

COOPERATIVE FUNDING AGREEMENT (Add CFI Type)
BETWEEN THE
SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT
AND
«FULL_NAME_OF_COOPERATOR»
FOR
«PROJECT_TITLE» («P000»)

THIS COOPERATIVE FUNDING AGREEMENT (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 «FULL_NAME_OF_COOPERATOR», a «CoopOrg» of the State of Florida, whose address is «LEGAL_STREET_ADDRESS», hereinafter referred to as the "COOPERATOR."

WITNESSETH:

WHEREAS, the COOPERATOR proposed a project to the DISTRICT for funding consideration under the DISTRICT'S cooperative funding program; and

WHEREAS, the project consists of «short_description_of_project», hereinafter referred to as the "PROJECT"; and

WHEREAS, the DISTRICT considers the resource benefits to be achieved by the PROJECT worthwhile and desires to assist the COOPERATOR in funding the PROJECT; and

WHEREAS, the parties desire to share in the cost of a third party review performed on the 30% design package.

If District funding includes federal or state funds, edit and add the appropriate Whereas clause(s) below, and see the instructions at Federal Single Audit/Florida Single Audit Act Paragraph.

WHEREAS, DISTRICT funding for the PROJECT includes Section 319(h) grant funds from the U. S. Environmental Protection Agency (EPA), Federal Catalog of Domestic Assistance number: CFDA 66.460.

WHEREAS, DISTRICT funding for the PROJECT includes funds from the ____ (Ecosystems Management and Restoration Trust Fund; Water Protection and Sustainability Program Trust Fund (WPSPTF); Water Management Lands Trust Fund), Florida Department of Environmental Protection (FDEP), Catalog of State Financial Assistance number: CSFA 37./022/039/066.

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

1. PROJECT CONTACTS AND NOTICES.

Each party hereby designates the individual set forth below as its prime contact for matters relating to this Agreement. Notices shall be sent to the attention of each party's prime contact as set forth herein by U.S. mail, postage paid, by nationally recognized overnight courier, or personally to the parties' addresses as set forth below. Notice is effective upon receipt.

Contract Manager for the DISTRICT:

«CMD»

Southwest Florida Water Management District

«CMD_Address»

«CMD_City», Florida «CMD_Zip»

Project Manager for the COOPERATOR:

«PMSP»

«PMSP_ORG»

«PMSP_ADDRESS»

«PMSP_CITY», «PMSP_STATE» «PMSP_ZIP»

Any changes to the above contact information must be provided to the other party in writing.

Reports required under this Agreement may be provided to the DISTRICT Contract Manager via email.

1.1 *[Replace this section with 1.1 in the CFA-4, Revenue Agreement, if the District will be performing the third party review; except replace DISTRICT'S Project Manager with DISTRICT'S Contract Manager]* The DISTRICT'S Contract Manager is authorized to approve requests to extend a PROJECT task deadline set forth in the Project Plan. Such approval must be in writing, explain the reason for the extension and be signed by the Contract Manager and his or her Bureau Chief, or Director if the Bureau Chief is the Contract Manager, unless the DISTRICT'S Signature Authority provides otherwise. The DISTRICT'S Signature Authority supersedes the approval requirements provided in this provision. The DISTRICT'S Contract Manager is not authorized to approve any time extension which will result in an increased cost to the DISTRICT or which will exceed the expiration date set forth in this Agreement.

1.2 *[Replace this section with 1.3 in the CFA-4, Revenue Agreement, if the District will be performing the third party review; except replace DISTRICT'S Project Manager with DISTRICT'S Contract Manager]* The DISTRICT'S Contract Manager is authorized to adjust a line item amount of the Project Budget set forth in the Project Plan, or, if applicable, the refined budget as set forth in Subparagraph 4 of the Funding Paragraph. The authorization must be in writing, explain the reason for the adjustment, and be signed by all appropriate DISTRICT staff in accordance with the DISTRICT'S Signature Authority. The DISTRICT'S Contract Manager is not authorized to make changes to the Scope of Work and is not authorized to approve any increase in the amounts set forth in the Funding Paragraph.

2. SCOPE OF WORK.

Upon receipt of written notice to proceed from the DISTRICT, the COOPERATOR shall perform the services necessary to complete the PROJECT in accordance with the Project Plan. Any changes to this Agreement, except as provided herein, must be mutually agreed to in a formal written amendment approved by the DISTRICT and the COOPERATOR prior to being performed by the COOPERATOR. The COOPERATOR shall be solely responsible for managing and controlling the PROJECT, both during and after construction and during and after the operation and maintenance of the PROJECT, including the hiring and supervising of any consultants or contractors it engages.

The parties agree that time is of the essence in the performance of each obligation under this Agreement.

2.1 The following is applicable to Feasibility Studies. If used, number the above sentence 2.1 [30% design and third party review projects are not considered feasibility studies for purposes of this Agreement] The parties acknowledge that the PROJECT is a feasibility study. The parties recognize that during the course of study, alternatives may be determined to not be feasible due to cost, water quality, permitability, supply availability, or other pertinent considerations. The COOPERATOR shall cease work on alternatives determined to not be feasible. The COOPERATOR may request reallocating funds to another alternative in accordance with Subparagraph 2 of the Project Contacts and Notices Paragraph of this Agreement. The approval of such request for reallocation of funds shall be in the DISTRICT'S sole discretion.

3. FUNDING.

The parties anticipate that the total cost of the PROJECT, including third party review costs, will be «TPC» Dollars (\$«TPCN»). The DISTRICT agrees to fund PROJECT costs up to «DC» Dollars (\$«DCN») and shall have no obligation to pay any costs beyond this maximum amount. (Multi-year funding – replace above sentence with: The DISTRICT agrees to fund PROJECT costs as appropriated by the DISTRICT in accordance with Subparagraph 1 of this Funding Paragraph and anticipates funding PROJECT costs up to «DC» Dollars (\$«DCN»), and shall have no obligation to pay any costs beyond this anticipated maximum amount.) The COOPERATOR agrees to provide all remaining funds necessary for the satisfactory completion of the PROJECT.

3.1 The DISTRICT'S performance and payment pursuant to this Agreement are contingent upon the DISTRICT'S Governing Board appropriating funds in its approved budget for the PROJECT in each fiscal year of this Agreement. (Multi-year funding: The COOPERATOR recognizes that the DISTRICT has approved \$«CONFUND_TODATE» for the PROJECT through Fiscal Year «CONFY». [WPSPTF-alternative water supply funds: This amount includes «WPSDOLLARS» Dollars (\$«WPSNUMERICDOLLARS») of WPSPTF funds.] The additional funds identified in this Agreement are contingent upon approval of such amounts by the DISTRICT'S Governing Board, in its sole discretion, in its annual budgets for future fiscal years.) The COOPERATOR'S payment of any financial obligation under this Agreement is subject to annual¹ appropriation by the COOPERATOR'S

Board/Council of legally available funds. (Applicable to state agencies, replace above sentence with: The COOPERATOR'S payment of any financial obligation under this Agreement is subject to the appropriation of funds by the Florida Legislature.) ¹Applicable to entities that solely have ad valorem taxes to fund Project costs (e.g. a special district), it must be requested by the Cooperator and must be approved by OGC.)

- 3.2 The COOPERATOR shall pay PROJECT costs prior to requesting reimbursement from the DISTRICT. The DISTRICT shall reimburse the COOPERATOR for the DISTRICT'S share of allowable PROJECT costs in accordance with the Project Budget contained in the Project Plan. Reimbursement for expenditures of contingency funds is contingent upon approval by the DISTRICT. If a reimbursement request includes the expenditure of contingency funds, the COOPERATOR shall provide sufficient documentation to the DISTRICT to explain the basis of the expense. The DISTRICT shall not reimburse the COOPERATOR for any expended contingency funds that the DISTRICT determines, in its sole discretion, to be in excess of what was reasonably necessary to complete the PROJECT. The DISTRICT shall reimburse the COOPERATOR for fifty percent (50%) of all allowable costs in each DISTRICT approved invoice received from the COOPERATOR, but at no point in time will the DISTRICT'S expenditure amounts under this Agreement exceed expenditures made by the COOPERATOR. (Multi-year funding: The parties acknowledge that the DISTRICT'S reimbursement percentage stated above is subject to change if the percentage of the DISTRICT'S anticipated funding amount is changed due to subsequent Governing Board approvals, but amounts approved by the DISTRICT in its annual budget shall not be reduced after the COOPERATOR has paid PROJECT costs of incurred obligations approved by the DISTRICT pursuant to Subparagraph 4 of this Funding Paragraph and are otherwise reimbursable by the DISTRICT under this Agreement.)
- 3.3 WPSPTF-alternative water supply funds: Any funds received from the WPSPTF shall be applied to equally reduce each party's share of allowable construction costs not to exceed 20% of the total allowable construction costs for the PROJECT. Unless otherwise provided in the Project Plan, any federal, state, local or grant monies received by the COOPERATOR for this PROJECT shall be applied to equally (proportionately) reduce each party's share of PROJECT costs. The COOPERATOR shall provide the DISTRICT (The parties will provide each other) with written documentation detailing its (their) allocation of any such funds appropriated for this PROJECT. This Subparagraph shall survive the expiration or termination of this Agreement.
- 3.4 The COOPERATOR may contract with consultant(s), contractor(s) or both to accomplish the PROJECT. Prior to posting solicitations, the COOPERATOR must obtain the DISTRICT'S written input regarding whether costs to be paid are allowable under this Agreement. The COOPERATOR must also obtain the DISTRICT'S written approval prior to entering into agreements for PROJECT work to ensure that costs to be reimbursed by the DISTRICT are reasonable. The DISTRICT shall provide a written response to the COOPERATOR within fifteen (15) business days of receipt of the solicitation or agreement. Upon written

DISTRICT approval, the budget amounts for the work set forth in such agreement(s) shall refine the amounts set forth in the Project Budget and be incorporated herein by reference. The DISTRICT shall not reimburse the COOPERATOR for costs incurred under consultant and contractor agreements until the DISTRICT approvals required under this provision have been obtained.

- 3.5 Payment shall be made to the COOPERATOR within forty-five (45) days of receipt of an invoice with adequate supporting documentation to satisfy auditing purposes. Invoices shall be submitted to the DISTRICT every two (2) months electronically at invoices@WaterMatters.org, or at the following address:

Accounts Payable Section
Southwest Florida Water Management District
Post Office Box 15436
Brooksville, Florida 34604-5436

The above-referenced payment due date shall not apply to that portion of an invoice that includes expenditures of contingency funds. The DISTRICT agrees to reimburse the COOPERATOR for expenditures of contingency funds within a reasonable time to accommodate the process provided for in Subparagraph 2 of this Funding Paragraph.

In addition to sending an original invoice to the DISTRICT'S Accounts Payable Section as required above, copies of invoices may also be submitted to the DISTRICT'S Contract Manager in order to expedite the review process. Failure of the COOPERATOR to submit invoices to the DISTRICT in the manner provided herein shall relieve the DISTRICT of its obligation to pay within the aforementioned timeframe.

The DISTRICT makes payments electronically through the Automated Clearing House (ACH) process. The COOPERATOR agrees to complete the DISTRICT'S *Vendor Registration Form* and *Vendor Electronic Payment Authorization Form* to enable payments to be sent to COOPERATOR electronically. The forms may be downloaded from the DISTRICT'S website at www.watermatters.org under Business & Finance – Contracts and Procurement. Any questions regarding electronic payments may be directed to the DISTRICT'S Accounts Payable Lead at 352-796-7211, extension 4108.

- 3.6 **Water Quality/Flood Protection (WQ/FP) Projects delete 1st & 2nd sentences:** The parties acknowledge that the PROJECT was approved for funding by the DISTRICT based upon the resource benefits expected to be achieved by the PROJECT (the "Measurable Benefit"). The parties also acknowledge that the COOPERATOR is solely responsible for implementing the PROJECT in such a manner that the expected resource benefits are achieved. If at any point during the progression of the PROJECT, *[include the following only if the Measurable Benefit is the construction of the project – do not include if the MB is limited to the 30% design and third party review]* following the completion of the third party review and the DISTRICT'S Governing Board's approval to continue funding the PROJECT, the DISTRICT determines that it is likely that the Measurable Benefit as set forth in

the Project Plan will not be achieved, the DISTRICT shall provide the COOPERATOR with fifteen (15) days advance written notice that the DISTRICT shall withhold payments to the COOPERATOR until such time as the COOPERATOR demonstrates that the PROJECT shall achieve the required resource benefits, to provide the COOPERATOR with an opportunity to cure the deficiencies.

WQ/FP Projects add: Furthermore, if at any point during the design of the PROJECT, it is determined by the DISTRICT, in its sole discretion, that the Resource Benefit as set forth in the Project Plan may not be achieved, the DISTRICT may terminate this Agreement without any payment obligation. Such termination shall be effective ten (10) days following the COOPERATOR'S receipt of written notice from the DISTRICT.

3.7 [Add the following when the District will be performing the third party review] Notwithstanding the DISTRICT'S reimbursement obligation set forth in Subparagraph 2 of this Funding Paragraph, the DISTRICT shall withhold reimbursement of the 30% design costs in an amount equivalent to half the cost for the third party design that will be performed by the DISTRICT'S consultant.

3.8 Any travel expenses which may be authorized under this Agreement shall be paid in accordance with Section 112.061, Florida Statutes (F.S.), as may be amended from time to time. The DISTRICT shall not reimburse the COOPERATOR for any purpose not specifically identified in the Scope of Work Paragraph. Surcharges added to third party invoices are not considered an allowable cost under this Agreement. Costs associated with in-kind services provided by the COOPERATOR are not reimbursable by the DISTRICT and may not be included in the COOPERATOR'S share of funding contributions under this Agreement.

3.9 Design/construction: [include the following only if the Measurable Benefit is the construction of the project – do not include if the MB is limited to the 30% design and third party review] The DISTRICT shall not be obligated to reimburse the COOPERATOR'S for any design or other work performed by the COOPERATOR'S consultant(s) that takes place other than the completion of the 30% design package as described in the Project Plan until the DISTRICT'S Governing Board is presented with the third party review and DISTRICT staff's recommendation and decides to continue funding the PROJECT. Except for costs associated with the 30% design package and the third party review, (t) The DISTRICT has no obligation and shall not reimburse the COOPERATOR for any costs under this Agreement until the Notice to Proceed with construction has been issued to the COOPERATOR'S contractor. If applicable, for reclaimed water projects only: Additionally, the DISTRICT has no obligation to reimburse the COOPERATOR for any costs under this Agreement until the related wastewater treatment facility which must be permitted by the Florida Department of Environmental Protection to deliver reclaimed water flows to the PROJECT as provided in the Project Plan, is constructed and operational, and if the proposed user of the reclaimed water is a newly proposed development or subdivision, until said development or subdivision is fully permitted and under construction.

3.10 [include the following only if the Measurable Benefit is the construction of the project – do not include if the MB is limited to the 30% design and third party review] The parties acknowledge that the DISTRICT has the right to terminate this Agreement without further payment obligation at the direction of the DISTRICT'S Governing Board following the review of the third party review.

3.11 Each COOPERATOR invoice must include the following certification, and the COOPERATOR hereby delegates authority by virtue of this Agreement to its Project Manager to affirm said certification:

"I hereby certify that the costs requested for reimbursement and the COOPERATOR'S matching funds, as represented in this invoice, are directly related to the performance under the «PROJNAMECOMB» («P000») agreement between the Southwest Florida Water Management District and «FULL_NAME_COMB» (Agreement No. _____), are allowable, allocable, properly documented, and are in accordance with the approved Project Budget. This invoice includes \$__ of contingency expenses. The COOPERATOR has been allocated a total of \$__ in federal, state, local or grant monies for this PROJECT (not including DISTRICT funds) and \$__ has been allocated to this invoice, reducing the DISTRICT'S and COOPERATOR'S share to \$__ (/ \$__ respectively when not 50/50 use "proportionately")."

3.12 In the event any dispute or disagreement arises during the course of the PROJECT, including whether expenses are reimbursable under this Agreement, the COOPERATOR will continue to perform the PROJECT work in accordance with the Project Plan. The COOPERATOR is under a duty to seek clarification and resolution of any issue, discrepancy, or dispute by providing the details and basis of the dispute to the DISTRICT'S Contract Manager no later than ten (10) days after the precipitating event. If not resolved by the Contract Manager, in consultation with his or her Bureau Chief, within ten (10) days of receipt of notice, the dispute will be forwarded to the DISTRICT'S Assistant Executive Director. The DISTRICT'S Assistant Executive Director in consultation with the DISTRICT'S Office of General Counsel will issue the DISTRICT'S final determination. The COOPERATOR'S continuation of the PROJECT work as required under this provision shall not constitute a waiver of any legal remedy available to the COOPERATOR concerning the dispute.

4. COMPLETION DATES.

The COOPERATOR shall commence and complete the PROJECT and meet the task deadlines in accordance with the Project Schedule set forth in the Project Plan, including any extensions of time provided by the DISTRICT in accordance with Subparagraph 1 of the Project Contacts and Notices Paragraph. In the event of hurricanes, tornados, floods, acts of God, acts of war, or other such catastrophes, or other man-made emergencies such as labor strikes or riots, which are beyond the control of either party/the COOPERATOR, the COOPERATOR'S obligations to meet the time frames provided in this Agreement shall be suspended for the period of time the condition continues to exist. During such suspension, this Agreement shall remain in effect. When the COOPERATOR is able to resume performance of its obligations under this Agreement, in whole or in part,

it shall immediately give the DISTRICT written notice to that effect and shall resume performance no later than two (2) working days after the notice is delivered. The suspension of the COOPERATOR'S obligations provided for in this provision shall be the COOPERATOR'S sole remedy for the delays set forth herein.

If the District is performing a third party review, replace the above with the following:

The COOPERATOR shall commence and complete the PROJECT and meet the task deadlines in accordance with the Project Schedule set forth in the Project Plan, including any extensions of time provided by the DISTRICT in accordance with Subparagraph 1 of the Project Contacts and Notices Paragraph. The DISTRICT shall commence and complete the third party review in accordance with the Project Schedule set forth in the Project Plan, including any extensions of time provided by the COOPERATOR. In the event of hurricanes, tornados, floods, acts of God, acts of war, or other such catastrophes, or other man-made emergencies such as labor strikes or riots, which are beyond the control of either party, the performing party's obligations to meet the time frames provided in this Agreement shall be suspended for the period of time the condition continues to exist. During such suspension, this Agreement shall remain in effect. When the performing party is able to resume performance of its obligations under this Agreement, in whole or in part, it shall immediately give the other party written notice to that effect and shall resume performance no later than two (2) working days after the notice is delivered. The suspension of the parties' obligations provided for in this provision shall be the performing party's sole remedy for the delays set forth herein.

5. REPAYMENT.

5.1 The COOPERATOR shall repay the DISTRICT all funds the DISTRICT paid to the COOPERATOR under this Agreement, *[include the following only if the Measurable Benefit is the construction of the project – do not include if the MB is limited to the 30% design and third party review]* excluding costs for the 30 percent design package and the third party review, if: a) the COOPERATOR fails to complete the PROJECT in accordance with the terms and conditions of this Agreement, including failing to meet the Measurable Benefit, (Feasibility Projects: as it may be modified in accordance with Subparagraph 2 of the Scope of Work Paragraph); b) the DISTRICT determines, in its sole discretion and judgment, that the COOPERATOR has failed to maintain scheduled progress of the PROJECT thereby endangering the timely performance of this Agreement; c) the COOPERATOR fails to appropriate sufficient funds to meet the task deadlines, unless extended in accordance with Subparagraph 1 of the Project Contacts and Notices Paragraph; or d) a provision or provisions of this Agreement setting forth the requirements or expectations of a Measurable Benefit resulting from the PROJECT is held to be invalid, illegal or unenforceable during the term of this Agreement, including the duration of the operation and maintenance obligations set forth in this Agreement (Reclaimed Water or Reclaimed Water ASR: and the requirements applicable to reclaimed water projects set forth in this Agreement. Should any of the above conditions exist that require the COOPERATOR to repay the DISTRICT, this Agreement shall terminate in accordance with the procedure set forth in the Default Paragraph.

- 5.2 Notwithstanding the above, the parties acknowledge that if the PROJECT fails to achieve the Measurable Benefit specified in this Agreement, the COOPERATOR may request the DISTRICT Governing Board to waive the repayment obligation, in whole or in part.
- 5.3 In the event the COOPERATOR is obligated to repay the DISTRICT under any provision of this Agreement, the COOPERATOR shall repay the DISTRICT within a reasonable time, as determined by the DISTRICT in its sole discretion.
- 5.4 The COOPERATOR shall pay attorneys' fees and costs incurred by the DISTRICT, including appeals, as a result of the COOPERATOR'S failure to repay the DISTRICT as required by this Agreement.
- 5.5 This Repayment Paragraph, including all subparagraphs, shall survive the expiration or termination of this Agreement.
6. **Construction:** [If the Measurable Benefit is limited to 30% design and third party review, do not add O&M provision.] OPERATION AND MAINTENANCE. After construction is completed, the COOPERATOR shall operate, use and maintain the PROJECT for a minimum of twenty (20) years, in such a manner that the Measurable Benefit required under this Agreement is achieved. In the event the PROJECT is not operated, used and maintained in accordance with these requirements, the COOPERATOR shall repay the DISTRICT an amount of five percent (5%) of total DISTRICT monies contributed to the PROJECT, [include the following only if the Measurable Benefit is the construction of the project – do not include if the Measurable Benefit is limited to the 30% design and third party review] excluding costs of the 30 percent design package and third party review, for each year or a fraction thereof for the early termination of the PROJECT. The rights and remedies in this provision are in addition to any other rights and remedies provided by law or this Agreement.

Use the paragraph below in place of the above paragraph for all reclaimed water projects that involve construction/installation and those funded by WPSPTF, alternative supply funds. The Contract Manager needs to make sure that the Project's "full capacity" is specifically defined in the Project Plan.

The COOPERATOR shall ensure that the reclaimed water infrastructure related to the PROJECT is constructed, operated and maintained in such a manner that it shall continue to be utilized to its proposed capacity, as described in this Agreement, for a minimum of twenty (20) years. Capacity is defined, for the purposes of this Agreement, as the reclaimed water benefits described in the Project Plan, except for adverse short-term conditions beyond the control of the COOPERATOR. The COOPERATOR shall provide written notice to the DISTRICT of any adverse short-term conditions and the COOPERATOR'S plan of action with regard to overcoming said conditions. The DISTRICT'S Contract Manager will evaluate and determine the COOPERATOR'S compliance with this provision as part of the DISTRICT required "Annual Reclaimed Water Supplier Report" evaluation. If the reclaimed water infrastructure related to the PROJECT is not utilized to its proposed capacity as described in this Agreement, the COOPERATOR shall reimburse the DISTRICT for payments made pursuant to this Agreement in an amount equivalent to the percentage of capacity not attained.

ASR and Recharge: If the Florida Department of Environmental Protection (FDEP) issues an operation permit for the PROJECT, the COOPERATOR shall ensure that the infrastructure related to the PROJECT is operated and maintained in such a manner that it shall continue to be utilized to the greatest extent practicable to ensure that the maximum resource benefit is achieved for a minimum of twenty (20) years, except during adverse short-term conditions beyond the control of the COOPERATOR. The COOPERATOR shall provide written notice to the DISTRICT of any adverse short-term conditions and the COOPERATOR'S plan of action with regard to overcoming said conditions. The DISTRICT will evaluate and determine the COOPERATOR'S compliance with this provision as part of the DISTRICT required "Annual Reclaimed Water Supplier Report" evaluation. If the infrastructure related to the PROJECT is not utilized to the greatest extent practicable as required by this Agreement, the DISTRICT shall require the COOPERATOR to reimburse the DISTRICT for payments made pursuant to this Agreement in an amount equivalent to the percentage of reclaimed water not available to users as a result of the COOPERATOR'S violation of this provision as determined by the DISTRICT in its sole discretion.

Restoration: The COOPERATOR shall be responsible for the perpetual operation and maintenance of the completed PROJECT facilities, to ensure the proper hydraulic operation of the PROJECT, and to conform to all the conditions specified in the environmental permits issued for the PROJECT, in such a manner that the Measurable Benefit required under this Agreement is achieved. In the event the PROJECT is not operated and maintained for a minimum of twenty (20) years, the COOPERATOR shall pay the DISTRICT an amount of five percent (5%) of total DISTRICT monies contributed to the PROJECT for each year or a fraction thereof for early termination of the PROJECT. The rights and remedies in this provision are in addition to any other rights and remedies provided by law or this Agreement.

6.1. **Construction/ASR:** Within thirty (30) days after construction is completed, the COOPERATOR shall provide the DISTRICT with construction record drawings, (WQ/FP Projects add: to include Resource Benefit calculations and methodology,) signed and sealed by a professional engineer, certifying that the Measurable Benefit has been achieved. (For reclaimed water projects, delete "has been achieved" from the preceding sentence and replace with "is capable of being achieved within the timeframe required by this Agreement.") (For ASR projects, replace the previous sentence with the following: "Within thirty (30) days after the FDEP cycle testing requirements are completed, the COOPERATOR shall provide the DISTRICT with construction record drawings, signed and sealed by a professional engineer, certifying the Measurable Benefit is achievable based on the FDEP cycle test results.) The COOPERATOR shall provide the DISTRICT with an operation and maintenance plan that ensures the Measurable Benefit will be maintained. Every two (2) years following the completion of the PROJECT, the COOPERATOR shall generate a report describing the operations and maintenance activities that took place during the reporting period that certifies that the Measurable Benefit has been maintained. The COOPERATOR'S obligation to generate reports shall continue until the expiration of the 20-year operation and maintenance period. (CM: add requirements to SOW Deliverables: Operation and

Maintenance Plan; “Upon DISTRICT request, biennial Operation and Maintenance Report”)

- 6.2. Construction/ASR: The DISTRICT retains the right to audit any certification and the COOPERATOR shall provide documentation as requested by the DISTRICT to support its certification that the specified Measurable Benefit has been maintained.
- 6.3. This Operation and Maintenance Paragraph, including all subparagraphs, shall survive the expiration or termination of this Agreement.

If federal or state funds are included in the District's funding of the project: add the following Federal Single Audit/Florida Single Audit Act Paragraph (bold is applicable for federal funds); replace three (3) with five (5) years in the Project Records and Documents Paragraph; include appropriate Exhibit reference in the Documents Paragraph; and add the Special Audit Requirements (U: drive) exhibit with Attachment 1 completed, Attachment 2 blank. (Complete a copy of Attachment 2 to determine the Subrecipient/Vendor relationship, retain in the contract file, contact Contracts for assistance.

7. FEDERAL SINGLE AUDIT/FLORIDA SINGLE AUDIT ACT.

Funding for this Agreement includes federal and state financial assistance and is therefore subject to **the United States Office of Management and Budget (OMB) Circular A-133, as revised**, (if the federal award was made on or after 12/26/2014 use: **the Uniform Grant Guidance, 2 C.F.R. Part 200, (UGG) subpart F**) and the Florida Single Audit Act (FSAA), Section 215.97, F.S. The COOPERATOR is a subrecipient of **federal and** state financial assistance under this Agreement and therefore may be subject to audits and monitoring as described in the Special Audit Requirements set forth as an exhibit to this Agreement. The COOPERATOR must also use the **Federal Subrecipient v. Contractor Determination and the Florida Single Audit Act Checklist for Non-State Organizations – Recipient/Subrecipient vs. Vendor Determination** (Attachment 2 of exhibit), to evaluate the applicability of the OMB Circular A-133, as revised, (if the federal award was made on or after 12/26/2014 use: the UGG, subpart F,) FSAA to non-state organizations to which the COOPERATOR provides federal and State resources to assist in carrying out activities related to this Agreement. If either party has a question related to the grant or subgrant of state **federal** funding, contact the individuals identified below.

DISTRICT:

COOPERATOR:

Any changes to the above contact information must be provided to the other party in writing.

8. WPSPTF-alternative water supply funds and reclaimed water projects: WATER RATE STRUCTURES.

The COOPERATOR shall adopt rate structures for water customers in the COOPERATOR'S service area that shall promote the conservation of water and the use of water from alternative water supplies. The COOPERATOR will provide a copy of such rate structures to the DISTRICT prior to the COOPERATOR'S first request for

reimbursement of PROJECT costs. The COOPERATOR shall implement the rate structures as described herein within twelve (12) months of completion of the PROJECT. This Paragraph shall survive the expiration or termination of this Agreement.

9. CONTRACT PERIOD.

This Agreement shall be effective (when processing an agreement prior to the fiscal year its funded: «EXDATE», contingent upon DISTRICT budget approval, and delete “upon execution by the parties”) upon execution by the parties and shall remain in effect through «ENDDATE», or upon satisfactory completion of the PROJECT and subsequent reimbursement to the COOPERATOR, whichever occurs first, unless amended in writing by the parties. The COOPERATOR shall not be eligible for reimbursement for any work that is commenced, or costs that are incurred, prior to the effective date of this Agreement.

10. PROJECT RECORDS AND DOCUMENTS.

Upon request by the DISTRICT, the COOPERATOR shall permit the DISTRICT to examine or audit all PROJECT related records and documents during or following completion of the PROJECT at no cost to the DISTRICT. Payments made to the COOPERATOR under this Agreement shall be reduced for amounts found to be not allowable under this Agreement by an audit. If an audit is undertaken by either party, all required records shall be maintained until the audit has been completed and all questions arising from it are resolved. Each party shall maintain all such records and documents for at least three (3) years following completion of the PROJECT. Each party shall comply with Chapter 119, F.S., the Public Records Act, including allowing public access to PROJECT documents and materials made or received by either party. Should either party assert any exemption to the requirements of Chapter 119, F.S., the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon the asserting party. This Paragraph shall survive the expiration or termination of this Agreement.

11. Include when the District needs to retain rights to reuse intellectual property or other work products. This should be rarely used and requires OGC approval. OWNERSHIP OF DOCUMENTS AND OTHER MATERIALS.

All documents, including reports, drawings, estimates, programs, manuals, specifications, and all goods or products, including intellectual property and rights thereto, purchased under this Agreement with DISTRICT funds or developed in connection with this Agreement shall be and shall remain the property of the DISTRICT and the COOPERATOR, jointly. Notwithstanding the above, all reclaimed water infrastructure shall be and shall remain the sole property of the COOPERATOR. This Paragraph shall survive the expiration or termination of this Agreement.

12. REPORTS.

12.1 The COOPERATOR shall provide the DISTRICT with a quarterly report describing the progress of the PROJECT tasks, adherence to the Performance Schedule and any developments affecting the PROJECT. The COOPERATOR shall promptly advise the DISTRICT of issues that arise that may impact the successful and timely

completion of the PROJECT. Quarterly reports shall be submitted to the DISTRICT'S Contract Manager no later than forty-five (45) days following the completion of the quarterly reporting period. It is hereby understood and agreed by the parties that the term "quarterly" shall reflect the calendar quarters ending March 31, June 30, September 30 and December 31.

- 12.2 Upon request by the DISTRICT, the COOPERATOR shall provide the DISTRICT with copies of all data, reports, models, studies, maps or other documents resulting from the PROJECT. **Additionally, one (1) set, electronic and hardcopy, of any final reports must be submitted to the DISTRICT as Record and Library copies. If water resource data are collected, include the following:** The COOPERATOR shall submit all water resource data collected under this Agreement to the DISTRICT for upload to DISTRICT databases, and to the Florida Department of Environmental Protection's (FDEP) database for water quality data in accordance with Rule 62-40.540, Florida Administrative Code (F.A.C.). This Subparagraph shall survive the expiration or termination of this Agreement.

Contract Managers: If water resource data are collected, replace three (3) with five (5) years in the Project Records and Documents Paragraph and add the following language in the Project Plan. The electronic data deliverables from this Agreement must be submitted to the appropriate data steward within the District's Data Collection Bureau, for uploading to the District's Water Management Information System (WMIS) database, and other District and Florida Department of Environmental Protection databases.

The COOPERATOR shall submit all water resource data collected under this Agreement to the DISTRICT within six (6) months of collection in a standardized electronic format (available from the DISTRICT). Water quality data shall be submitted in a standardized electronic format (available from the DISTRICT) in accordance with Rule 62-40.540, F.A.C. and shall include the required data elements set forth in Rules 62-160.240 and 62-160.340 F.A.C.

Monitoring or collection of water resource data includes all field and laboratory data collected at groundwater or surface water stations. Groundwater includes, but is not limited to, the monitoring or collection of lithologic/geophysical, aquifer-test, water quality, water level, or biological data from test wells, observation wells, private wells, public supply wells, monitoring wells, springs, agricultural wells, or permit compliance wells. Surface water includes, but is not limited to, the monitoring or collection of water quality, biological, water level, discharge/flow, or sediment data from lakes, streams, rivers, estuarine or offshore marine sites, canals, retention ponds or stormwater ponds.

Water resource data also includes rainfall or other meteorological data, land survey data, elevation data, aerial imagery and other remotely-sensed data, and geographic information system (GIS) mapping data. All survey and mapping services and deliverables shall be certified as meeting or exceeding, in quality and precision, the standards applicable for this work, as set forth in Chapter 472, F.S.

Laboratories generating water resource data for submission to the DISTRICT must hold certification from the Department of Health - Environmental Laboratory

Certification Program as required under Rule 62-160.300 F.A.C. All field sampling organizations collecting water resource data shall follow the applicable field collection, quality control, and record-keeping requirements described in DEP-SOP-001/01 (March 1, 2014), Rule 62-160.800 F.A.C., unless specifically exempted by the DISTRICT.

The COOPERATOR shall obtain a Site Identifier (SID) from the DISTRICT'S Contract Manager for all sites before collecting data from the sites, so that samples and readings can be correctly tagged and identified.

The COOPERATOR shall contact the appropriate DISTRICT Contract Manager for specific monitoring protocols and requirements.

The COOPERATOR shall permit the DISTRICT, the FDEP, or any consultant operating on behalf of the DISTRICT or FDEP, to conduct periodic audits of field and laboratory procedures or records to determine if approved protocols are being followed in accordance with Rule 62-160.650 F.A.C.

- 12.3 *[Replace this 12.3 reporting provision with the following sentence if the Measurable Benefit is limited to the 30% design and third party review]* The COOPERATOR shall provide the DISTRICT with the 30% design in accordance with the requirements set forth in the Project Plan.

Type 2 Projects: The COOPERATOR shall provide the DISTRICT with the final design drawings including supporting documentation **WQ/FP Projects add:** and Resource Benefit calculations and methodology, for review by the DISTRICT in order for the DISTRICT to verify that the design meets the requirements of the PROJECT as set forth in the Project Plan. **WQ/FP Projects add:** A professional engineer shall, at a minimum, sign and seal the final design drawings, including Resource Benefit calculations and methodology. The DISTRICT shall provide a written response to the COOPERATOR within ten (10) business days of receipt of the design drawings and supporting documentation either verifying the design drawings appear to meet the requirements of this Agreement or stating its insufficiencies. The COOPERATOR shall not advertise the construction bid documents until the DISTRICT provides the required verification. The DISTRICT'S verification shall not constitute an approval of the design, or a representation or warranty that the DISTRICT has verified the architectural, engineering, mechanical, electrical, or other components of the construction bid documents or that such documents are in compliance with DISTRICT rules and regulations or any other applicable rules, regulations or law. The COOPERATOR shall require the design professional to warrant that the construction bid documents are adequate for bidding and construction of the PROJECT.

Type 3 Projects: Replace the first two sentences above with: The COOPERATOR must ensure that the design of the PROJECT maximizes the resource benefits to the greatest extent practicable. The COOPERATOR shall provide the DISTRICT with the 30%, 60%, 90% and final design drawings, including supporting documentation **WQ/FP Projects add:** and Resource Benefit calculations and methodology, for review by the DISTRICT, in order for the DISTRICT to verify that

the design meets the requirements of the PROJECT, as set forth in the Project Plan.

Use the paragraph below in place of the above paragraph if the Cooperator has already completed design, and the District is not funding design.

The COOPERATOR shall provide the DISTRICT with the final design drawings, including supporting documentation **WQ/FP Projects add:** and Resource Benefit calculations and methodology, for review by the DISTRICT in order for the DISTRICT to verify that the design meets the requirements of the PROJECT as set forth in the Project Plan. **WQ/FP Projects add:** A professional engineer shall, at a minimum, sign and seal the final design drawings, including Resource Benefit calculations and methodology. The DISTRICT shall provide a written response to the COOPERATOR within ten (10) business days of receipt of the design drawings and supporting documentation either verifying the design drawings appear to meet the requirements of this Agreement or stating its insufficiencies. The DISTRICT'S verification shall not constitute an approval of the design, or a representation or warranty that the DISTRICT has verified the architectural, engineering, mechanical, electrical, or other components of the construction bid documents or that such documents are in compliance with DISTRICT rules and regulations or any other applicable rules, regulations or law. The COOPERATOR shall require the design professional to warrant that the construction bid documents are adequate for bidding and construction of the PROJECT.

Feasibility studies and WMPs: Replace 12.3 with the following:

The COOPERATOR shall provide the DISTRICT with each deliverable set forth in the Project Plan for review by the DISTRICT, including any supporting documentation. The DISTRICT shall provide a written response to the COOPERATOR and the COOPERATOR shall respond to the DISTRICT'S questions and concerns within the timeframes set forth in the Project Plan.

Reclaimed water or reclaimed water ASR, if applicable:

- 12.4 The COOPERATOR shall provide the DISTRICT with an “*Annual Reclaimed Water Supplier Report*” showing the reuse flow and customer information for the COOPERATOR'S entire reuse system. This report requirement shall become effective upon execution of this Agreement. The reporting period shall be October 1st through September 30th and the report must be submitted by April 1st of the calendar year following the fiscal year period. The Annual Reclaimed Water Supplier Report is available at:

http://www.swfwmd.state.fl.us/download/view/site_file_sets/118/SWFWMD_Annual_Reclaimed_Water_Supplier_Report_LEG-R02600_AA.xlsx

The report format will be updated by the DISTRICT as needed. The COOPERATOR shall obtain the DISTRICT'S approval of the report before the report is finalized, and the DISTRICT will not unreasonably withhold its approval. Annual submission of this report will eliminate the requirement for the Reclaimed Water Offset Report by the COOPERATOR from any ongoing or previously

completed reclaimed water projects with the DISTRICT. In addition to other remedies provided in this Agreement, noncompliance with this report requirement may affect the COOPERATOR'S eligibility for further DISTRICT funding.

Reclaimed water facility information must be delivered to the DISTRICT as one ESRI Geodatabase that will contain the three feature classes and characteristics identified in the DISTRICT'S Reclaimed Water GIS Standards available at: <http://ftp.swfwmd.state.fl.us/pub/gisdata/schema/>. The GIS standard format will be updated by the DISTRICT as needed. The COOPERATOR shall obtain the DISTRICT'S approval of the GIS submission before the submission is finalized, and the DISTRICT will not unreasonably withhold its approval.

12.5 The COOPERATOR shall provide the data, reports and documents referenced in this provision at no cost to the DISTRICT.

13. RISK, LIABILITY, AND INDEMNITY.

13.1 To the extent permitted by Florida law, the COOPERATOR assumes all risks relating to the PROJECT and agrees to be solely liable for, and to indemnify and hold the DISTRICT harmless from all claims, loss, damage and other expenses, including attorneys' fees and costs and attorneys' fees and costs on appeal, arising from the design, construction, operation, maintenance or implementation of the PROJECT; provided, however, that the COOPERATOR shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the DISTRICT'S officers, employees, contractors and agents. The acceptance of the DISTRICT'S funding by the COOPERATOR does not in any way constitute an agency relationship between the DISTRICT and the COOPERATOR.

13.2 The COOPERATOR agrees to indemnify and hold the DISTRICT harmless, to the extent allowed under Section 768.28, F.S., from all claims, loss, damage and other expenses, including attorneys' fees and costs and attorneys' fees and costs on appeal, arising from the negligent acts or omissions of the COOPERATOR'S officers, employees, contractors and agents related to its performance under this Agreement.

13.3 This Risk, Liability, and Indemnity Paragraph, including all subparagraphs, shall not be construed as a waiver of the COOPERATOR'S sovereign immunity or an extension of COOPERATOR'S liability beyond the limits established in Section 768.28, F.S. Additionally, this Risk, Liability, and Indemnity Paragraph, including all subparagraphs, will not be construed to impose contractual liability on the COOPERATOR for underlying tort claims as described above beyond the limits specified in Section 768.28, F.S., nor be construed as consent by the COOPERATOR to be sued by third parties in any manner arising out of this Agreement.

13.4 Nothing in this Agreement shall be interpreted as a waiver of the DISTRICT'S sovereign immunity or an extension of its liability beyond the limits established in Section 768.28, F.S., nor be construed as consent by the DISTRICT to be sued by third parties in any manner arising out of this Agreement.

13.5 This Risk, Liability, and Indemnity Paragraph, including all subparagraphs, shall survive the expiration or termination of this Agreement.

14. DEFAULT.

Either party may terminate this Agreement upon the other party's failure to comply with any term or condition of this Agreement, including the failure to meet task deadlines established in this Agreement, as long as the terminating party is not in default of any term or condition of this Agreement at the time of termination. To effect termination, the terminating party shall provide the defaulting party with a written "Notice of Termination" stating its intent to terminate and describing all terms and conditions with which the defaulting party has failed to comply. If the defaulting party has not remedied its default within thirty (30) days after receiving the Notice of Termination, this Agreement shall automatically terminate. If a default cannot reasonably be cured in thirty (30) days, then the thirty (30) days may be extended at the non-defaulting party's discretion, if the defaulting party is pursuing a cure of the default with reasonable diligence. The rights and remedies in this Paragraph are in addition to any other rights and remedies provided by law or this Agreement.

15. RELEASE OF INFORMATION.

The parties agree not to initiate any oral or written media interviews or issue press releases on or about the PROJECT without providing notices or copies to the other party no later than three (3) business days prior to the interview or press release. This Paragraph shall not be construed as preventing the parties from complying with the public records disclosure laws set forth in Chapter 119, F.S.

16. DISTRICT RECOGNITION.

The COOPERATOR shall recognize DISTRICT funding in any reports, models, studies, maps or other documents resulting from this Agreement, and the form of said recognition shall be subject to DISTRICT approval. **If construction is involved, the COOPERATOR shall provide signage at the PROJECT site that recognizes funding for this PROJECT provided by the DISTRICT. All signage must meet with DISTRICT written approval as to form, content and location, and must be in accordance with local sign ordinances.**

17. PERMITS AND REAL PROPERTY RIGHTS.

The COOPERATOR shall obtain all permits, local government approvals and all real property rights necessary to complete the PROJECT prior to commencing any construction involved in the PROJECT. The DISTRICT shall have no obligation to reimburse the COOPERATOR for any costs under this Agreement until the COOPERATOR has obtained all permits, approvals, and property rights necessary to accomplish the objectives of the PROJECT. In the event a permit, approval or property right is obtained but is subsequently subject to a legal challenge that results in an unreasonable delay or cancellation of the PROJECT as determined by the DISTRICT in its sole discretion, the COOPERATOR shall repay the DISTRICT all monies contributed

to the PROJECT. This Paragraph shall survive the expiration or termination of this Agreement.

18. LAW COMPLIANCE.

The COOPERATOR shall comply with all applicable federal, state and local laws, rules, regulations and guidelines, including those of the DISTRICT, related to performance under this Agreement.

19. DIVERSITY IN CONTRACTING AND SUBCONTRACTING.

The DISTRICT is committed to supplier diversity in the performance of all contracts associated with DISTRICT cooperative funding projects. The DISTRICT requires the COOPERATOR to make good faith efforts to encourage the participation of minority owned and woman owned and small business enterprises, both as prime contractors and subcontractors, in the performance of this Agreement, in accordance with applicable laws.

19.1 If requested, the DISTRICT shall assist the COOPERATOR by sharing information to help the COOPERATOR in ensuring that minority owned and woman owned and small businesses are afforded an opportunity to participate in the performance of this Agreement.

19.2 If the District's share is \$100,000 or more, add 19.2 to require the submission of a diversity report. The final invoice cannot be paid without this report. Discuss the requirements of this clause with the Cooperator's Project Manager. The proper Cooperator department must be aware of this requirement up-front. The COOPERATOR agrees to provide the DISTRICT with a report indicating all contractors and subcontractors who performed work in association with the PROJECT, the amount spent with each contractor or subcontractor, and to the extent such information is known, whether each contractor or subcontractor was a minority owned or woman owned or small business enterprise. If no minority owned or woman owned or small business enterprises were used in the performance of this Agreement, then the report shall so indicate. The Minority/Women Owned and Small Business Utilization Report form is attached as an exhibit. The report is required upon final completion of the PROJECT prior to final payment, or within thirty (30) days of the execution of any amendment that increases PROJECT funding, for information up to the date of the amendment and prior to the disbursement of any additional funds by the DISTRICT.

20. ASSIGNMENT.

Except as otherwise provided in this Agreement, no party may assign any of its rights or delegate any of its obligations under this Agreement, including any operation or maintenance duties related to the PROJECT, without the prior written consent of the other party. Any attempted assignment in violation of this provision is void. This Paragraph shall survive the expiration or termination of this Agreement.

21. CONTRACTORS.

Nothing in this Agreement shall be construed to create, or be implied to create, any relationship between the DISTRICT and any consultant or contractor of the COOPERATOR.

22. THIRD PARTY BENEFICIARIES.

Nothing in this Agreement shall be construed to benefit any person or entity not a party to this Agreement.

23. LOBBYING PROHIBITION.

Pursuant to Section 216.347, F.S., the COOPERATOR is prohibited from using funds provided by this Agreement for the purpose of lobbying the Legislature, the judicial branch or a state agency.

24. PUBLIC ENTITY CRIMES.

Pursuant to Subsections 287.133(2) and (3), F.S., a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, F.S., for Category Two, for a period of 36 months following the date of being placed on the convicted vendor list. The COOPERATOR agrees to include this provision in all contracts issued as a result of this Agreement.

25. **Include if state funds are involved. DISCRIMINATION.**

Pursuant to Subsection 287.134(2)(a), F.S., an entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity. The COOPERATOR agrees to include this provision in all contracts issued as a result of this Agreement.

26. **Include in contracts of \$1 million or more: SCRUTINIZED COMPANIES.**

Pursuant to Section 287.135, F.S., a company that, at the time of bidding or submitting a proposal for a new contract or renewal of an existing contract, is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, F.S., or is

engaged in a boycott of Israel; is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, F.S.; or is engaged in business operations in Cuba or Syria, is ineligible to, and may not bid on, submit a proposal for, or enter into or renew a contract with an agency or local governmental entity for goods or services of \$1 million or more. By signing this Agreement, COOPERATOR certifies that it is not participating in a boycott of Israel, is not on any of the aforementioned lists, and it does not have business operations in Cuba or Syria. The COOPERATOR agrees to notify the DISTRICT if placement on any of the aforementioned lists occurs or if COOPERATOR is engaged in a boycott of Israel or has business operations in Cuba or Syria. The DISTRICT may terminate this Agreement if the COOPERATOR is found to have submitted a false certification; has been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel; has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; or has been engaged in business operations in Cuba or Syria. If the DISTRICT determines COOPERATOR submitted a false certification, the DISTRICT may bring a civil action against the COOPERATOR which may result in a penalty equal to the greater of \$2 million or twice the amount of this Agreement and all reasonable attorneys' fees and costs.

Reclaimed Water, if applicable:

27. DISTRIBUTION REQUIREMENTS.

The COOPERATOR shall adhere to the following terms and conditions and shall provide written documentation that evidences compliance with each prior to requesting any reimbursement.

- 27.1. Adopt, or have the associated local government adopt, an ordinance requiring dual distribution (potable and reclaimed) lines in new developments within its reclaimed water service area, and provide for the necessary enforcement.
- 27.2. Adopt an ordinance and provide enforcement for the efficient use of reclaimed water for aesthetic landscape irrigation which results in at least a fifty percent (50%) efficiency to groundwater, surface water, and/or potable water supplies used for irrigation. Examples may include, but are not limited to: eliminating daytime reclaimed water irrigation, odd/even reclaimed watering schedules, and residential reclaimed water metering coupled with water conserving rates. Such measures shall be developed with the intent of eliminating practices which do not result in the beneficial use of reclaimed water.
- 27.3. Adopt a policy to guarantee a rate of connection to the reclaimed water system that is not less than fifty percent (50%) of the customer accounts in the PROJECT'S service area. This fifty percent (50%) rate of connections shall be achieved in the PROJECT service area within one year of PROJECT completion. This Subparagraph shall survive the expiration or termination of this Agreement. (For new residential subdivisions under construction, replace "one year" in the previous sentence with "three years.")

Replace the above with the following if the residential subdivision already has the distribution system installed.

Adopt a policy to guarantee connection to the reclaimed water system of the customer accounts in the PROJECT'S service area.

27.4. Have initiated the installation of reclaimed water meters within the PROJECT service area identified in the COOPERATOR'S Project Plan. If the PROJECT serves single family residential customers, a minimum of a master meter per subdivision is required. The COOPERATOR shall maintain and record reclaimed water usage through said meter(s) for the life of the reuse system. This Subparagraph shall survive the expiration or termination of this Agreement.

28. Reclaimed Water: EDUCATION PROGRAM AND APPROVAL.

The COOPERATOR shall continue its previously approved customer education program promoting the efficient use and conservation of reclaimed water. (if Education Program not yet developed and approved by the District, replace "continue its previously approved" with "institute a", remove "AND APPROVAL" from the title, and add following: **Plans for the program are included in the COOPERATOR'S Project Plan. The COOPERATOR must obtain the DISTRICT'S approval of the educational material prior to proceeding with implementation of the PROJECT. The DISTRICT will not unreasonably withhold its approval. The DISTRICT shall have no obligation to reimburse the COOPERATOR for any costs under this Agreement until the COOPERATOR'S education program is implemented.**

29. Reclaimed Water: 20-YEAR CUSTOMER COMMITMENT AGREEMENT.

The COOPERATOR shall obtain written agreements with residential reclaimed water customers served by the PROJECT that provide at least fifty percent (50%) of the PROJECT'S proposed reclaimed water replacement of existing or planned, groundwater or surface water withdrawals, under normal operating conditions to be achieved within one year of PROJECT completion. (For new residential subdivisions under construction, replace "one year" in the previous sentence with "three years.") Full achievement of the PROJECT'S proposed reclaimed water benefits shall be achieved within five (5) years of PROJECT completion and shall continue for a minimum of twenty (20) years. Written notification that all such agreements have been secured shall be provided to the DISTRICT'S Contract Manager prior to initiating construction of the PROJECT, and copies shall be furnished upon request. Agreements must include, at a minimum, term of agreement, quantities to be supplied, rates, fees and seasonal availability. This Paragraph shall survive the expiration or termination of this Agreement.

Use the provision below instead of the above if there is no 1 or 3 year allowance to complete connections.

The COOPERATOR shall obtain written agreements with residential reclaimed water customers served by the PROJECT that provide the PROJECT'S proposed reclaimed water replacement of existing or planned, groundwater or surface water withdrawals, under normal operating conditions for a minimum of twenty (20) years. Written notification

that all such agreements have been secured shall be provided to the DISTRICT'S Contract Manager prior to initiating construction of the PROJECT, and copies shall be furnished upon request. Agreements must include, at a minimum, term of agreement, quantities to be supplied, rates, fees and seasonal availability. This Paragraph shall survive the expiration or termination of this Agreement.

The Standard 20-year language (above) should be used when *multiple residential reuse customers* are to be supplied by the project, and the WUP 20-year language (below) should be used when *individual customers with WUPs* are to be supplied by the project. If both customer types are to be supplied by one project, then both paragraphs should be used.

Where reclaimed water shall provide benefits to withdrawals under Water Use Permits (WUPs), the COOPERATOR shall secure long term written agreements with those WUP customers served by the PROJECT, ensuring utilization of reclaimed water at the proposed capacity, as described in this Agreement, for a minimum of twenty (20) years. The COOPERATOR shall ensure said customers will provide the PROJECT'S proposed benefits to existing or planned, groundwater or surface water withdrawals, under normal operating conditions. Written notification that all such agreements have been secured shall be provided to the DISTRICT'S Contract Manager prior to initiating construction of the PROJECT, and copies shall be furnished upon request. Agreements must include, at a minimum, term of agreement, quantities to be supplied, rates, fees and seasonal availability. This Paragraph shall survive the expiration or termination of this Agreement.

30. Construction. COMPENSATORY TREATMENT MITIGATION.

This PROJECT shall not be used by the COOPERATOR or any other entity as compensatory water quality treatment or wetland mitigation, or any other required mitigation due to impacts for any projects. the PROJECT shall not be used for WUP withdrawal credits. In the event the PROJECT is used for compensatory water quality treatment or mitigation or WUP withdrawal credits in violation of this Paragraph, the COOPERATOR shall repay the DISTRICT all funds the DISTRICT paid to the COOPERATOR under this Agreement. The PROJECT can be used for self-mitigation due to impacts specifically associated with the construction of the PROJECT. This Paragraph shall survive the expiration or termination of this Agreement.

31. Restoration: CONSERVATION EASEMENT.

The COOPERATOR shall convey a perpetual conservation easement as defined in Section 704.06, F.S., to the DISTRICT, over the PROJECT area generally described in the Project Plan, without encumbrances unless such encumbrances do not adversely affect the ecological viability of the PROJECT. The parties acknowledge that for purposes of this Paragraph, the conservation easement will cover that portion of the property that is being improved with funds provided under this Agreement. The form and content of the conservation easement is subject to DISTRICT review and approval prior to execution, and should be substantially similar to the template attached hereto as an exhibit. Within sixty (60) days of beginning construction the COOPERATOR must submit a Title Insurance Commitment, legal description with a boundary survey signed and sealed by a Florida registered surveyor, evidence of ownership or legal control of the property, and a

draft conservation easement, in accordance with the Project Plan, for DISTRICT review and approval. If the COOPERATOR is a municipality, political subdivision or state agency, it may use an Ownership and Encumbrance Report acceptable to the DISTRICT in lieu of a Title Insurance Commitment. The COOPERATOR will have ninety (90) days to remove any encumbrances identified by the DISTRICT as unacceptable or demonstrate to the DISTRICT'S satisfaction that the encumbrance or encumbrances will not affect the ecological viability of the PROJECT. Within thirty (30) days after construction is complete the COOPERATOR must execute and record the conservation easement. Within thirty (30) days after recording, the COOPERATOR must submit the recorded conservation easement for the PROJECT area to the DISTRICT. Within ninety (90) days after recording, the Cooperator must submit a Title Insurance Policy consistent with the Title Insurance Commitment or Ownership and Encumbrance Report approved by the DISTRICT. All costs associated with obtaining the conservation easement and the other required documents shall be the sole obligation of the COOPERATOR outside of this Agreement. This Paragraph shall survive the expiration or termination of this Agreement.

32. GOVERNING LAW.

This Agreement is governed by Florida law and venue for resolving disputes under this Agreement shall be exclusively in Hillsborough County, Florida. This Paragraph shall survive the expiration or termination of this Agreement.

33. SEVERABILITY.

If any provision or provisions of this Agreement shall be held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. Notwithstanding the above, if a provision or provisions of this Agreement setting forth the requirements or expectations of a Measurable Benefit resulting from the PROJECT is held to be invalid, illegal or unenforceable during the term of this Agreement, this Agreement shall terminate in accordance with Subparagraph 1 of the Repayment Paragraph. This Paragraph shall survive the expiration or termination of this Agreement.

34. COUNTERPARTS.

The parties may execute this Agreement, and any amendments related to this Agreement, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all of the parties need not appear on the same counterpart. be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument.

35. ENTIRE AGREEMENT.

This Agreement and the attached exhibit(s) listed below constitute the entire agreement between the parties and, unless otherwise provided herein, may be amended only in writing, signed by all parties to this Agreement.

36. DOCUMENTS.

The following document(s) is/are attached and made a part of this Agreement. In the event of a conflict of contract terminology, priority shall first be given to the language in the body of this Agreement, then to Exhibit "A," and then to Exhibit "C", then to Exhibit "B", then to Exhibit "D".

Exhibit "A" COOPERATOR'S Project Plan
Exhibit "B" Minority/Women Owned and Small Business Utilization Report Form
Exhibit "C" Special Audit Requirements
Exhibit "D" Sample Conservation Easement

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: _____
Amanda Rice, P.E. Date
Assistant Executive Director

«FULL_NAME_OF_COOPERATOR»

By: _____
«Name_Title» Date

COOPERATIVE FUNDING AGREEMENT (Add CFI Type)
BETWEEN THE
SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT
AND
«FULL_NAME_OF_COOPERATOR»
FOR
«PROJECT_TITLE» («P000»)

AGREEMENT NO. _____

EXHIBIT "A"
COOPERATOR'S PROJECT PLAN

EXHIBIT "B"
MINORITY/WOMEN OWNED AND SMALL BUSINESS UTILIZATION REPORT

Projects receiving \$100,000 or more in cooperative funding from the Southwest Florida Water Management District require the submission of the following information within 30 days of any amendment increasing project funding and with the final invoice. Questions regarding use of this form should be directed to Contracts Administration, Phone (352) 796-7211 ext. 4132.

COOPERATOR: _____ AGREEMENT NO.: _____ PROJECT NAME: _____ TOTAL PROJECT COST: _____		INDICATE THE ONE CATEGORY THAT BEST DESCRIBES EACH ORGANIZATION LISTED*												
		BUSINESS CLASSIFICATION		CERTIFIED MBE					NON-CERTIFIED MBE					UNKNOWN
		NON-MINORITY	SMALL BUSINESS Section 288.703(1) F.S.	AFRICAN AMERICAN	HISPANIC AMERICAN	ASIAN/HAWAIIAN AMERICAN	NATIVE AMERICAN	AMERICAN WOMAN	AFRICAN AMERICAN	HISPANIC AMERICAN	ASIAN/HAWAIIAN AMERICAN	NATIVE AMERICAN	AMERICAN WOMAN	
NAMES OF CONTRACTORS AND SUBCONTRACTORS UTILIZED	TOTAL AMOUNT PAID													

* Our organization does not collect minority status data.

 Signature Date Print Name and Title