

COOPERATIVE FUNDING AGREEMENT (3)  
BETWEEN THE  
SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT  
AND  
CITY OF CLEARWATER  
FOR

CLEARWATER GROUNDWATER REPLENISHMENT PROJECT – PHASE 3 (N665)

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 the CITY OF CLEARWATER, a municipal corporation of the State of Florida, whose address is 112 South 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 to 30%, third party review, full design, permitting and construction of a 3 million gallon per day (mgd) water purification plant and associated aquifer recharge injection wellfield at Clearwater's Northeast Water Reclamation Facility, 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; and

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

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:      Robert O. Peterson  
Southwest Florida Water Management District  
2379 Broad Street  
Brooksville, Florida 34604-6899

Project Manager for the CITY:

Robert S. Fahey, P.E.  
City of Clearwater Public Utilities Department  
100 South Myrtle Avenue, No. 220  
Clearwater, Florida 33756-5520

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

- 1.1 Project and Contract Managers are hereby 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 in accordance with each party's signature authority. Project and Contract Managers are not authorized to approve any time extension which will result in an increased cost, or which will exceed the expiration date set forth in Paragraph 7, Contract Period.
- 1.2 Project and Contract Managers are 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 in accordance with each party's signature authority. Project and Contract Managers are not authorized to make changes to the Scope of Work and are not authorized to approve any increase in the amounts set forth in the funding section of this Agreement, or a line item amount if the adjusted amount exceeds either party's appropriation of funds necessary to complete any Project Task in the fiscal year in which the adjustment is requested.
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, including the third party review costs, will be Twenty Eight Million Six Hundred Eighty Thousand Dollars (\$28,680,000). The DISTRICT agrees to fund the costs as appropriated by the DISTRICT in accordance with Subparagraph 3.1 below and anticipates funding costs up to Fourteen Million Three Hundred Forty Thousand Dollars (\$14,340,000) 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 \$1,554,000 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 COUNTY, 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 shall provide the DISTRICT with documentation supporting its decision to procure its construction contractor. 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 competitive, 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](mailto: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 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 CITY 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, following the completion of the third party review and the DISTRICT Governing Board's approval to continue 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 Measurable Benefit, to provide the CITY with an opportunity to cure the deficiencies.
- 3.7 The parties acknowledge that the DISTRICT has the right to terminate this Agreement without further payment obligation if the DISTRICT determines, in its sole judgment and discretion, that the Measureable Benefit may not be achieved or the PROJECT is no longer cost effective based on the results of the third party review.
- 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 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.

3.9 The DISTRICT shall not be obligated to reimburse the CITY for any design or other work performed by the CITY consultant(s) that takes place other than the 30% design package as described in the Project Plan set forth in Exhibit "A" until the DISTRICT 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, the DISTRICT has no obligation and shall not reimburse the CITY for any costs incurred other than the 30% design package until the Notice to Proceed with construction has been issued to the CITY'S contractor.

3.10 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 Clearwater Goundwatear Replishment Project – Phase 3 (N665) agreement between the Southwest Florida Water Management District and the CITY (Agreement No. 15C00000115), 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 \$\_\_."

3.11 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. The DISTRICT shall commence and complete the third party review in accordance with the project schedule set forth in Exhibit "A", including any extensions of time provided by the CITY. 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 party obligated to perform the work, the 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 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 party's obligations provided for in this provision shall be the party'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, excluding costs for the 30 percent design and third party review, 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;
  - d) the DISTRICT determines, in its sole discretion, the Measurable Benefit will not be achieved; or
  - e) 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.

- 6.1 The CITY shall provide the DISTRICT with an "*Annual Recharge Facility Report*" showing the reuse flow and quality information for the facility. This report shall include an analysis of how the CITY will achieve the Measureable Benefit required under this Agreement. This report requirement shall become effective upon completion of construction. The reporting period shall be October 1<sup>st</sup> through September 30<sup>th</sup> and the report must be submitted by April 1<sup>st</sup> of the calendar year following the fiscal year period.

The report format will be proposed by the CITY and agreed upon by the DISTRICT. The CITY shall obtain the DISTRICT'S approval of the report before the report is finalized, and the DISTRICT will not unreasonably withhold its approval. In addition to other remedies provided in this Agreement, noncompliance with this report requirement may affect the CITY'S eligibility for further DISTRICT funding.

- 6.2 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. The DISTRICT'S Contract Manager will evaluate and determine the CITY'S compliance with this provision as part of the DISTRICT required "*Annual Recharge Facility Report*". In the event the DISTRICT determines, in its sole discretion, that the facility did not achieve the Measurable Benefit any time after ten (10) years of operation, the DISTRICT shall require the CITY to produce a compliance plan for DISTRICT approval within six (6) months of the DISTRICT'S determination of noncompliance. The compliance plan shall include the CITY'S measures to achieve the Measurable Benefit within two years of receipt of the plan. If the CITY fails to achieve the Measurable Benefit by the end of the two (2) year period, the CITY will reimburse the DISTRICT for payments made pursuant to this Agreement in an amount of 5% of total DISTRICT monies contributed the PROJECT, excluding costs of the 30 percent design and third party review, for each year or a fraction thereof for the early termination of the PROJECT starting from the initial observation of the failure to meet the Measurable Benefit. The rights and remedies in this provision are in addition to any other rights and remedies provided by law or this Agreement.
- 6.3 Within thirty (30) days after construction is completed, the CITY shall provide the DISTRICT with construction record drawings, signed and sealed by a professional engineer, certifying that the Measurable Benefit is will be met. 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.
- 6.4. 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 January 27, 2015, and shall remain in effect through March 31, 2022 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. The CITY shall submit all water resources data collected under this Agreement to the DISTRICT for upload to the DISTRICT databases (as set forth Exhibit A), 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.), as necessary.
- 9.3 The CITY must ensure that the design of the PROJECT maximizes the resource benefits to the greatest extent practicable. In addition to providing the DISTRICT the 30% design package as described in the Project Plan, the CITY shall provide the DISTRICT with the 60%, 90% and final design, including supporting documentation and Measurable 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 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 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 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, wetland mitigation, or groundwater supply offset for any projects. In the event the PROJECT is used for compensatory water quality treatment, wetland mitigation or groundwater supply offset 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, P.G. Date  
Assistant Executive Director

CITY OF CLEARWATER

By: \_\_\_\_\_  
George N. Cretekos, Mayor Date

By: \_\_\_\_\_  
William B. Horne II, City Manager Date

Approved as to form:

Attest:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Rosemarie Call  
City Clerk

COOPERATIVE FUNDING AGREEMENT (3)  
BETWEEN THE  
SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT  
AND  
CITY OF CLEARWATER  
FOR  
CLEARWATER GROUNDWATER REPLENISHMENT PROJECT - PHASE 3 (N665)

DISTRICT APPROVAL	INITIALS	DATE
LEGAL	<u>MBM</u>	<u>8/30/15</u>
RISK MGMT	<u>N/A</u>	
CONTRACTS	<u>SPC</u>	<u>9/2/15</u>
BUREAU CHIEF	<u>DM</u>	<u>9-17-15</u>
DIRECTOR	<u>WBJ</u>	<u>10/7/15</u>
GOVERNING BOARD	<u>N/A SPC</u>	

## EXHIBIT "A" CITY'S PROJECT PLAN

### **Project Description**

The CITY has a reclaimed water utilization program. Their ultimate goal is to fully utilize available reclaimed water through residential reuse and aquifer recharge applications. This PROJECT is for the design, permitting and construction of a Water Purification Plant including Ultra-Filtration, Reverse Osmosis and Advanced Oxidation treatment systems, a Class I concentrate injection well, Water Degasification System with membrane contactors, Injection Water Polishing System and the associated injection wells (up to four) and monitor well systems of the Aquifer Recharge Wellfield. The project will recharge an average of 2.4 million gallons per day (3 million gallon per day capacity) of purified water to a brackish water interval of the Upper Floridan aquifer at the CITY's Northeast Water Reclamation Facility and surrounding property. Public outreach activities will continue to be used to educate the community on the safety, benefits and financial viability of the PROJECT. An independent Technical Advisory Committee will be convened to provide technical oversight on the safety of the purified water product and groundwater injection process.

### **Project Objectives**

- Design, permit and construct a reclaimed water purification facility, a Class I concentrate injection well, purified water degasification facility, injection water polishing system and associated injection well and monitor well systems of the aquifer recharge wellfield at Clearwater's Northeast Water Reclamation Facility.
- Recharge an average of 2.4 million gallons per day (3 million gallon per day capacity) of purified water into a brackish water interval of the Upper Floridan aquifer. The goal of the PROJECT would allow for the CITY to increase their reclaimed water utilization, reduce surface discharges to Tampa Bay, reducing nutrient loading, improving water levels in the Upper Floridan aquifer, and potentially providing the CITY with additional water supplies from their existing wellfields.

### **Project Tasks**

#### **Task 1 - 30 Percent Design**

The CITY shall design the PROJECT including secondary containment, permanent pumps, piping, automated controls and other appurtenances, electrical service, motor control center buildings and instrumentation and controls for automated valves up to Preliminary Design (30% level of completion), which will include sufficient information for the third party review, such as:

1. Introduction and background
2. Project Site Details – This section includes site boundaries, existing treatment facilities, buildings, parking lots, surface water, wetlands and existing wells (recharge well and monitor wells).

3. Site specific hydrogeologic survey - This section includes identification of sinkholes, hydrologic characterization of aquifers and confining zones, groundwater elevations and seasonal variations, and direction of groundwater movement (static and during purified water injection) as characterized during the hydrogeologic investigations previously performed. In addition, this section will include identification of water wells and flood prone areas in the project vicinity.
4. Basis of design - This section will outline and describe the parameters that are used for design of the required water treatment systems, pipelines and groundwater injection wellfield.
5. Description of facilities - This section will provide an overall description of the facilities.
6. Process Mechanical - This section will describe the mechanical equipment such as piping and valves including materials of construction, power and other utility requirements, redundancy, and corrosion protection.
7. Instrumentation and controls - This section will present control philosophy, description of equipment such as PLCs, telemetry equipment, field instruments, and communication between local panels and City's SCADA systems. Control narrative describing how the overall process and individual equipment will be operated and controlled.
8. Civil - This section will provide design parameters and descriptions for roads, drainage, earthwork requirements and code requirements.
9. Utility Management – This section will include a recommended course of action for the management of utilities.

Measurable benefits calculations and methodology will be provided along with a construction cost estimate and performance schedule. The CITY will hold a design review meeting of the 30% design phase and will provide a formal evaluation. Minutes of any meetings will be prepared and circulated to attendees.

The CITY shall also provide the DISTRICT with an Engineering Report that will present the basis of design, description of the facilities, description of codes used by each discipline, material of construction, utilities required, and geotechnical information.

The 30% design shall be conducted in two parts.

#### Task 1.1 Water Treatment Plant and Infrastructure

The CITY shall prepare proposed PROJECT 30% design plans and technical specifications for the construction of a Water Purification Plant including Ultra-Filtration, Reverse Osmosis and Advanced Oxidation treatment systems, a Water Degasification System with membrane contactors, the Injection Water Polishing System, and infrastructure including secondary containment, permanent pumps, piping, automated controls and other appurtenances, electrical service, motor control center buildings and instrumentation and controls for automated valves.

### **Task 1.2 Injection Wells and Infrastructure**

The CITY shall prepare proposed PROJECT 30% design plans and technical specification for wellhead construction, including up to four (4) Class V aquifer recharge injection wells, required monitor wells, transmission pipelines, infrastructure and controls for the recharge wells, the Class I concentrate injection well, and other appurtenances as well as electrical service.

### **Task 2 - Third Party Review**

A third party review of the PROJECT 30% design, construction cost estimates and schedule (Task 1) shall be implemented by the CITY. The CITY will select and contract with an independent consultant that is not a member of the PROJECT design team.

The CITY, through its consultant, will perform a detailed evaluation of the PROJECT design, cost estimates, schedule, and analysis of measurable benefit methodology. The CITY will ensure its design team fully cooperates in making all pertinent and appropriate PROJECT documents available, in a timely manner, to its third party review consultant. The CITY will prepare and submit to the DISTRICT a detailed report on the PROJECT design, addressing the expected project cost for construction and/or operations and maintenance or present a clearly stated rationale for rejecting the findings.

### **Task 3 - Final Design and Permitting**

This phase will expand the 30 percent design into a more detailed design for construction.

#### **Task 3.1 60% Design and Engineer's Opinion of Cost**

Design Plans and Calculations will be completed by the CITY and submitted to the DISTRICT at the 60% level of completion. The CITY will complete an estimated construction schedule and an engineer's estimate of the probable construction costs. Updated Measurable Benefit calculations and methodology, as well as draft construction technical specifications will be provided by the CITY to the DISTRICT.

#### **Task 3.2 90% Design and Engineer's Opinion of Cost**

The 90% design stage shall comprise a level of design progress which would be sufficient to apply for and obtain all project construction permits. The level of project design definition would be sufficient to permit the initiation of all major construction activities including the purchase of all materials and equipment required to maintain a project construction schedule.

#### **Task 3.3 Permitting**

The CITY will be the applicant for, and shall acquire all permits necessary to implement the PROJECT. All applicable permitting fees will be the responsibility of the CITY. At the 60% design point, the CITY will prepare draft packages for all required permits.

Pre-application meetings will be held for all necessary permits, and the CITY will invite DISTRICT staff to attend these meetings, as well as provide the DISTRICT with copies of meeting materials and minutes.

The CITY will submit all final permit application packages to the receiving agency.

The CITY will respond to all Requests for Additional Information in a timely manner with each regulatory agency.

The CITY will provide copies of all permit application packages, Requests for Additional Information, and responses to the DISTRICT.

#### **Task 3.4 Final Design and Cost Estimate**

The final design and implementation stage shall comprise a level of design progress which incorporates all project permits and permit conditions related to the completion of all major construction activities, including the purchase of all materials and equipment required for project construction and startup. Project engineering shall be advanced to a level of (100%) completion to serve as the sufficient basis for project bidding and subsequent construction.

#### **Task 3.5 Construction Bidding**

The CITY will complete construction technical specification and bid documents for the PROJECT in two phases; first for the injection wells and infrastructure and then for the water treatment plant and infrastructure.

The preparation and advertisement of the Request for Bids (RFB's) for the PROJECT construction selection of the two phases will be completed by the CITY.

### **Task 4 - Construction and Testing**

The CITY will complete the construction of this PROJECT in accordance with the final permitted design plans and contract documents. The CITY will conduct operational testing of the PROJECT facilities in accordance with the permit(s).

The CITY will oversee the operational testing of the PROJECT facilities in accordance to the permit(s).

### **Task 5 - Construction Engineering and Inspection (CEI)**

#### **Task 5.1 Construction Progress Meetings**

The CITY will attend the pre-construction meeting with the contractor and monthly construction meetings.

#### **Task 5.2 Inspections**

The CITY will monitor all phases of construction and complete engineering inspections to assure the PROJECT construction conforms with the permitting requirements. The DISTRICT will be provided copies of all inspection documents, photographs, and certifications of construction completion when they are received.

## **Task 6. Public Outreach and Education**

The CITY shall continue to perform public outreach and communications activities to promote the project in accordance with the strategies and tactics identified in the CITY's report titled Groundwater Replenishment Project, Public Outreach Summary Report, February 2014.

Additionally, under the title of Public Outreach, the CITY shall be responsible for establishing a Technical Advisory Committee (TAC) to provide oversight on the objectives to produce a safe purified water product and effective groundwater recharge injection process. The Public Outreach components shall include activities described below.

### **Task 6.1 Technical Advisory Committee**

The CITY shall assemble and convene a TAC to meet and review the PROJECT plan technical specifications at 30% and 90% design completion. The TAC will also provide general oversight during PROJECT construction and operation. The TAC will consist of individuals with technical expertise in designing and permitting of reclaimed water purification systems to potable standards, Florida groundwater injection systems into USDW aquifers, and Public Outreach design and administration as well as at least one citizen representative. The TAC will have the primary objectives of reviewing the third party review report and recommendations (see Task 2) as well as the 90% design completion, during construction and 2 years into testing operation to determine the design is technically sound, meeting the necessary requirements for the protection of public health and welfare. The TAC will also determine if the planned Public Outreach and communications for the project will be successful, resulting in public acceptance of the PROJECT. The TAC will provide objective technical oversight during the PROJECT design, construction and operation to help guide the CITY towards successful construction, operation and communication of the Clearwater Groundwater Replenishment Project. The CITY shall be responsible for all requirements and obligations set forth in this Task 6.1, including those requirements and obligations to be performed by the TAC.

### **Task 6.2 Public Surveys**

The CITY will conduct public perception surveys of its citizens to measure the effectiveness of education and outreach efforts that have occurred (pre/post surveys) for the contract period.

### **Task 6.3 Website**

The CITY shall measure effectiveness of the established website – tracking the number of unique webpage views monthly to measure the number of stakeholders using the site.

### **Task 6.4 Outreach and Education**

The CITY shall plan a media day with local media to discuss the PROJECT.

The CITY will prepare an annual update to the February 2014 Groundwater Replenishment Project, Public Outreach Summary Report including results from

the above listed activities to be provided in February each year during the contract period. The CITY will provide a draft and final report to the DISTRICT.

The CITY will provide all PROJECT-related printed/video/Internet materials to the DISTRICT'S Contract Manager for review at least two weeks prior to printing or public viewing/access. In addition, the DISTRICT logo and acknowledgement of funding from the DISTRICT will be visible on all printed materials, signage, exhibits, webpages, at presentations, special events and workshops conducted in relation to the PROJECT.

The CITY shall conduct quarterly Public Outreach status meetings and provide quarterly reports including updated work task schedule and timeline. The quarterly reports should contain a written review of outreach accomplishments, number of participants reached, number of site visits and pageviews to the project website, survey results, material samples, photos and any other relevant information related to the PROJECT. These reports shall start the first quarter following the Agreement execution date. The reports are due the last day of each quarter, December 31; March 31; June 30, and September 30, via email to the DISTRICT'S Contract Manager. The final report shall include a summation of all interim reports, final project overall outreach/impact numbers, program evaluation and evaluation results with recommendations for improvement.

The CITY will incorporate a Public Education element into the Water Purification Facility to promote the findings of the PROJECT along with other industry best practice messaging for Water Resources and Conservation

The CITY will require involvement from their Engineering and Hydrogeologic Consultants to coordinate as the Project Team lead with the Public Outreach consultant.

### **Measurable Benefits**

- The PROJECT will beneficially recharge 2.4 million gallons per day of purified reclaimed water into the Upper Floridan aquifer on an annual average basis.

### **Deliverables**

- Quarterly design status reports
- Minutes of kick-off, pre-application and progress meetings
- 30% design plans, technical specifications and cost estimate
- 30% design, 3<sup>rd</sup> party review report
- Design Plans, to include Measurable Benefit calculations and methodology, at 30%, 60%, and 90% design
- Engineer's opinion of probable cost at 30%, 60%, 90%, proposed final design and final construction drawings
- Technical Specifications at 60%, 90%, and 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
- Construction bid packages for cost approval (completed)
- Copies of construction contracts
- Copy of Construction Permits
- Digital photos of stages of construction
- Construction inspection reports and construction certification
- As-Built Survey signed and sealed by a licensed Florida professional surveyor and mapper
- Construction record drawings, to include Measurable Benefit calculations and methodology, signed and sealed by a professional engineer
- One (1) set, electronic and hardcopy, of any final reports including reports submitted to FDEP
- Copies of all final Public Outreach project-related printed/video/internet materials
- Draft Annual Public Outreach Reports (Updated Version)
- Final Annual Public Outreach Reports
- Minority/Woman Owned and Small Business Utilization Report Form
- Annual Recharge Facility Report
- All water resource data will be provided in electronic format by the CITY. DISTRICT will provide specified format.

**Project Schedule**

DESCRIPTION	Commence	Complete
30 Percent Design	January 27, 2015	March 1, 2016
Third Party Review	March 1, 2016	April 30, 2016
Final Design and Permitting	May 1, 2016	September 1, 2017
Construction and Testing	June 1, 2016	March 31, 2021
CEI	June 1, 2016	March 31, 2021
Public Outreach	February 1, 2016	March 31, 2021

**Project Budget**

DESCRIPTION	DISTRICT	CITY	TOTAL
30 Percent Design	\$425,686	\$425,686	\$851,372
Third Party Review	\$25,000	\$25,000	\$50,000
Final Design and Permitting	\$1,153,314	\$1,153,314	\$2,306,628
Construction and Testing	\$11,624,200	\$11,624,800	\$23,248,400
CEI	\$611,800	\$611,800	1,223,600
Public Outreach	\$500,000	\$500,000	\$1,000,000
<b>TOTAL</b>	<b>\$14,340,000</b>	<b>\$14,340,000</b>	<b>\$28,680,000</b>

**Key Personnel**

CITY Project Manager – Robert S. Fahey, P.E.

Phone - (727) 562-4608

DISTRICT Contract Manager – Robert O. Peterson, P.G.

Phone - (352) 796-7211, Ext. 4253

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