

COOPERATIVE FUNDING AGREEMENT (TYPE 3)  
BETWEEN THE  
SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT  
AND  
CITY OF CLEARWATER  
AND  
PINELLAS COUNTY  
FOR  
LOWER SPRING BRANCH CONVEYANCE IMPROVEMENTS (N915)

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 Osceola Avenue, Clearwater, Florida 33756, hereinafter referred to as the "CITY," and PINELLAS COUNTY, a political subdivision of the State of Florida, whose address is 315 Court Street, Clearwater, Florida 33756, hereinafter referred to as the "COUNTY."

WITNESSETH:

WHEREAS, the CITY and the COUNTY 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 of conveyance improvements along the Lower Spring Branch of Stevenson Creek in Pinellas County, 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 and the COUNTY in funding the PROJECT.

NOW THEREFORE, the DISTRICT, the CITY and the COUNTY, 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.

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Contract Manager for the DISTRICT:  
Robert Dowling  
Southwest Florida Water Management District  
2379 Broad Street  
Brooksville, Florida 34604

Project Manager for the CITY:  
Roger T. Johnson  
City of Clearwater  
100 S Myrtle Ave, Room #220  
Clearwater, Florida 33756

Project Manager for the COUNTY:  
David Talhouk  
Pinellas County  
14 South Ft. Harrison Avenue, 4<sup>th</sup> Floor  
Clearwater, Florida 33756

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, or, if applicable, the refined budget as set forth in Subparagraph 4 of the Funding Paragraph. The authorization must be in writing, explain the reason for the adjustment, and be signed by all appropriate DISTRICT staff in accordance with the DISTRICT'S Signature Authority. The DISTRICT'S Contract Manager is not authorized to make changes to the Scope of Work and is not authorized to approve any increase in the amounts set forth in the funding section of this Agreement.

## 2. SCOPE OF WORK.

Upon receipt of written notice to proceed from the DISTRICT, the CITY and the COUNTY shall perform the services necessary to complete the PROJECT in accordance with the Project Plan. Any changes to this Agreement, except as provided herein, must be mutually agreed to in a formal written amendment approved by the DISTRICT, the CITY and the COUNTY prior to being performed by the CITY and the COUNTY. The CITY and the COUNTY 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 they engage.

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 Three Hundred Twenty Thousand Dollars (\$3,320,000). The DISTRICT agrees to fund PROJECT costs as appropriated by the DISTRICT in accordance with Subparagraph 1 of this Funding Paragraph and anticipates funding PROJECT costs up to One Million Six Hundred Sixty Thousand Dollars (\$1,660,000) and shall have no obligation to pay any costs beyond this anticipated maximum amount. The CITY agrees to fund PROJECT costs up to One Million One Hundred Sixty Thousand Dollars (\$1,160,000) and shall have no obligation to pay any costs beyond this maximum amount. The COUNTY agrees to fund PROJECT costs up to Five Hundred Thousand Dollars (\$500,000) and shall have no obligation to pay any costs beyond this maximum amount. The CITY and the COUNTY will be the lead parties and agree to provide all remaining funds necessary for the satisfactory completion of the PROJECT for their respective expenditures under this Agreement and pay PROJECT costs prior to requesting reimbursement from the DISTRICT.

- 3.1 The DISTRICT will reimburse the CITY and COUNTY for the DISTRICT'S share of the PROJECT costs in accordance with the Project Budget contained in the Project Plan. The DISTRICT will reimburse the CITY fifty percent (50%) of all allowable costs in each DISTRICT approved invoice up to the maximum DISTRICT contribution of One Million One Hundred Sixty Thousand Dollars (\$1,160,000) and will reimburse the COUNTY fifty percent (50%) of all allowable costs in each DISTRICT approved invoice received from the COUNTY up to the maximum DISTRICT contribution of Five Hundred Thousand Dollars (\$500,000). The COUNTY will reimburse the CITY for twenty five percent (25%) of the construction cost of the Douglas Avenue Crossing, not to exceed Two Hundred Seventy Thousand Dollars (\$270,000).
- 3.2 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 and the COUNTY recognizes that the DISTRICT has approved \$625,000 for the PROJECT through Fiscal Year 2018. The additional funds identified in this Agreement are contingent upon approval of such amounts by the DISTRICT'S Governing Board, in its sole discretion, in its annual budgets for future fiscal years. The CITY'S and the COUNTY'S payment of any financial obligation under this Agreement is subject to appropriation by the CITY'S Council and the COUNTY'S Board of legally available funds.
- 3.3 The CITY and the COUNTY shall pay PROJECT costs prior to requesting reimbursement from the DISTRICT. The DISTRICT shall reimburse the CITY and the COUNTY for the DISTRICT'S share of allowable PROJECT costs in

accordance with the Project Budget contained in the Project Plan. Reimbursement for expenditures of contingency funds is contingent upon approval by the DISTRICT. If a reimbursement request includes the expenditure of contingency funds, the CITY and COUNTY shall provide sufficient documentation to the DISTRICT to explain the basis of the expense. The DISTRICT shall not reimburse the CITY and the COUNTY 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 and the COUNTY for fifty percent (50%) of all allowable costs in each DISTRICT approved invoice received from the CITY or the COUNTY, but at no point in time shall the DISTRICT'S expenditure amounts under this Agreement exceed expenditures made by the CITY and the COUNTY combined. 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 and the COUNTY have paid PROJECT costs of incurred obligations approved by the DISTRICT pursuant to Subparagraph 5 of this Funding Paragraph and are otherwise reimbursable by the DISTRICT under this Agreement.

- 3.4 Unless otherwise stated in this Agreement, any federal, state, local or grant monies received by the CITY and the COUNTY for this PROJECT shall be applied to equally reduce each party's share of PROJECT costs. The parties will provide each other with written documentation detailing their allocation of any such funds appropriated for this PROJECT. This Subparagraph shall survive the expiration or termination of this Agreement.
- 3.5 The CITY and the COUNTY may contract with consultant(s), contractor(s) or both to accomplish the PROJECT. The CITY and the COUNTY 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 and the COUNTY 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 and the COUNTY for costs incurred under consultant and contractor agreements until the DISTRICT approvals required under this provision have been obtained.
- 3.6 Payment shall be made to the CITY and the COUNTY 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 and the COUNTY for contingency expenses within a reasonable time to accommodate the process provided for in Subparagraph 3 of this Funding Paragraph.

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

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

- 3.7 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 and the COUNTY with fifteen (15) days advance written notice that the DISTRICT shall withhold payments to the CITY and the COUNTY until such time as the CITY and the COUNTY demonstrate that the PROJECT shall achieve the required resource benefits, to provide the CITY and the COUNTY 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 and the COUNTY'S receipt of written notice from the DISTRICT.

- 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 and the COUNTY for any purpose not specifically identified in the Scope of Work Paragraph. Surcharges added to third party invoices are not considered an allowable cost under this Agreement. Costs associated with in-kind services provided by the CITY and the COUNTY are not reimbursable by the DISTRICT and may not be included

in the CITY'S and the COUNTY'S share of funding contributions under this Agreement.

- 3.9 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.
- 3.10 The DISTRICT has no obligation and shall not reimburse the COUNTY for any costs under this Agreement until the Notice to Proceed with construction has been issued to the COUNTY'S contractor.
- 3.11 Each CITY and COUNTY invoice must include the following certification, and the CITY and the COUNTY hereby delegates authority by virtue of this Agreement to its Project Manager to affirm said certification:

For the CITY:

"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 Lower Spring Branch Conveyance Improvements (N915) agreement between the Southwest Florida Water Management District and the City of Clearwater (Agreement No. 18CF0000878), 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 \$\_\_ / \$\_\_ respectively."

For the COUNTY:

"I hereby certify that the costs requested for reimbursement and the COUNTY'S matching funds, as represented in this invoice, are directly related to the performance under the Lower Spring Branch Conveyance Improvements (N915) agreement between the Southwest Florida Water Management District and Pinellas County (Agreement No. 18CFCNTY878), are allowable, allocable, properly documented, and are in accordance with the approved Project Budget. This invoice includes \$\_\_ of contingency expenses. The COUNTY 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 COUNTY'S share to \$\_\_ / \$\_\_ respectively."

- 3.12 In the event any dispute or disagreement arises during the course of the PROJECT, including whether expenses are reimbursable under this Agreement, the CITY and the COUNTY will continue to perform the PROJECT work in accordance with the Project Plan. The CITY and the COUNTY are 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 and the COUNTY'S continuation of the PROJECT work as required under this provision shall not constitute a waiver of any legal remedy available to the CITY and the COUNTY concerning the dispute.

#### 4. COMPLETION DATES.

The CITY and the COUNTY shall commence and complete the PROJECT and meet the task deadlines in accordance with the Project Schedule set forth in the Project Plan, including any extensions of time provided by the DISTRICT in accordance with Subparagraph 1 of the Project Contacts and Notices Paragraph. In the event of hurricanes, tornados, floods, acts of God, acts of war, or other such catastrophes, or other man-made emergencies such as labor strikes or riots, which are beyond the control of either party, the CITY'S and the COUNTY'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 and the COUNTY are 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 and the COUNTY'S obligations provided for in this provision shall be the CITY'S and the COUNTY'S sole remedy for the delays set forth herein.

#### 5. REPAYMENT.

5.1 The CITY and the COUNTY shall repay the DISTRICT all funds the DISTRICT paid to the CITY and COUNTY under this Agreement, if: a) the CITY and the COUNTY fail 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 and the COUNTY have failed to maintain scheduled progress of the PROJECT thereby endangering the timely performance of this Agreement; c) the CITY and the COUNTY fail to appropriate sufficient funds to meet the task deadlines, unless extended in accordance with Subparagraph 1 of the Project Contacts and Notices Paragraph; or d) a provision or provisions of this Agreement setting forth the requirements or expectations of a Measurable Benefit resulting from the PROJECT is held to be invalid, illegal or unenforceable during the term of this Agreement, including the duration of the operation and maintenance obligations set forth in this Agreement. Should any of the above conditions exist that require the CITY and the COUNTY to repay the DISTRICT, this Agreement shall terminate in accordance with the procedure set forth in the Default Paragraph.

5.2 Notwithstanding the above, the parties acknowledge that if the PROJECT fails to meet the Measurable Benefit specified in this Agreement, the CITY and the COUNTY may request the DISTRICT Governing Board to waive the repayment obligation, in whole or in part.

- 5.3 In the event the CITY and the COUNTY are obligated to repay the DISTRICT under any provision of this Agreement, the CITY and the COUNTY shall repay the DISTRICT within a reasonable time, as determined by the DISTRICT in its sole discretion.
- 5.4 The CITY and the COUNTY shall pay attorneys' fees and costs incurred by the DISTRICT, including appeals, as a result of the CITY'S and the COUNTY'S failure to repay the DISTRICT as required by this Agreement.
- 5.5 This Repayment Paragraph, including all subparagraphs, shall survive the expiration or termination of this Agreement.

## 6. CITY OPERATION AND MAINTENANCE.

After construction is completed, the CITY shall operate, use and maintain its portion of 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 a part of the CITY'S portion of 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 its portion of the PROJECT, for each year or a fraction thereof for the early termination of the PROJECT. The CITY will be obligated to pay attorneys' fees and costs incurred by the DISTRICT, including appeals, as a result of the CITY'S failure to repay the DISTRICT in accordance with this Paragraph. 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 for its portion of the PROJECT, 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 for its portion of the PROJECT 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.
- 6.3 This CITY Operation and Maintenance Paragraph, including all subparagraphs, shall survive the expiration or termination of this Agreement.

## 7. COUNTY OPERATION AND MAINTENANCE.

After construction is completed, the COUNTY shall operate, use and maintain its portion of 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 a part of the COUNTY'S portion of the PROJECT is not operated, used and maintained in accordance with these requirements, the COUNTY shall repay the DISTRICT an amount of five percent (5%) of total DISTRICT monies contributed to its portion of the PROJECT, for each year or a fraction thereof for the early termination of the PROJECT. The COUNTY will be obligated to pay attorneys' fees and costs incurred by the DISTRICT, including appeals, as a result of the COUNTY'S failure to repay the DISTRICT in accordance with this Paragraph. The rights and remedies in this provision are in addition to any other rights and remedies provided by law or this Agreement.

7.1 Within thirty (30) days after construction is completed, the COUNTY shall provide the DISTRICT with construction record drawings for its portion of the PROJECT, to include Resource Benefit calculations and methodology, signed and sealed by a professional engineer, certifying that the COUNTY'S portion of the Measurable Benefit has been achieved. The COUNTY shall provide the DISTRICT with an operation and maintenance plan for its portion of the PROJECT that ensures the Measurable Benefit will be maintained. Every two (2) years following the completion of the PROJECT, the COUNTY 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 COUNTY'S obligation to generate reports shall continue until the expiration of the 20-year operation and maintenance period.

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

7.3 This COUNTY Operation and Maintenance Paragraph, including all subparagraphs, shall survive the expiration or termination of this Agreement.

## 8. CONTRACT PERIOD.

This Agreement shall be effective October 1, 2017 and shall remain in effect through September 1, 2021, or upon satisfactory completion of the PROJECT and subsequent reimbursement to the CITY and the COUNTY, whichever occurs first, unless amended in writing by the parties. The CITY and the COUNTY 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.

## 9. PROJECT RECORDS AND DOCUMENTS.

Upon request by the DISTRICT, the CITY and the COUNTY 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 and the COUNTY 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 any 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 any party assert any exemption to the requirements of Chapter 119, F.S., the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon the asserting party. This Paragraph shall survive the expiration or termination of this Agreement.

## 10. REPORTS.

- 10.1 The CITY and the COUNTY shall provide the DISTRICT with quarterly reports describing the progress of the PROJECT tasks, adherence to the performance schedule and any developments affecting the PROJECT. The CITY and the COUNTY 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.
- 10.2 Upon request by the DISTRICT, the CITY and the COUNTY 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. This Subparagraph shall survive the expiration or termination of this Agreement.
- 10.3 The CITY must ensure that the design of its portion 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 the Project Plan. 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 this 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
- 10.4 The COUNTY shall provide the DISTRICT with the final design of its portion of the PROJECT, including supporting documentation and Resource Benefit calculations and methodology, for review by the DISTRICT in order for the DISTRICT to verify that the design meets the requirements of the PROJECT as set forth in the Project

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

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

## 11. RISK, LIABILITY, AND INDEMNITY.

11.1 To the extent permitted by Florida law, the CITY and the COUNTY assume all risks relating to the PROJECT and agree 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 and the COUNTY 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 and the COUNTY does not in any way constitute an agency relationship between the DISTRICT, the CITY and the COUNTY.

11.2 The CITY and the COUNTY agree 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 and the COUNTY'S officers, employees, contractors and agents related to its performance under this Agreement.

11.3 This Risk, Liability, and Indemnity Paragraph, including all subparagraphs, shall not be construed as a waiver of the CITY'S and the COUNTY'S sovereign immunity or an extension of CITY'S and the COUNTY'S liability beyond the limits established in Section 768.28, F.S. Additionally, this Risk, Liability, and Indemnity Paragraph, including all subparagraphs, will not be construed to impose contractual liability on the CITY and the COUNTY 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 and the COUNTY to be sued by third parties in any manner arising out of this Agreement.

11.4 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.

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

12. DEFAULT.

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

13. 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 parties no later than three (3) business days prior to the interview or press release. This Paragraph shall not be construed as preventing the parties from complying with the public records disclosure laws set forth in Chapter 119, F.S.

14. DISTRICT RECOGNITION.

The CITY and the COUNTY 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 and the COUNTY 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.

15. PERMITS AND REAL PROPERTY RIGHTS.

The CITY and the COUNTY 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. The DISTRICT shall have no obligation to reimburse the COUNTY for any costs under this Agreement until the COUNTY 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 and the COUNTY shall repay the DISTRICT all monies contributed to the PROJECT. This Paragraph shall survive the expiration or termination of this Agreement.

16. LAW COMPLIANCE.

The CITY and the COUNTY 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 and the COUNTY'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.

17. 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 and the COUNTY 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.

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

17.2 The CITY and the COUNTY each agree to provide the DISTRICT with a report indicating all contractors and subcontractors who performed work in association with the PROJECT, the amount spent with each contractor or subcontractor, and to the extent such information is known, whether each contractor or subcontractor was a minority owned or woman owned or small business enterprise. If no minority owned or woman owned or small business enterprises were used in the performance of this Agreement, then the report shall so indicate. The Minority/Women Owned and Small Business Utilization Report form is attached as an exhibit. The report is required upon final completion of the PROJECT prior to final payment, or within thirty (30) days of the execution of any amendment that increases PROJECT funding, for information up to the date of the amendment and prior to the disbursement of any additional funds by the DISTRICT.

18. 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 parties. Any attempted assignment in violation of this provision is void. This Paragraph shall survive the expiration or termination of this Agreement.

19. 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 or the COUNTY.

20. THIRD PARTY BENEFICIARIES.

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

21. LOBBYING PROHIBITION.

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

22. 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 and the COUNTY agree to include this provision in all contracts issued as a result of this Agreement.

23. SCRUTINIZED COMPANIES.

Pursuant to Section 287.135, F.S., a company that, at the time of bidding or submitting a proposal for a new contract or renewal of an existing contract, is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, F.S., or is engaged in a boycott of Israel; is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, F.S.; or is engaged in business operations in Cuba or Syria, is ineligible to, and may not bid on, submit a proposal for, or enter into or renew

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

24. COMPENSATORY TREATMENT AND MITIGATION.

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

25. GOVERNING LAW.

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

26. SEVERABILITY.

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

27. ENTIRE AGREEMENT.

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

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" 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: \_\_\_\_\_  
Amanda Rice, P.E. Date  
Assistant Executive Director

CITY OF CLEARWATER

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

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

Approved as to form: \_\_\_\_\_ Attest: \_\_\_\_\_  
Camilo A. Soto Rosemarie Call  
Assistant City Attorney City Clerk

PINELLAS COUNTY

By: \_\_\_\_\_  
Charlie Justice Date  
Chairman, Board of County Commissioners

Approved as to form: \_\_\_\_\_ Attest: Ken Burke, Clerk of the Circuit Court

By: \_\_\_\_\_ By: \_\_\_\_\_  
Pinellas County Attorney Deputy Clerk

COOPERATIVE FUNDING AGREEMENT (TYPE 3)  
BETWEEN THE  
SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT  
AND  
CITY OF CLEARWATER  
AND  
PINELLAS COUNTY  
FOR  
LOWER SPRING BRANCH CONVEYANCE IMPROVEMENTS (N915)

## EXHIBIT "A" PROJECT PLAN

### PROJECT DESCRIPTION

The PROJECT is a cooperative funding project located within the City of Clearwater in Pinellas County. The PROJECT will reduce structure and street flooding during the 100 year, 24 hour storm event, providing flood relief for approximately 11 homes, by constructing conveyance improvements along the Lower Spring Branch of Stevenson Creek. The general location of the PROJECT is shown on the attached map (Figure 1).

The CITY'S portion of the PROJECT includes design, permitting and construction of conveyance improvements at the Douglas Avenue, Springtime Avenue and Overbrook Avenue crossings. The COUNTY will reimburse the CITY for 25% of the construction cost of the Douglas Avenue crossing not to exceed two hundred seventy thousand dollars (\$270,000).

The COUNTY'S portion of the PROJECT includes construction of conveyance improvements at the Sunset Point Road crossing.

The COUNTY shall, separate to this Agreement and prior to implementation of the PROJECT, design the stormwater improvement BMPs for the Sunset Point Road crossing and secure the necessary rights-of-way and easements necessary for construction.

### RESOURCE BENEFIT

The reduction of the existing flooding problem during the 100 year, 24-hour storm event, providing flood relief for approximately 11 homes.

### MEASURABLE BENEFIT

The construction of conveyance improvements at the Douglas Avenue, Springtime Avenue, Overbrook Avenue and Sunset Point Road crossings of the Lower Spring Branch system.

### PROJECT TASKS

Key tasks to be performed by the CITY:

1. DESIGN – The CITY shall provide the necessary services such as survey, geotechnical services, environmental services, and engineering services to develop design drawings and technical specifications for construction. At each design stage submittal, the CITY shall provide Resource Benefit calculations and methodology.
2. PERMITTING – The CITY shall prepare and submit all necessary permit applications and obtain necessary approvals.
3. BIDDING AND CONTRACT AWARD – The CITY shall procure a contractor to implement the PROJECT based on the final design drawings and approved permits in accordance with the procurement laws applicable to the CITY. Prior to bid advertisement, the CITY shall identify those bid items for which reimbursement will be requested from the DISTRICT.

4. CONSTRUCTION – The CITY shall construct its portion of the PROJECT in conformance with the final design drawings, specifications and approved permits.
5. CONSTRUCTION ENGINEERING AND INSPECTION (CEI) – For its portion of the PROJECT, the CITY shall review all shop drawings, complete engineering inspections and monitor all phases of construction by means of survey, observations, and materials testing to give reasonable assurance that the construction work conforms to the permitted drawings and design specifications. The CITY shall provide the DISTRICT with inspection documents and photographs.
6. AS-BUILT SURVEY, RECORD DRAWINGS AND SUBSTANTIAL COMPLETION – For its portion of the PROJECT, the CITY shall obtain and provide to the DISTRICT an As-Built Survey signed and sealed and certified by a licensed Florida professional surveyor and mapper, the Record Drawings signed by a professional engineer, and a certification of Substantial Completion, signed by the CITY, contractor, and engineer. The CITY shall provide the Resource Benefit calculations and methodology, signed and sealed by a professional engineer, following completion of construction.
7. OPERATION AND MAINTENANCE - The CITY shall provide for the operation and maintenance of its portion of the completed PROJECT to ensure it functions in accordance with the final design drawings and conforms to all the conditions specified in the environmental permits issued for the PROJECT. The CITY shall be identified as the entity responsible for all operation and maintenance requirements in all permits issued for its portion of the PROJECT. The CITY shall prepare an Operation and Maintenance Plan detailing the inspection and maintenance activities to ensure optimum performance of its portion of the PROJECT improvements.

## **PROJECT TASKS**

Key tasks to be performed by the COUNTY:

1. BIDDING AND CONTRACT AWARD – The COUNTY shall procure a contractor to implement its portion of the PROJECT based on the final design drawings and approved permits in accordance with the procurement laws applicable to the COUNTY. Prior to bid advertisement, the COUNTY shall identify those bid items for which reimbursement will be requested from the DISTRICT.
2. CONSTRUCTION – The COUNTY shall construct its portion of the PROJECT in conformance with the final design drawings, specifications and approved permits.
3. CONSTRUCTION ENGINEERING AND INSPECTION (CEI) – For its portion of the PROJECT, the COUNTY shall review all shop drawings, complete engineering inspections and monitor all phases of construction by means of survey, observations, and materials testing to give reasonable assurance that the construction work conforms to the permitted drawings and design specifications. The COUNTY shall provide the DISTRICT with inspection documents and photographs.
4. AS-BUILT SURVEY, RECORD DRAWINGS AND SUBSTANTIAL COMPLETION – For its portion of the PROJECT, the COUNTY shall obtain and provide to the DISTRICT an As-Built Survey signed and sealed and certified by a licensed Florida professional

surveyor and mapper, the Record Drawings signed by a professional engineer, and a certification of Substantial Completion, signed by the COUNTY, contractor, and engineer. The COUNTY shall provide the Resource Benefit calculations and methodology, signed and sealed by a professional engineer, following completion of construction.

5. OPERATION AND MAINTENANCE - The COUNTY shall provide for the operation and maintenance of its portion of the completed PROJECT to ensure the PROJECT functions in accordance with the final design drawings, and conforms to all the conditions specified in the environmental permits issued for the PROJECT. The COUNTY shall be identified as the entity responsible for all operation and maintenance requirements in all permits issued for its portion of the PROJECT. The COUNTY shall prepare an Operation and Maintenance Plan detailing the inspection and maintenance activities to ensure optimum performance of its portion of the PROJECT improvements.

#### **DELIVERABLES (CITY)**

1. Quarterly reports
2. Minutes of kick-off, pre-application and progress meetings
3. Design drawings at 30%, 60%, 90% and final design levels
4. Estimate of proposed construction cost at 30% design
5. Engineer's opinion of probable cost at 60%, 90% and final design
6. Technical Specifications at 60%, 90% and final design
7. Copy of all required federal, state and local environmental permit approvals and permitted drawings
8. Construction bid packages for cost approval, with reimbursable items identified (prior to posting)
9. Copy of contract with consultant and contractor (for cost approval, prior to execution)
10. Copy of executed contract with consultant and contractor
11. Copy of Notice to Proceed to contractor
12. Copy of construction permits
13. Dated color (digital) photographs of the construction site prior to, during, and immediately following completion of construction
14. Construction inspection reports
15. As-Built Survey
16. Construction Record Drawings
17. Certification of Substantial Completion
18. Resource Benefit calculations and methodology
19. One (1) set, electronic and hardcopy, of any final reports and data files
20. Minority/Women Owned and Small Business Utilization Report
21. Operation and Maintenance Plan
22. Upon DISTRICT request, biennial Operation and Maintenance Report

#### **DELIVERABLES (COUNTY)**

1. Quarterly reports
2. Minutes of kick-off, pre-application and progress meetings
3. Design drawings at final design levels
4. Engineer's opinion of probable cost at final design
5. Technical Specifications at final design
6. Copy of all required federal, state and local environmental permit approvals and permitted drawings

7. Construction bid packages for cost approval, with reimbursable items identified (prior to posting)
8. Copy of contract with contractor (for cost approval, prior to execution)
9. Copy of executed contract with contractor
10. Copy of Notice to Proceed to contractor
11. Copy of construction permits
12. Dated color (digital) photographs of the construction site prior to, during, and immediately following completion of construction
13. Construction inspection reports
14. As-Built Survey
15. Construction Record Drawings
16. Certification of Substantial Completion
17. Resource Benefit calculations and methodology
18. One (1) set, electronic and hardcopy, of any final reports and data files
19. Minority/Women Owned and Small Business Utilization Report
20. Operation and Maintenance Plan
21. Upon DISTRICT request, biennial Operation and Maintenance Report

**PROJECT SCHEDULE (CITY)**

DESCRIPTION	COMMENCE	COMPLETE
Design	12/19/2017	1/21/2019
Permitting	6/18/2018	1/21/2019
Bidding & Contract Award	2/4/2019	5/6/2019
Construction and Construction Engineering & Inspection (CEI)	6/3/2019	12/7/2020
As-Built Survey, Record Drawings & Substantial Completion	12/8/2020	3/8/2021

**PROJECT SCHEDULE (COUNTY)**

DESCRIPTION	COMMENCE	COMPLETE
Bidding & Contract Award	12/29/2017	5/31/2018
Construction and Construction Engineering & Inspection (CEI)	6/29/2018	10/18/2019
As-Built Survey, Record Drawings & Substantial Completion	11/25/2019	12/27/2019

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

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**PROJECT BUDGET**

DESCRIPTION	DISTRICT	CITY	COUNTY	TOTAL
Design	\$100,000	\$100,000	\$0	\$200,000
Permitting	\$20,000	\$20,000	\$0	\$40,000
Bidding & Contract Award	\$2,500	\$2,500	\$0	\$5,000
Construction				
Douglas Avenue Crossing	\$432,500	\$432,500	\$0*	\$865,000
Springtime Crossing	\$297,500	\$297,500	\$0	\$595,000
Overbrook Crossing	\$297,500	\$297,500	\$0	\$595,000
Sunset Road Crossing	\$495,000	\$0	\$495,000	\$990,000
General Construction	\$0	\$0	\$0	\$0
Construction Engineering & Inspection (CEI)	\$0	\$0	\$0	\$0
As-Built Survey, Record Drawings & Substantial Completion	\$15,000	\$10,000	\$5,000	\$30,000
<b>TOTAL</b>	<b>\$1,660,000</b>	<b>\$1,160,000</b>	<b>\$500,000</b>	<b>\$3,320,000</b>

***\*The COUNTY will reimburse the CITY for 25% of the construction cost of the Douglas Avenue crossing not to exceed two-hundred seventy thousand dollars (\$270,000).***

Reimbursement for expenditures of contingency funds is contingent upon DISTRICT approval in accordance with the Funding Paragraph in the Agreement. The CITY and COUNTY must provide justification for the expenditure that will require documentation including, but not limited to, the purpose and necessity of the expenditure, the reason the expenditure was not included in the consultant or contractor agreement with the CITY and COUNTY, expenditure cost comparisons and justification of the cost.

The remainder of this page intentionally left blank.

FIGURE 1



