be given under this Amendment or by law shall be in writing and shall be deemed to have been given when delivered by personal delivery or when deposited in the United States mail, certified, return receipt requested, full postage prepaid to the District or to Beville at the addresses set forth above.

25. Headings. The headings in this Amendment are intended solely for convenience or reference and shall be given no effect in the construction or interpretation of this Amendment.

26. Exhibit and Schedules. The Exhibits and Schedules referred to in this Amendment constitute an integral part of this Amendment as if fully rewritten herein.

27. Counterparts. This Amendment may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

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28. Governing Law. This Amendment shall be construed in accordance with and governed by the laws of the State of Florida without giving effect to the conflict of law provisions thereof.

29. Waivers. No waiver of any of the provisions of this Amendment shall be valid and enforceable unless such waiver is in writing and signed by the party granting the same, and, unless otherwise stated therein, no such waiver shall constitute a waiver of any other provision hereof (whether or not similar) or a continuing waiver.

30. Attorney's Fees. If any party to this Amendment shall employ legal counsel to protect its rights under this Amendment or to enforce any term or provision of this Amendment, then the party prevailing in any such legal action shall have the right to recover from the other party all of its reasonable attorney's and paralegal fees, costs and expenses incurred in relation to such claim (whether incurred in trial, on appeal, in Bankruptcy Court or Probate Court).

31. Pronouns/Plural. The use of a particular pronoun herein shall not be restrictive as to gender or number but shall be interpreted in all cases as the context may require. Whenever used herein, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall include the other.

32. Entire Agreement. This Amendment constitutes the entire understanding between the parties hereto concerning this Amendment. All negotiations relative to this Amendment between the parties hereto are set forth herein, and there are no representations, warranties, covenants, understandings or agreement, oral or otherwise, in relation thereto between the parties other than those incorporated herein or in the Agreement.

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33. Modification. No supplement, modification or amendment of this Amendment shall be binding unless made in a written instrument which is signed by all of the parties and which specifically refers to this Amendment.

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Signed, sealed and delivered  
in the presence of:

SELLER  
C. Herman Beville Ranch, Ltd. by  
C. Herman Beville Properties, Inc.,  
General Partner

[Signature]  
Signature of Witness #1  
Printed Name of Witness #1

by: [Signature]  
Nellie L. Beville, President

[Signature]  
Signature of Witness #2  
Printed Name of Witness #2

ACKNOWLEDGEMENT

STATE OF FLORIDA  
COUNTY OF Harvard

The foregoing instrument was acknowledged before me this 17 day of  
Sept, 2003, by Nellie L. Beville, President of C. Herman Beville  
Properties, Inc. as General Partner of C. Herman Beville Ranch, Ltd., who is known to  
me or has produced FL DRIVERS LIC. as identification.



Steven E. Blaschka  
Commission # DD 063615  
Expires Oct 9, 2005  
Bonded thru  
Atlantic Bonding Co., Inc.

My commission expires:

[Signature]  
Notary Public - State of Florida

BUYER

Southwest Florida Water Management  
District, Grantee

[Signature]  
Signature of Witness #1  
Printed Name of Witness #1

by: [Signature]  
Fritz H. Musselmann,  
Land Resources Director

[Signature]  
Signature of Witness #2  
Printed Name of Witness #2

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ACKNOWLEDGEMENT

STATE OF FLORIDA

COUNTY OF HERNANDO

The foregoing instrument was acknowledged before me this 17 day of Sept, 2003, by Fritz H. Musselmann, Land Resources Director of the Southwest Florida Water Management District. He is personally known to me.

  
\_\_\_\_\_  
Notary Public – State of Florida

My commission expires:



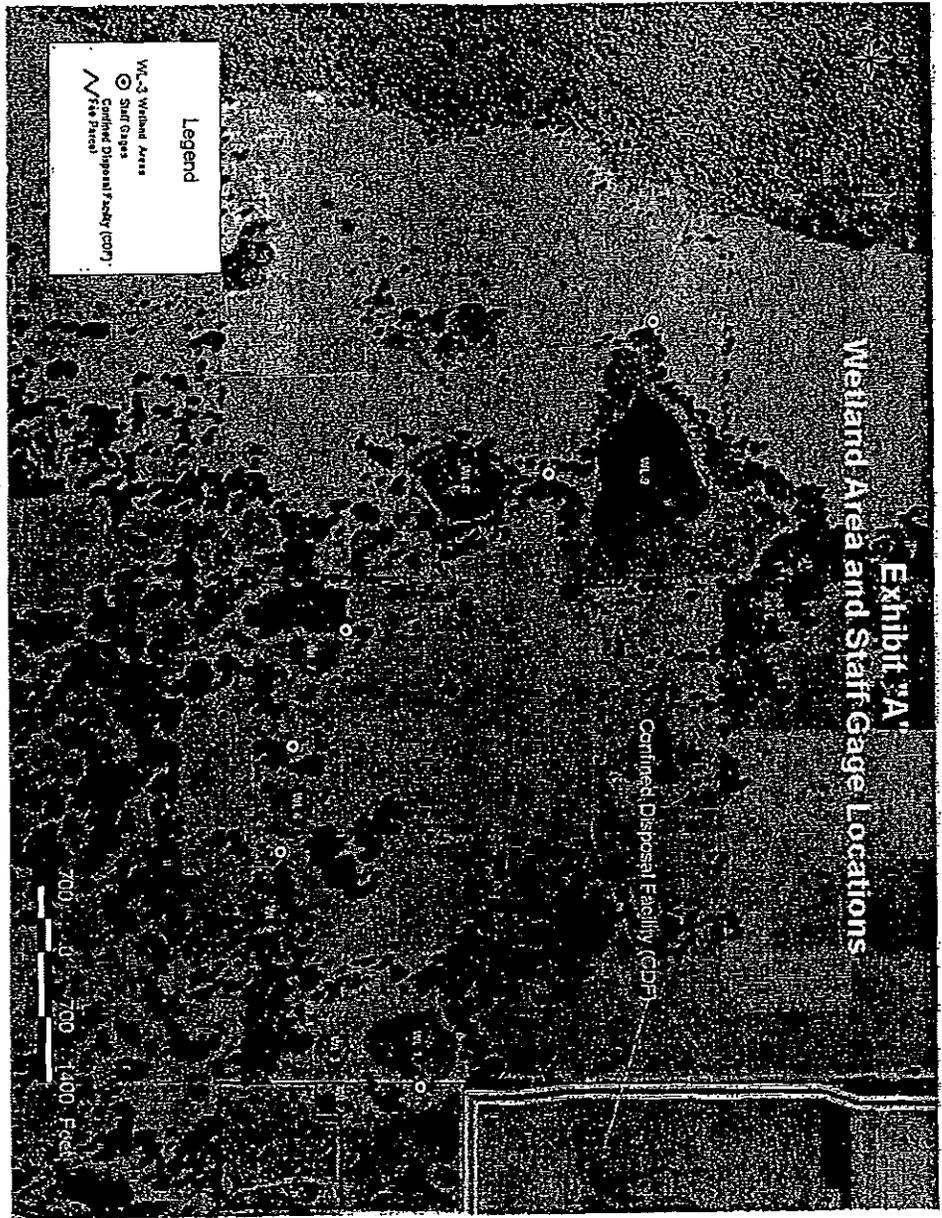
Steven E. Blaschka  
Commission # DD 063615  
Expires Oct. 9, 2005  
Bonded Thru  
Atlantic Bonding Co., Inc.

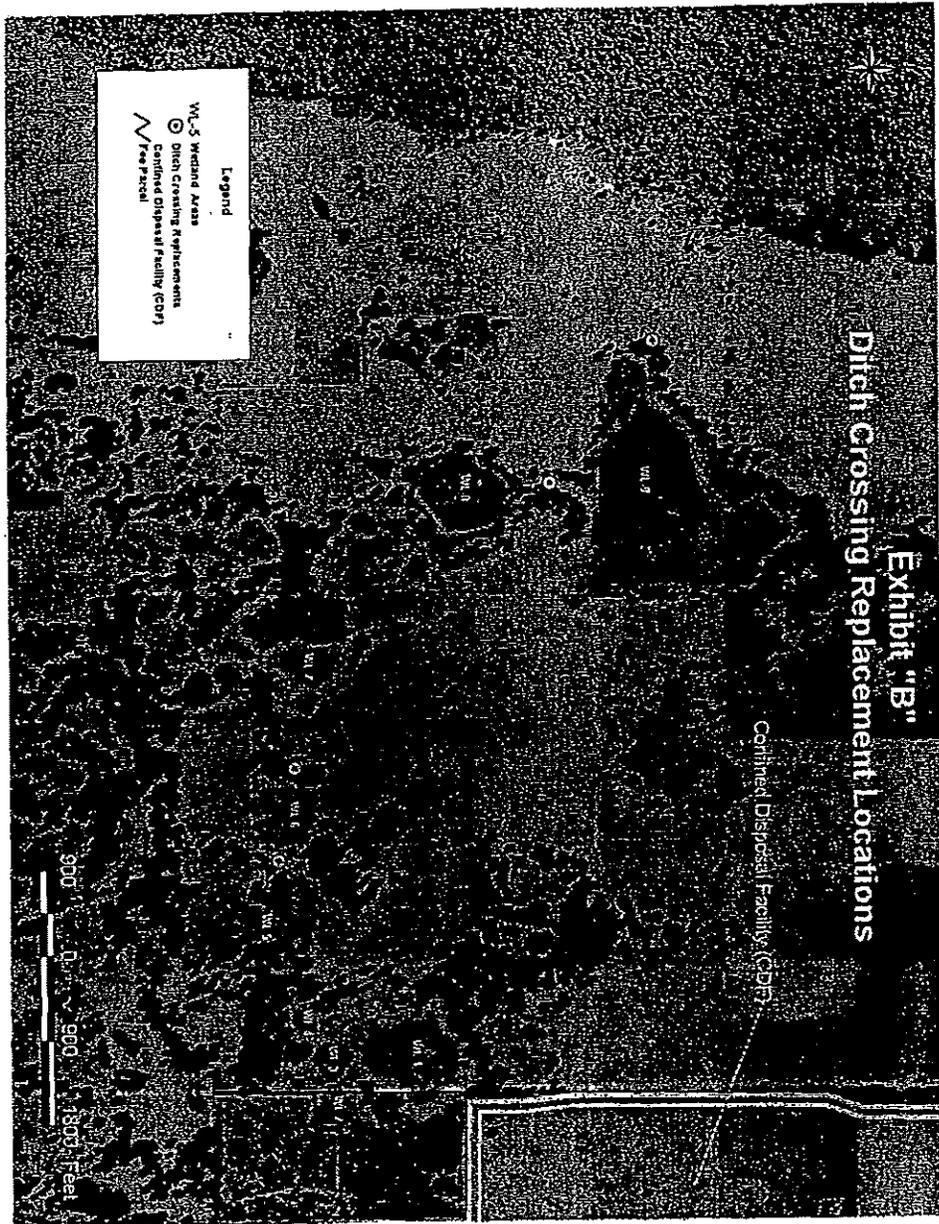
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## SCOPE OF WORK

The contractor shall shape and compact the existing clay sub-grade to the typical section shown in these specifications. Any areas that are not firm, unyielding, and not meeting test requirements shall be stabilized by adding additional material or by removing unsuitable material which is to be replaced by suitable material. The contractor shall place and open graded asphalt base on the prepared sub-grade, dress the shoulders, sod and hydro mulch.

## SPECIFICATIONS

Governing specifications shall be Florida Department of Transportation Standard Specifications for Road and Bridge Construction, dated 1991, and any supplements thereto.

### SHAPE AND COMPACT EXISTING SUB-GRADE

The existing clay road shall be shaped to the typical section shown in these specifications. Any areas that are not firm and unyielding shall be stabilized by adding additional material or by replacing the unsuitable material as specified in Base Group 4.

## TESTING

Stabilize subgrade, as specified in section 160 of F.D.O.T. Road and Bridge Construction Manual. The work specified in this section consists of stabilizing of designated portions of the roadbed to provide a firm and unyielding subgrade, having the required minimum Florida bearing value of 75, and a plasticity of not greater than 10% per Adaburg Scale (AASHTO).

All testing will be at the direction of the County. Testing will be performed by the County.

Payment Shall be made under:

ITEM NO. 160-7 SHAPE AND COMPACT EXISTING SUB-GRADE PER SQUARE YARD  
ITEM NO. 205-1 BASE GROUP 4 PER TON.

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## COLD MIX OPEN-GRADED ASPHALT BASE

**Description:** The work specified in this section consists of constructing a cold mix open-graded asphalt concrete base composed of aggregate and emulsified asphalt mixed into a uniformly, well-coated mass, spread on a prepared sub-grade, compacted to the lines, grades, and thickness established by the County.

**Materials:** Aggregate – Aggregate shall be from an approved source and meet the requirements of FDOT Specifications Section 901, No. 57 or No. 67 Coarse Aggregate, as designated by the County.

Emulsified Asphalt – Emulsified asphalt shall meet the requirements of Type CMS-2\* ASTM D2397 or CMS-2h\* ASTM D2397.

**Additives** – Additives that enhance pavement performance are subject to approval by Polk County.

**Mix Requirements:** The mix shall contain 14 to 16 gallons of emulsified asphalt to the ton of aggregate. Not less than 95% of the aggregate shall be coated.

**Construction Requirements:** Mixing – Mix aggregate and emulsified asphalt at the supplier's recommended temperature to produce a uniform, well-coated mixture without asphalt drain-off. Aggregate shall have a moisture content adequate to allow distribution of the emulsion, but shall not be so great that the moisture or emulsion runs from the mix or otherwise negatively impacts the mix.

**Placement** – Mix shall not be placed when ambient temperature is below 45° F. The mix shall not be placed when rain is occurring or the threat of rain is present immediately before placement or during the mix's curing period. Mixture shall be placed in a uniform layer(s) as required to achieve the specified thickness after compaction. After the placement of the mix, it shall be covered with approximately three pounds of clean, granular sand per square yard by mechanical means to prevent tracking. Payment for furnishing and placing the sand shall be included in the cost of the Cold Mix Open Graded Asphalt Base.

**Compaction** – Immediately after the mix has been spread, struck off, surface irregularities and other defects remedied, roll uniformly until compacted as specified. Compact with a self-propelled 8-12 ton non-vibratory steel wheeled roller with an eighty-four inch wide drum. Make a minimum of three (3) complete roller coverages or more, as needed, until roller marks are eliminated. Do not over compact; this could fracture the aggregate. Provide satisfactory longitudinal and transverse joints.

**Curing** – Allow sufficient time for mixture to cure before opening to traffic.

**Repairs** – Repair surface areas without damaging pavement. Defective materials are subject to replacement at the expense of the contractor.

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Surface Requirements – Surface requirements shall meet the requirements of FDOT Specifications Article 330-12.3.3.

Compensation – Compensation shall be as specified in FDOT Specifications Article 280-10.

Payment – Payment shall be made under Item 280-3-A Cold Mix Open-Graded Asphalt Base (4" Thick) Per Sq. Yd.

### HOT MIX OPEN-GRADED ASPHALT BASE

**Description:** The work specified in this section consists of constructing a hot mix open-graded asphalt concrete base composed of aggregate and asphalt cement mixed into a uniformly, well-coated mass, spread on a prepared sub-grade, compacted to the lines, grades and thickness established by the County.

**Materials: Aggregate –** Aggregate materials for use in this base shall be from an approved FDOT source of supply, and meet the requirements of Section 901 of FDOT Specifications, No. 57 or No. 67 Course Aggregate, as specified by the County.

**Bituminous Material –** Bituminous material for this base shall be asphalt cement viscosity grade AC-30, meeting the requirements of Section 916.1 of FDOT Specifications.

**Mix Requirements: Gradation –** Gradation of the mixture shall be as follows:

Sieve Size	Percent Passing
1-1/2"	100
3/4"	80-95
1/2"	20-55
No. 4	5-20
No. 10	0-10
No. 200	0-5

**Gradation Content –** Gradation and asphalt content of the mix during production will be determined by the County at the minimum frequency of one (1) per 1000 tons produced; and also by the producer at a frequency of once per day if production exceeds 100 tons, or whenever consecutive days' production exceeds 100 tons.

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Mix Approval – Producer shall provide the County with a design mix for approval prior to beginning production.

Bitumen Content – Bitumen content will be between 3.0% and 4.5%, as determined during job mix formula development. Actual bitumen percent and gradation on individual sieve sizes for the aggregate blend will be shown on the job mix formula.

Construction Requirements: Equipment – The requirements for plant and equipment for this base are specified in FDOT Standard Specifications Section 320. General construction requirements that apply are outlined in Section 330.

Placement – Mixture shall not be placed when air temperature is below 40°F or when the underlying course is wet. When overtaken by sudden rain, the engineer may allow placement of mixture that was in transit from the plant, at the engineer's discretion.

Temperature – Temperature of the mixture at the time of mixing will be between 280° and 310°F. Temperature of the mixture at the time of placing will be between 240 and 280 degrees F.

Compaction – Compaction of the mixture shall be accomplished when the temperature of the mix is between 150° and 225°, and will be accomplished before the mix temperature is below 100°F. The mixture shall be compacted with a self-propelled 8-12 ton non-vibratory steel wheel roller with an eighty-four inch wide drum. Do not over compact, which could fracture the aggregate.

Repairs – Repair surface areas without damaging base. Defective materials are subject to replacement at the expense of the contractor.

Surface Requirements – Surface requirements shall meet the requirements of FDOT Specifications Article 330-12.3.3.

Compensation – Compensation shall be as specified in FDOT Specifications Article 280-10.

Payment – Payment shall be made under Item No. 280-3-B Hot Mix Open-Graded Asphalt Base (4" Thick) Per Sq. Yd.

## FINAL DRESSING

Final dressing shall be specified in Article 120-11 of the FDOT specifications.

Payment shall be made under: ITEM NO. 120-81 FINAL DRESSING PER SQUARE YARD.

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## BORROW EXCAVATION

Borrow excavation shall be used for shoulder build-up in areas that require additional material to meet the shoulder template.

Payment shall be made under: ITEM NO. 120-2 BORROW EXCAVATION (TRUCK MEASURE) PER CU. YD.

## SODDING

Sodding shall be specified in Section 575 of the FDOT specifications and shall include water as directed by the engineer.

Payment shall be made under: ITEM NO. 575-1 SODDING PER SQ. YD.

## HYDRO-MULCH

Hydro-Mulch shall be spread on the areas outside the sod as directed by the engineer. The hydro-mulch shall contain the following materials per acre.

Brown-Top (Winter Rye)	165 lbs. Per acre
Brown Top (Summer Rye)	165 lbs. Per acre
Bahia	132 lbs. per acre
Bermuda, Unhulled	61 lbs. Per acre
Fertilizer	77 lbs. per acre
Sticker	44 lbs. Per acre
Hydro Mulch	33 bales

Price and payment shall be made under: ITEM NO. 570-22 HYDRO-MULCH PER SQUARE YARD.

## REMOVAL OF UNSUITABLE MATERIALS

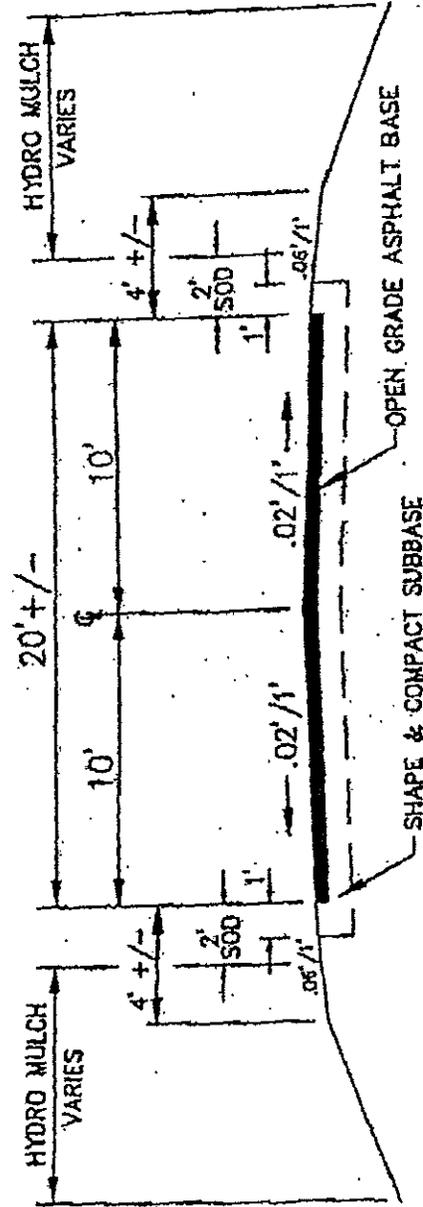
Payment shall be made under Item No. 120-4 and shall comply with all applicable requirements of F.D.O.T. Section 120-4 and 120-5.

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# TYPICAL ROAD SECTION

## OPEN GRADE ASPHALT BASE

N.T.S.

MDG 6/28/99

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## EXHIBIT C

### SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE ("Agreement") is made and entered into by and between the SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT, a public corporation of the State of Florida ("DISTRICT"), and FLETCHER MARINE, INC., a Florida corporation ("FLETCHER").

#### WITNESSETH:

WHEREAS, the DISTRICT entered into an agreement with Subaqueous Services, LLC ("Subaqueous") for the Lake Panasoffkee Restoration Project ("Project"), DISTRICT Agreement No. 03CONC00031, hereinafter referred to as the "Restoration Agreement"; and

WHEREAS, Subaqueous subcontracted with FLETCHER for the performance of dredging work required under the Restoration Agreement; and

WHEREAS, FLETCHER claims that it is entitled to a fuel and energy cost adjustment as a result of unexpected fuel and energy cost increases from May 2006 through the completion of the Project which is expected to be November 2008; and

WHEREAS, the DISTRICT maintains that fuel and energy cost adjustments are not authorized under the Restoration Agreement; and

WHEREAS, the parties desire to settle this dispute under the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual promises, covenants, agreements and conditions contained herein and for other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. **SETTLEMENT OF DISPUTES.** In order to reach resolution of any and all present and future claims FLETCHER may have against the DISTRICT arising from or related to the performance of the Project, the DISTRICT agrees to provide FLETCHER with shell material located on approximately 40 acres of land owned by the DISTRICT ("Property") for the purpose of selling said shell material. The Property is more specifically described in Exhibit "A", attached hereto and incorporated herein by reference. FLETCHER'S access to the Property and the sale of the shell material will be in accordance with and subject to the terms and conditions set forth in the subparagraphs below.
  - 1.1 The DISTRICT agrees to allow FLETCHER to sell shell material located on the Property as compensation for documented inflated fuel and energy costs as set forth at Subparagraph 1.2 of this Agreement. The DISTRICT will conduct an initial baseline topographic survey of the shell area and will perform subsequent topographic surveys to quantify the volume of shell removed by FLETCHER. The DISTRICT will retain ownership of the shell material until such time that FLETCHER locates a buyer and hauls the shell off-site.



- 1.2 FLETCHER will provide to the DISTRICT a final fuel and energy adjustment amount for all inflated fuel and energy costs incurred from May 2006 through the completion of the Project along with supporting documentation within sixty (60) days of completion of the Project. The DISTRICT'S Operations Department Director will approve the final amount ("Approved Amount") within thirty (30) days of receipt of the supporting documentation, which approval will not be unreasonably withheld. FLETCHER asserts that inflated diesel fuel costs incurred between May 2006 and September 16, 2008, totals \$1,086,989; however, FLETCHER has not yet provided documentation supporting such amount to the DISTRICT. For purposes of this subparagraph, supporting documentation will consist of fuel delivery tickets from diesel fuel providers and copies of invoices from Sumter Electric Cooperative, Inc., showing cost break downs for each monthly invoice.
- 1.3 FLETCHER will credit the DISTRICT \$2.60 per cubic yard (in-place volume) of material sold. For example, if the Approved Amount is \$1,200,000, FLETCHER will be allowed to remove and sell 461,538 cubic yards ( $\$1,200,000/\$2.60$  per cubic yard) of shell material as compensation. The exact yardage FLETCHER will be allowed to sell will be based on the actual costs incurred by FLETCHER through completion of the Project.
- 1.4 FLETCHER will be allowed to sell shell material for the term of this Agreement as provided at Paragraph 5 or until FLETCHER is fully compensated for the Approved Amount, whichever is earlier.
- 1.5 Commencing upon the DISTRICT'S approval of the final fuel and energy adjustment amount as set forth at Subparagraph 1.2, FLETCHER may enter upon the Property for the purpose of excavating shell, loading shell onto trucks and removing shell from the Property. FLETCHER is allowed to place vehicles, a construction trailer and equipment necessary for the shell operation on the Property with prior written approval from the DISTRICT'S Operations Department Director. FLETCHER is not authorized to set up any type of processing facilities on the Property; shell is to be loaded and hauled off-site as-is. FLETCHER is responsible for obtaining any property rights from adjacent land owners that may be necessary to access the Property.
- 1.6 If there is not adequate shell located on the Property to compensate FLETCHER as provided in this Agreement, the DISTRICT will authorize FLETCHER to enter upon adjacent land owned by the DISTRICT to access additional shell material. In this event, Exhibit "A" will be revised to replace the Property with this new area and the revised Exhibit "A" will be incorporated herein by reference. Upon receipt of the revised Exhibit "A" and written approval from the DISTRICT'S Operations Department Director, FLETCHER will relocate any vehicles, construction trailers, and other equipment to the new designated area.
- 1.7 Upon termination of this Agreement, FLETCHER will promptly remove all vehicles, construction trailers and equipment from the DISTRICT'S property.

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- 1.8 FLETCHER will provide quarterly reports to the DISTRICT documenting the tons and volume of material hauled off-site. Documentation will consist of a summary spreadsheet and copies of delivery tickets.
  - 1.9 Notwithstanding the above, the DISTRICT has the option at any time during the term of this Agreement to pay FLETCHER an amount that equals the unreimbursed portion of the Approved Amount instead of providing FLETCHER with access to shell material as set forth in this Agreement.
  - 1.10 The DISTRICT'S obligations as set forth in Paragraph 1 of this Agreement, including all subparagraphs, will take effect only after FLETCHER provides the releases described at Paragraph 2 of this Agreement.
2. RELEASE. In consideration of the execution by the DISTRICT of this Agreement and the compromise contained herein, FLETCHER, by execution hereof, waives, releases and relinquishes any and all claims, demands, causes of action, and liability, including attorneys' fees and costs, that it has or may have in the future, against the DISTRICT and Subaqueous, its employees, officers arising out of or relating to the work performed under Restoration Agreement.
  3. NONADMISSION. By entering into this Agreement, the DISTRICT does not admit any liability to FLETCHER, Subaqueous or any other party, for fuel and energy cost adjustments arising from or related to the Project.
  4. ASSUMPTION OF RISK AND INDEMNIFICATION. FLETCHER will assume all risk involved in entering upon and utilizing the DISTRICT'S property as authorized under this Agreement and agrees to indemnify and hold harmless the DISTRICT and all DISTRICT agents, employees and officers from and against all liabilities, claims, damages, expenses or actions, either at law or in equity, including attorneys' fees and costs and attorneys' fees and costs on appeal, caused or incurred, in whole or in part, as a result of any act or omission by FLETCHER, its agents, employees, subcontractors, assigns, heirs or anyone for whose acts or omissions any of these persons or entities may be liable during FLETCHER'S performance under this Agreement. This paragraph will survive the termination or expiration of this Agreement.
  5. CONTRACT PERIOD. This Agreement will be effective upon execution by all parties, and will remain in effect for five (5) years from the date of demobilization of the Project, unless terminated, pursuant to Paragraphs 1.4 and 1.9 of this Agreement, or as amended in writing by the parties. Notwithstanding the above, the effectiveness of this Agreement is contingent upon and subject to review and approval by the DISTRICT Governing Board at its meeting on September 30, 2008. In the event the DISTRICT Governing Board does not approve this Agreement, this Agreement shall be null, void and of no legal effect. After this Agreement has been executed by FLETCHER and the Executive Director of the DISTRICT, FLETCHER may not withdraw approval or terminate this Agreement under any circumstances unless the DISTRICT Governing Board fails to approve this Agreement.

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6. LAW COMPLIANCE. FLETCHER agrees that the activities authorized under this Agreement will be performed in a good, safe, workmanlike manner and in accordance with all applicable federal, state and local laws, rules, regulations, guidelines and permits.

7. INSURANCE. FLETCHER must maintain during the entire term of this Agreement, insurance in the following kinds and amounts or limits with a company or companies authorized to do business in the State of Florida and will not commence work under this Agreement until the DISTRICT has received an acceptable certificate of insurance showing evidence of such coverage. Certificates of insurance must reference this Agreement and the DISTRICT'S Project Manager.

7.1 Liability insurance on forms no more restrictive than the latest edition of the Commercial General Liability policy (CG 00 01) of the Insurance Services Office without restrictive endorsements, or equivalent, with the following minimum limits and coverage:

Per Occurrence.....	\$500,000
General Aggregate.....	\$1,000,000

7.2 Vehicle liability insurance, including owned, non-owned and hired autos with the following minimum limits and coverage:

Bodily Injury per Person	\$100,000
Bodily Injury Liability per Occurrence	\$300,000
Property Damage Liability	\$100,000
or	
Combined Single Limit	\$500,000

7.3 The DISTRICT and its employees, agents, and officers must be named as additional insureds on the general liability policy to the extent of the DISTRICT'S interests arising from this Agreement.

7.4 FLETCHER must carry workers' compensation insurance in accordance with Chapter 440, F.S. If FLETCHER does not carry workers' compensation coverage, FLETCHER must submit to the DISTRICT both an affidavit stating that the FLETCHER meets the requirements of an independent contractor as stated in Chapter 440, F.S. and a certificate of exemption from workers' compensation coverage.

7.5 Certificates of insurance must provide for mandatory thirty (30) days prior written notice to the DISTRICT of any change or cancellation of any of the required insurance coverage.

7.6 FLETCHER must obtain certificates of insurance from any subcontractor otherwise the FLETCHER must provide evidence satisfactory to the DISTRICT that coverage is afforded to the subcontractor by the FLETCHER insurance policies.

8. REMEDIES. Either party's failure to timely comply with any obligation in this Agreement will be deemed a breach of this Agreement and the expenses and costs incurred by the



non-breaching party, including attorneys' fees and costs and attorneys' fees and costs on appeal, due to said breach will be borne by the breaching party. Additionally, the parties will not be limited by the above but may avail themselves of any and all remedies under Florida law for any breach of this Agreement. The waiver by any party to this Agreement of the breach of any provision of this Agreement will not be deemed a continuing waiver or a waiver of any subsequent breach.

9. NOTICES. For purposes of this Agreement, all notification shall be provided as follows:

Don Fletcher, President  
Fletcher Marine, Inc.  
1040 Island Avenue  
Tarpon Springs, FL 34689

Mike Holtkamp, Dir., Operations Department  
Southwest Florida Water Management District  
2379 Broad Street  
Brooksville, FL 34604-6899

10. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the parties and, unless otherwise provided herein, may be amended only in writing, signed by all parties to this Agreement.
11. AUTHORITY OF PARTIES. Subject to approval by the DISTRICT Governing Board as provided at Paragraph 5 of this Agreement, the parties hereby represent and warrant that each has full power and authority to enter into this Agreement; that all consents and authorizations required in order to enter into and perform this Agreement have been obtained and are in full force and effect; and the parties hereby agree to indemnify and hold the other party, and its officers, directors, agents, and assigns, harmless from and against any and all loss or liability (including, without limitation, any and all attorney's fees and costs throughout all trial and appellate levels) the indemnified party may incur or become liable for as a result of or in connection with any inaccuracy in any of said representations or warranties and any claim or demand accruing as a result thereof.
12. SUCCESSORS AND ASSIGNS. This Agreement will be binding upon and inure to the benefit of the parties and their respective heirs, legal representatives and successors. No party may assign its interest under this Agreement, without the prior written consent of the other party.
13. VENUE AND APPLICABLE LAW. This Agreement shall be governed by, construed, and enforced under the laws of the State of Florida and venue will lie in the County of Hernando.
14. DRAFTING. The parties agree that this Agreement will be construed without regard to the drafter of the same and will be construed as though each party to this Agreement participated equally in the preparation and drafting of this Agreement.
15. VOLUNTARY EXECUTION. The parties acknowledge that each has read and understands this Agreement and that each is signing this Agreement voluntarily, without coercion, and based upon his or its own judgment, and not in reliance upon any representations or promises made by the other party, other than those contained within this Agreement.



16. HEADINGS. The captions appearing at the commencement of the paragraphs hereof are descriptive only and for convenience in reference. Should there be any conflict between any such caption and the paragraph at the head of which it appears, the paragraph and not such caption will control and govern in the construction of this Agreement.

In WITNESS WHEREOF, the parties hereto have executed this Settlement Agreement and Release on the day and year set forth next to their signatures below.

FLETCHER MARINE, INC.

John M. Behn 9/25/08  
Witness Date

By: Don Fletcher 9/25/08  
Don Fletcher, President Date  
Authorized Agent for Company

SOUTHWEST FLORIDA WATER  
MANAGEMENT DISTRICT

Dianne M. Brass 9-30-08  
Witness Date

By: David L. Moore 9-30-08  
David L. Moore Date  
Executive Director

Approved by the Governing Board of the Southwest Florida Water Management District this 30th day of SEPTEMBER 2008, in HERNANDO County, Florida.

By: Neil Combe  
Neil Combe, Chair  
Attest: Jennifer E. Closshey  
Jennifer E. Closshey, Secretary  
(Seal)

Filed this 1st day of  
OCTOBER  
Dianne M. Brass 2008.  
Deputy Agency Clerk

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Approved as to Legal Form and Content  
M. B. McNeil  
Attorney



Exhibit "A"

Legal Description 19-528-144X

The South 1000.00 feet of the North 1200.00 feet of the East 1625.00 feet of the West 1950.00 feet of the Southwest 1/4 of Section 16, Township 20 Soth, Range 22 East lying in Sumter County, Florida.

Containing 37.3 acres

Survey Section 09-25-08

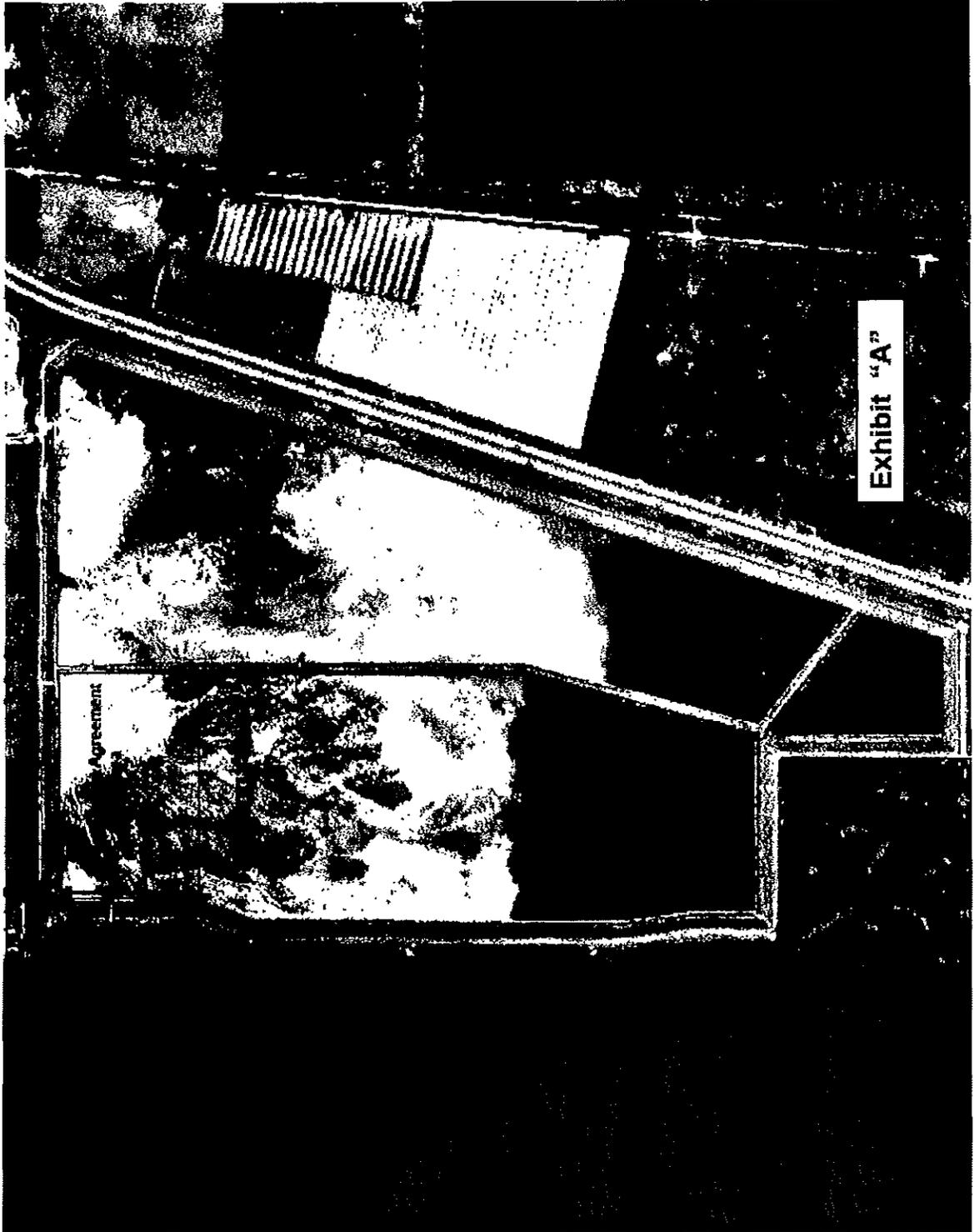
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SECRET TO BEA VALUE MANAGEMENT DISTRICT



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