

FIRST AMENDMENT (3)
TO AGREEMENT BETWEEN THE
SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT
AND
CITY OF CLEARWATER
FOR
STORMWATER IMPROVEMENT - FLOOD PROTECTION
SMALLWOOD CIRCLE (N359)

This FIRST AMENDMENT entered into and effective this 31st day of December 2014 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 CITY OF CLEARWATER, a municipal corporation of the State of Florida, whose address is 112 Osceola Avenue, Clearwater, Florida 33756, hereinafter referred to as the "CITY."

WITNESSETH:

WHEREAS, the DISTRICT and the CITY entered into an Agreement effective November 7, 2011 (Original Agreement), for the implementation of Best Management Practices within the City of Clearwater watershed between Highland Avenue to the west, Drew Street (SR 590) to the south, Hobart Avenue to the east and Walnut Street to the north; and

WHEREAS, the parties hereto wish to amend the Agreement to extend the contract period due to sanitary sewer issues at Edgewood Avenue, and update contract language applicable to the DISTRICT'S cooperatively funded projects.

NOW THEREFORE, in consideration of the mutual terms, covenants and conditions contained herein, the parties hereby mutually agree to amend the Original Agreement, effective November 7, 2011, as follows:

1. Paragraph 1, Project Manager and Notices, is hereby amended as follows:

Project Manager for the DISTRICT: R.J. Dowling, P.E.
Project Manager for the CITY: Jennifer Shannon, P.E.

2. Subparagraphs 1.1 and 1.2 are hereby amended to the extent that approval of requests to extend a task deadline must be signed by the Project Manager and his or her Bureau Chief, or Director if the Bureau Chief is the Project Manager, unless the DISTRICT'S Signature Authority provides otherwise, and adjustments to a line item amount of the PROJECT budget must be signed by all appropriate DISTRICT staff in accordance with the DISTRICT'S signature authority.
3. Subparagraph 3.2 is hereby amended to replace the DISTRICT'S Accounts Payable Section address with the following:

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

4. New Subparagraph 3.9 is hereby added to Paragraph 3, Funding, as follows:
 - 3.9. In the event any dispute or disagreement arises during the course of the PROJECT, including whether expenses are reimbursable under this Agreement, the CITY will continue to perform the PROJECT work in accordance with the Project Plan. The CITY 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 Project Manager no later than ten (10) days after the precipitating event. If not resolved by the Project 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 CITY'S continuation of the PROJECT work as required under this provision shall not constitute a waiver of any legal remedy available to the CITY concerning the dispute.
5. Paragraph 4, Completion Dates, is hereby amended to complete construction of the PROJECT by June 30, 2015.
6. Paragraph 5, Failure to Complete Project, is hereby replaced in its entirety with new Paragraph 5, Repayment, as follows:
 5. REPAYMENT.
 - 5.1 The CITY shall repay the DISTRICT all funds the DISTRICT paid to the CITY under this Agreement, if: a) the CITY fails to complete the PROJECT in accordance with the terms and conditions of this Agreement, including failing to meet the measurable benefit; b) the DISTRICT determines, in its sole discretion and judgment, that the CITY has failed to maintain scheduled progress of the PROJECT thereby endangering the timely performance of this Agreement; c) the CITY fails to appropriate sufficient funds to meet the task deadlines, unless extended in accordance with Subparagraph 1.1; 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 Paragraph 6 of this Agreement. Should any of the above conditions exist that require the CITY to repay the DISTRICT, this Agreement shall terminate in accordance with the procedure set forth in Paragraph 11, Default.
 - 5.2 Notwithstanding the above, the parties acknowledge that if the PROJECT fails to meet the measurable benefit specified in this Agreement, the CITY may request the DISTRICT Governing Board to waive the repayment obligation, in whole or in part.

- 5.3 In the event the CITY is obligated to repay the DISTRICT under any provision of this Agreement, the CITY shall repay the DISTRICT within a reasonable time, as determined by the DISTRICT in its sole discretion.
 - 5.4 The CITY shall pay attorneys' fees and costs incurred by the DISTRICT, including appeals, as a result of CITY'S failure to repay the DISTRICT as required by this Agreement.
7. Paragraph 7, Contract Period, is hereby amended to extend the expiration date of December 31, 2014, in the Original Agreement, to September 30, 2015.
 8. Paragraph 10, Liability, is hereby replaced in its entirety with new Paragraph 10, Risk, Liability, and Indemnity, as follows:

10. RISK, LIABILITY, AND INDEMNITY.

- 10.1 To the extent permitted by Florida law, the CITY 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 CITY 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 CITY does not in any way constitute an agency relationship between the DISTRICT and the CITY.
- 10.2 The CITY 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 CITY'S officers, employees, contractors and agents related to its performance under this Agreement.
- 10.3 This Paragraph 10 shall not be construed as a waiver of the CITY'S sovereign immunity or an extension of CITY'S liability beyond the limits established in Section 768.28, F.S. Additionally, this Paragraph 10 will not be construed to impose contractual liability on the CITY for underlying tort claims as described above beyond the limits specified in Section 768.28, F.S., nor be construed as consent by the CITY to be sued by third parties in any manner arising out of this Agreement.
- 10.4 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.

9. Paragraph 23, Governing Law, is hereby amended to the extent that venue will be exclusively in Hernando County, Florida.
10. Paragraph 24, Survival, is hereby amended to include Paragraphs 8, 14, 17, 23 and 28.
11. New Paragraphs 27, Scrutinized Companies, and 28, Severability, are hereby added as follows:
 27. **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 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., is ineligible for, 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. Any contract with an agency or local governmental entity for goods or services of \$1 million or more entered into or renewed on or after July 1, 2011, must contain a provision that allows for the termination of such contract at the option of the awarding body if the company is found to have submitted a false certification as provided under Subsection 287.135(5), F.S., or has been placed on either of the aforementioned lists. The CITY agrees to comply with the requirements of Section 287.135, F.S. in connection with the implementation of the PROJECT.
 28. **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 5.1.
12. The terms, covenants and conditions set forth in the Original Agreement that have not been specifically amended herein, will continue in existence, are hereby ratified, approved and confirmed, and will remain binding upon the parties hereto.

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

SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT

By: _____
Mark A. Hammond, P.E. Date
Director, Resource Management Division

CITY OF CLEARWATER

By: _____
George N. Cretekos, Mayor Date

By: _____
William B. Horne II, City Manager Date



Approved as to form:

Attest:

Camilo Soto
Assistant City Attorney

Rosemarie Call
City Clerk

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DISTRICT APPROVAL	INITIALS	DATE
LEGAL	<u>msm</u>	<u>7/31/14</u>
RISK MGMT	<u>N/A</u>	
CONTRACTS	<u>gmk</u>	<u>8/11/14</u>
BUREAU CHIEF	<u>Maal</u>	<u>8/12/14</u>
DIRECTOR	<u>Maal</u>	<u>8/12/14</u>
GOVERNING BOARD		<u>N/A gmk</u>