



An Equal Opportunity Employer

Southwest Florida Water Management District

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

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

- Michael A. Babb**
Chair, Hillsborough
 - Randall S. Maggard**
Vice Chair, Pasco
 - Jeffrey M. Adams**
Secretary, Pinellas
 - David W. Dunbar**
Treasurer, Hillsborough, Pinellas
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 - Thomas E. Bronson**
Hernando, Marion
 - Wendy Griffin**
Hillsborough
 - George W. Mann**
Polk
 - Michael A. Moran**
Charlotte, Sarasota
 - Vacant**
Citrus, Lake, Levy, Sumter
- Robert R. Beltran, P.E.**
Executive Director

March 16, 2015

Roger Johnson, E.I.
City of Clearwater
100 S. Myrtle Avenue, Room 220
Clearwater, Florida 33618

Subject: City of Clearwater for Hillcrest Avenue Bypass Culvert (N632)

Dear Mr. Johnson:

Enclosed is one fully executed original of the agreement between the Southwest Florida Water Management District and the City of Clearwater, for the subject project.

If you have any questions, please contact me at the Brooksville office, extension 4739. I look forward to working with you on this project.

Sincerely,

R.J. Dowling, P.E.
Professional Engineer
Engineering & Watershed Management
Water Resources Bureau

RJD/brm
L:\ENGLIBRARY\RJ Dowling\FY15_CFIN632

Enclosures (2)

cc: Records (Contract File)
Project File

MAR 20 2015
City of Clearwater

COOPERATIVE FUNDING AGREEMENT (3)
BETWEEN THE
SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT
AND
CITY OF CLEARWATER
FOR
HILLCREST AVENUE BYPASS CULVERT (N632)

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

WHEREAS, the project consists of design, permitting, and construction for installation of a box culvert from under Browning Street to the upstream end of Linn Lake at the Evergreen Avenue footbridge to reduce structure flooding. This project was identified as Project 4A in the Stevenson Creek Watershed Management Plan, which was prepared by the CITY with the DISTRICT'S cooperative funding and participation, 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 CITY in funding the PROJECT.

NOW THEREFORE, the DISTRICT and the CITY, 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 and reports 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: R.J. Dowling, P.E.
Southwest Florida Water Management District
2379 Broad Street
Brooksville, Florida 34604

Project Manager for the CITY:

Roger T. Johnson, E.I.
City of Clearwater
100 South Myrtle Avenue, Room 220
Clearwater, Florida 33618

Any changes to the above representatives or addresses must be provided to the other party in writing.

- 1.1 The DISTRICT'S Contract Manager is authorized to approve requests to extend a PROJECT task deadline set forth in this Agreement. 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 The DISTRICT'S Contract Manager is authorized to adjust a line item amount of the PROJECT budget contained in the Project Plan set forth in Exhibit "A" or, if applicable, the refined budget as set forth in Subparagraph 3.4 below. 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 section of this Agreement.
2. SCOPE OF WORK. Upon receipt of written notice to proceed from the DISTRICT, the CITY shall perform the services necessary to complete the PROJECT in accordance with the CITY'S Project Plan set forth in Exhibit "A." 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 CITY prior to being performed by the CITY. The CITY 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.
3. FUNDING. The parties anticipate that the total cost of the PROJECT will be Three Million Nine Hundred Thousand Dollars (\$3,900,000). The DISTRICT agrees to fund PROJECT costs as appropriated by the DISTRICT in accordance with Subparagraph 3.1 below and anticipates funding PROJECT costs up to One Million Nine Hundred Fifty Thousand Dollars (\$1,950,000), and shall have no obligation to pay any costs beyond this anticipated maximum amount. The CITY 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. The CITY recognizes that the DISTRICT has approved \$230,000 for the PROJECT through Fiscal Year 2015. The additional funds identified in this Agreement are contingent upon approval of such amounts by the DISTRICT Governing Board, in its sole discretion, in its annual budgets for future fiscal years. The CITY'S payment of any financial obligation under this Agreement is subject to appropriation by the CITY'S Council of legally available funds.

- 3.2 The CITY shall pay PROJECT costs prior to requesting reimbursement from the DISTRICT. The DISTRICT shall reimburse the CITY for the DISTRICT'S share of allowable PROJECT costs in accordance with the PROJECT budget contained in the Project Plan set forth in Exhibit "A." Reimbursement for expenditures of contingency funds is contingent upon approval by the DISTRICT. If a reimbursement request includes the expenditure of contingency funds, the CITY shall provide sufficient documentation to the DISTRICT to explain the basis of the expense. The DISTRICT shall not reimburse the CITY for any 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 CITY for fifty percent (50%) of all allowable costs in each DISTRICT approved invoice received from the CITY, but at no point in time will the DISTRICT'S expenditure amounts under this Agreement exceed expenditures made by the CITY. 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 CITY has paid PROJECT costs of incurred obligations approved by the DISTRICT pursuant to Subparagraph 3.4 and are otherwise reimbursable by the DISTRICT under this Agreement.
- 3.3 Unless otherwise stated in this Agreement, any federal, state, local or grant monies received by the CITY for this PROJECT shall be applied to equally reduce each party's share of PROJECT costs. The CITY shall provide the DISTRICT with written documentation detailing its allocation of any such funds appropriated for this PROJECT.
- 3.4 The CITY may contract with consultant(s), contractor(s) or both to accomplish the PROJECT. The CITY must obtain the DISTRICT'S written approval prior to posting solicitations for consultants or contractors and prior to entering into agreements with consultants or contractors to ensure that costs to be reimbursed by the DISTRICT under those agreements are reasonable and allowable under this Agreement. The DISTRICT shall provide a written response to the CITY 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 contract(s) shall refine the amounts set forth in the PROJECT budget and be incorporated herein by reference. The DISTRICT shall not reimburse the CITY 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 CITY 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 contingency expenses. The DISTRICT agrees to reimburse the CITY for contingency expenses within a reasonable time to accommodate the process provided for in Subparagraph 3.2 of this Agreement.

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 CITY to submit invoices to the DISTRICT in the manner provided herein shall relieve the DISTRICT of its obligation to pay within the aforementioned timeframe.

- 3.6 If at any point during the progression of 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 CITY with fifteen (15) days advance written notice that the DISTRICT shall withhold payments to the CITY until such time as the CITY demonstrates that the PROJECT shall achieve the required resource benefits, to provide the CITY with an opportunity to cure the deficiencies.

Furthermore, if at any point during the progression 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 CITY'S receipt of written notice from the DISTRICT.

- 3.7 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 CITY for any purpose not specifically identified in Paragraph 2, Scope of Work. Surcharges added to third party invoices are not considered an allowable cost under this Agreement. Costs associated with in-kind services provided by the CITY are not reimbursable by the DISTRICT and may not be included in the CITY'S share of funding contributions under this Agreement.
- 3.8 The DISTRICT has no obligation and shall not reimburse the CITY for any costs under this Agreement until the Notice to Proceed with construction has been issued to the CITY'S contractor.

- 3.9 Each CITY invoice must include the following certification, and the CITY 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 CITY'S matching funds, as represented in this invoice, are directly related to the performance under the SW IMP - Flood Protection - Hillcrest Avenue Bypass Culvert (N632) agreement between the Southwest Florida Water Management District and City of Clearwater (Agreement No. 15C00000019), are allowable, allocable, properly documented, and are in accordance with the approved project budget. This invoice includes \$__ of contingency expenses. The CITY 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 CITY'S share to \$__."

- 3.10 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 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 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.

4. COMPLETION DATES. The CITY shall commence and complete the PROJECT and meet the task deadlines in accordance with the project schedule set forth in Exhibit "A," including any extensions of time provided by the DISTRICT in accordance with Subparagraph 1.1 of this Agreement. 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 the CITY, the CITY'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 CITY 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 CITY'S obligations provided for in this provision shall be the CITY'S sole remedy for the delays set forth herein.

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.

6. OPERATION AND MAINTENANCE. After construction is completed, the CITY 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 CITY shall repay the DISTRICT an amount of five percent (5%) of total DISTRICT monies contributed to the PROJECT 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.

6.1. Within thirty (30) days after construction is completed, the CITY shall provide the DISTRICT with construction record drawings, to include Resource Benefit calculations and methodology, signed and sealed by a professional engineer, certifying that the Measurable Benefit has been achieved. The CITY 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 CITY shall generate a report describing the operations and maintenance activities that took place during the reporting period that certifies that the Measurable Benefit set forth in the Project Plan has been maintained. The CITY'S obligation to generate reports shall continue until the expiration of the 20-year operation and maintenance period.

6.2. The DISTRICT retains the right to audit any certification and the CITY shall provide documentation as requested by the DISTRICT to support its certification that the specified Measurable Benefit has been maintained.

7. CONTRACT PERIOD. This Agreement shall be effective October 1, 2014, contingent upon DISTRICT budget approval, and shall remain in effect through August 31, 2017, or upon satisfactory completion of the PROJECT and subsequent reimbursement to the CITY, whichever occurs first, unless amended in writing by the parties. The CITY 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.
8. PROJECT RECORDS AND DOCUMENTS. Upon request by the DISTRICT, the CITY 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 CITY 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 allow public access to PROJECT documents and materials made or received by either party in accordance with the Public Records Act, Chapter 119, F.S. 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.
9. REPORTS.
 - 9.1 The CITY 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 CITY 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.
 - 9.2 Upon request by the DISTRICT, the CITY 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.
 - 9.3 The CITY must ensure that the design of the PROJECT maximizes the resource benefits to the greatest extent practicable. The CITY shall provide the DISTRICT with the 30%, 60%, 90% and proposed final design, including supporting documentation and Resource Benefit calculations and methodology, for review by the DISTRICT, in order for the DISTRICT to verify that the proposed design meets the requirements of the PROJECT, as set forth in Exhibit "A." A professional engineer shall, at a minimum, sign and seal the proposed final design plans. The DISTRICT shall provide a written response to the CITY within ten (10) business days of receipt of the proposed design plans and supporting documentation either verifying the design plans appear to meet the requirements of the Agreement or stating its insufficiencies. The CITY shall not finalize the design or 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 CITY shall require the design professional to warrant that the construction documents are adequate for bidding and construction of the PROJECT.

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

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.

11. 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 provision are in addition to any other rights and remedies provided by law or this Agreement.

12. 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 provision shall not be construed as preventing the parties from complying with the public records disclosure laws set forth in Chapter 119, F.S.
13. DISTRICT RECOGNITION. The CITY 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 CITY 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.
14. PERMITS AND REAL PROPERTY RIGHTS. The CITY 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 CITY for any costs under this Agreement until the CITY 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 CITY shall repay the DISTRICT all monies contributed to the PROJECT.
15. LAW COMPLIANCE. The CITY 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. If the PROJECT involves design services, the CITY'S professional designers and the DISTRICT'S regulation and projects staff shall meet regularly during the PROJECT design to discuss ways of ensuring that the final design for the proposed PROJECT technically complies with all applicable DISTRICT rules and regulations. However, the DISTRICT undertakes no duty to ensure compliance with such rules and regulations.
16. 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 CITY 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.

- 16.1 If requested, the DISTRICT shall assist the CITY by sharing information to help the CITY in ensuring that minority owned and woman owned and small businesses are afforded an opportunity to participate in the performance of this Agreement.
- 16.2 The CITY 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 Exhibit "B." 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.
17. 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.
18. 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 CITY.
19. THIRD PARTY BENEFICIARIES. Nothing in this Agreement shall be construed to benefit any person or entity not a party to this Agreement.
20. LOBBYING PROHIBITION. Pursuant to Section 216.347, F.S., the CITY is prohibited from using funds provided by this Agreement for the purpose of lobbying the Legislature, the judicial branch or a state agency.
21. 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 CITY agrees to include this provision in all contracts issued as a result of this Agreement.
22. 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.

23. COMPENSATORY TREATMENT AND MITIGATION. This PROJECT shall not be used by the CITY or any other entity as compensatory water quality treatment or wetland mitigation or any other required mitigation due to impacts for any projects. In the event the PROJECT is used for compensatory water quality treatment or mitigation for another project in violation of this Paragraph, the CITY shall repay the DISTRICT all funds the DISTRICT paid to the CITY under this Agreement. The PROJECT can be used for self-mitigation due to impacts specifically associated with the construction of the PROJECT.
24. GOVERNING LAW. This Agreement is governed by Florida law and venue for resolving disputes under this Agreement shall be exclusively in Hernando County, Florida.
25. 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.
26. SURVIVAL. The provisions of this Agreement that require performance after the expiration or termination of this Agreement shall remain in force notwithstanding the expiration or termination of this Agreement including Subparagraphs 3.3 and 9.2, and Paragraphs 5, 6, 8, 10, 14, 17, 23, 24 and 25 and any provisions requiring an offset or other continuing resource benefit.
27. ENTIRE AGREEMENT. This Agreement and the attached exhibits 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.
28. DOCUMENTS. The following documents 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 "B."

Exhibit "A" CITY'S Project Plan
Exhibit "B" Minority/Women Owned and Small Business Utilization Report Form

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: Brian J. Armstrong 3/11/15
Brian J. Armstrong, P.G. Date
Assistant Executive Director

CITY OF CLEARWATER

By: George N. Cretekos 2/10/15
George N. Cretekos, Mayor Date

By: William B. Horne II 2/10/15
William B. Horne II, City Manager Date

Approved as to form:
Camilo A. Soto
Asst. City Attorney

Attest:
Rosemarie Call
Rosemarie Call
City Clerk



COOPERATIVE FUNDING AGREEMENT (3)
BETWEEN THE
SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT
AND
CITY OF CLEARWATER
FOR
SW IMP - FLOOD PROTECTION - HILLCREST AVENUE BYPASS CULVERT (N632)

DISTRICT APPROVAL	INITIALS	DATE
LEGAL	<u>msm</u>	<u>12/3/14</u>
RISK MGMT	<u>N/A</u>	<u>-</u>
CONTRACTS	<u>AMT</u>	<u>12/5/14</u>
BUREAU CHIEF	<u>Max</u>	<u>12/10/14</u>
DIRECTOR	<u>Max</u>	<u>12/10/14</u>
GOVERNING BOARD	<u>N/A</u>	<u>-</u>

EXHIBIT "A"
CITY'S PROJECT PLAN

PROJECT DESCRIPTION

The goal of the PROJECT is to provide flood relief for approximately 47 homes, within the Stevenson Creek Watershed, by creating additional conveyance within the Hillcrest Avenue area. The DISTRICT will be reimbursing the CITY for improvements performed within the Hillcrest Avenue area, similar to the attached *Figure 4-2 Alternative 1b* diagram, which are necessary to achieve the Resource Benefit and Measurable Benefit described below.

PROJECT TASKS

Key tasks to be performed by the CITY:

1. Select and hire a consultant to complete the design and permitting.
2. Solicit Bids for Construction – The CITY shall utilize the technical specifications and construction plans to prepare a bid package and solicit bids from qualified construction firms.
3. Contractor Selection – The CITY shall select the lowest qualifying bid and negotiate a contract with the Bidder.
4. Construction - The CITY shall construct the PROJECT in accordance with the final permitted design plans and contract documents.
5. Construction Engineering and Inspection (CEI) - The CITY shall monitor all phases of construction and complete engineering inspections and review all shop drawings to assure infrastructure/facility construction conforms to the permitted plans and design specifications and will provide the DISTRICT inspection documents and photographs.
6. As-Built Survey and Record Drawings – The CITY shall obtain an As-Built Survey, and Record Drawings, to include Resource Benefit calculations and methodology, signed and sealed by a professional engineer, following completion of construction. The CITY shall obtain the certification of construction of the completed PROJECT from the Engineer of Record and forward to the DISTRICT.
7. Operation and Maintenance Plan and Schedule – The CITY will provide a written operation and maintenance plan and schedule of maintenance in accordance with Paragraph 6 of the Agreement.

RESOURCE BENEFIT

Based on the *Hillcrest Avenue Bypass Basis of Design Report* prepared by Interflow Engineering, LLC, dated August 18, 2014, the PROJECT will provide the following benefits:

- Reduce existing flooding in the PROJECT area, removing approximately 47 structures from the 100-year floodplain.

MEASUREABLE BENEFIT

- Construct a box culvert in the Hillcrest Avenue area to provide additional conveyance in accordance with the final permitted design plans.

DELIVERABLES

- Quarterly Status Reports
- Minutes of kick-off, pre-application and progress meetings
- Design plans, to include Resource Benefit calculations and methodology, at 30%, 60%, 90% and proposed final design levels
- Estimate of proposed construction cost at 30% design
- Engineer's opinion of probable cost at 60%, 90% and proposed final design and final construction drawings
- Technical Specifications at 60%, 90% and proposed final design
- Operation and Maintenance Plan
- Copy of all required federal, state and local environmental permit application packages and final permits
- Construction bid packages for cost approval (prior to posting)
- Copy of contract with consultant and contractor (for cost approval, prior to execution)
- Copy of executed contract with consultant and contractor
- Copy of Notice to Proceed to contractor
- Copy of Construction Permits
- Digital photos of stages of construction
- Construction inspection reports and construction certification
- Construction record drawings, to include Resource Benefit calculations and methodology, signed and sealed by a professional engineer
- One (1) set, electronic and hardcopy, of any final reports
- Minority/Women Owned and Small Business Utilization Report
- Upon DISTRICT request, bi-annual Operation and Maintenance Report

PROJECT BUDGET

DESCRIPTION	DISTRICT	CITY	TOTAL
Design & Permitting	\$230,000	\$230,000	\$460,000
Construction	\$1,720,000	\$1,720,000	\$3,440,000
CEI	\$0	\$0	\$0
Total	\$1,950,000	\$1,950,000	\$3,900,000

PROJECT SCHEDULE

The CITY shall be responsible for accomplishing the PROJECT within the following timetable:

DESCRIPTION	DATE
Start Design and Permitting	October 31, 2014
30% Design Complete	January 1, 2015
60% Design Complete	June 1, 2015
90% Design Complete	October 1, 2015
Complete Design & Permitting	December 01, 2015
Solicit Bids for Construction	December 08, 2015
Bidding and Contractor Selection Complete	January 22, 2016
Start Construction	January 28, 2016
Finish Construction	February 01, 2017
Record Drawings Complete	April 03, 2017

Additional task deadlines contained in the performance schedules of any consultant and contractor contracts will be incorporated herein by reference.

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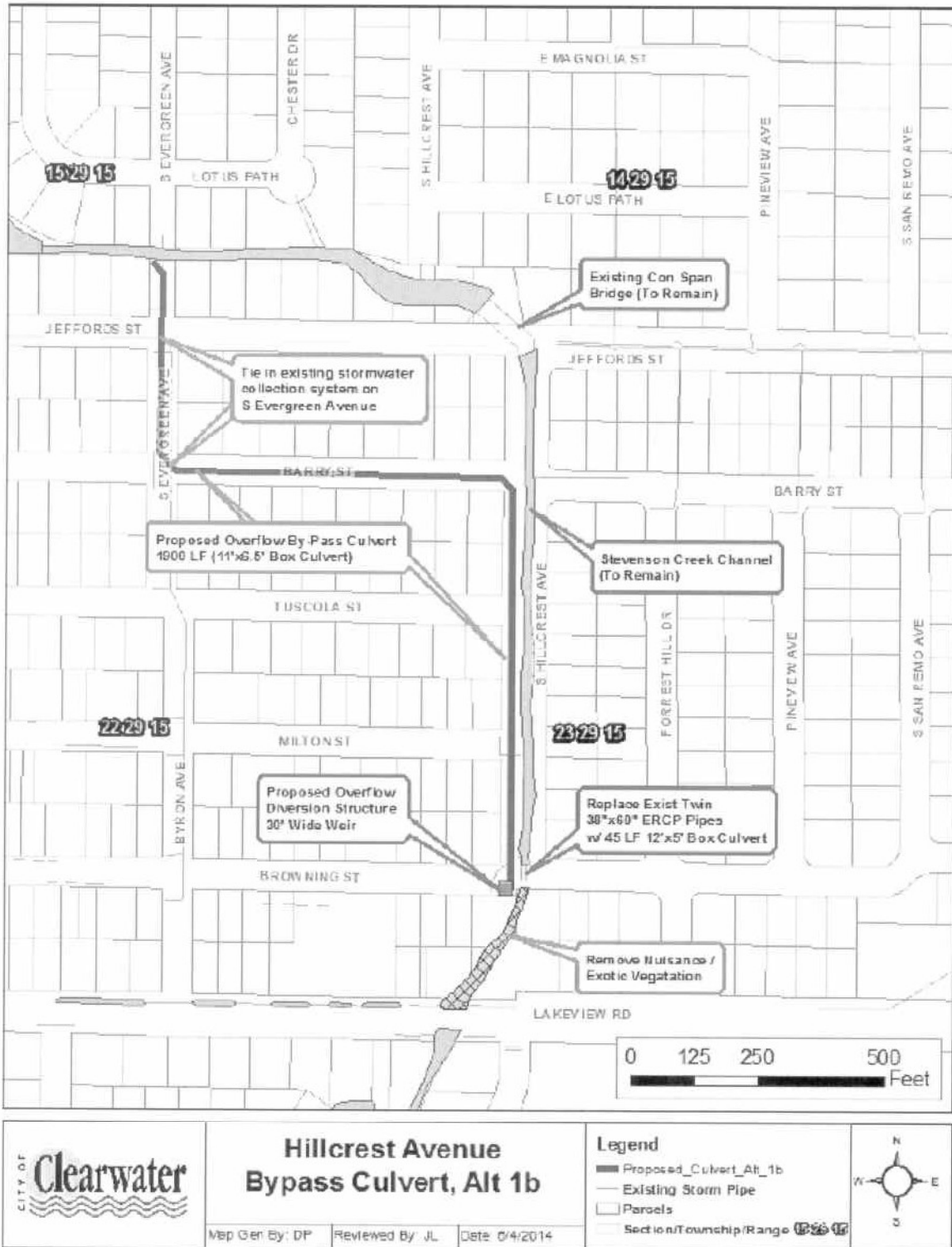


Figure 4-2 Alternative 1b

