

Southwest Florida Water Management District Cooperative Funding Initiative (CFI) Project Agreement (Type 1-3)

This Agreement, including any exhibits referenced, attached, or incorporated herein (Agreement) is entered into by and between the Southwest Florida Water Management District (District) and the Cooperator named below:

Project Information

Cooperator Name: _____
 Cooperator Address: _____

 Project Number: _____
 Project Name: _____
 Project Description: _____
 Project Location(s): _____

Agreement Information

Risk Level: _____ Electronic Signature Consent: Yes/No
 Effective Date: _____ Expiration Date: _____
 O&M Expiration Date: _____
 Total Project Cost: _____
 State Funding: _____ CSFA #: _____ Title: _____
 Federal Funding: _____ CFDA #: _____ Title: _____
 District's Total Share: _____ Approved funds: _____ FY: _____
 Cooperator's Total Share: _____ Land Acquisition Cost: _____ Match: Yes/No
 District Funding Percentage: _____ Conservation Easement: Yes/No

Party Contacts

District Contract Manager
 Name: _____
 Address: _____

 Phone: _____
 Email: _____
 Cooperator Project Manager
 Name: _____
 Address: _____

 Phone: _____
 Email: _____

The Parties agree to comply with the terms and conditions set forth in the exhibits below, which are incorporated herein by reference:

	Exhibit A - CFI Standard Terms and Conditions (Type 1-3, Public Cooperator)
	Exhibit A - CFI Standard Terms and Conditions (Type 1-3, Private Cooperator)
	Exhibit B - CFI Special Terms and Conditions – Construction, Restoration, or Conservation with Construction
	Exhibit B - CFI Special Terms and Conditions – Construction (Water Quality/Flood Protection)

	Exhibit B - CFI Special Terms and Conditions – Construction (Reclaimed Water)
	Exhibit B - CFI Special Terms and Conditions – Construction (ASR and Recharge)
	Exhibit B - CFI Special Terms and Conditions – Non-Construction (Feasibility Study, Conservation, Watershed Management Plan)
	Exhibit B - CFI Special Terms and Conditions – Construction (Third-Party Review)
	Exhibit B - CFI Special Terms and Conditions – Septic to Sewer
	Exhibit B - CFI Special Terms and Conditions – Septic to Sewer (Third-Party Review)
	Exhibit C - Project Plan
	Exhibit D – Minority/Women Owned and Small Business Utilization Report Form
	Exhibit E – Contingency Funds Justification Form
	Exhibit F - Special Audit Requirements
	Exhibit G- State Funding Requirements
	Exhibit H - Federal Funding Requirements
	Exhibit I- Miscellaneous
	Attachment 1 – Sample Conservation Easement

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: _____
Name: _____ Date: _____
Title: _____

Cooperator

By: _____
Name: _____ Date: _____
Title: _____
Additional signatures attached on separate page

Exhibit A
Southwest Florida Water Management District
Standard Terms and Conditions
(Type 1-3, Public Cooperator)

1. Project Contacts and Notices.

The individuals identified in the CFI Project Agreement are the prime contacts for matters relating to this Agreement. Any changes to the prime contact information will be provided to the other party in writing. Notices shall be sent to the attention of each party's prime contact by U.S. mail, postage paid, by nationally recognized overnight courier, or personally to the party's address. Notice is effective upon receipt. Unless otherwise indicated in this Agreement, reports may be provided to the District's Contract Manager via email.

2. Contact Authority.

The Cooperator's Project Manager is authorized to affirm the invoice certification required by this Agreement. The District's Contract Manager is authorized to approve requests to extend a Project task deadline or to adjust a line item amount of the Project Budget. The District's Contract Manager is not authorized to approve any time extension that will extend a Project task beyond the expiration date of this Agreement or which will result in a change to the total project cost or the parties' funding shares as identified in the CFI Project Agreement. Changes authorized by this Paragraph do not require a formal written amendment but must be in writing and signed in accordance with each party's signature authority.

3. Agreement Term.

The effective date of this Agreement is identified in the CFI Project Agreement. The expiration date is the date identified in the CFI Project Agreement, or upon the satisfactory completion of the Project and subsequent final reimbursement to the Cooperator, whichever occurs first. If Exhibit B requires the Cooperator to operate and maintain the Project after its completion, the operation and maintenance obligation shall survive the above-referenced expiration date for 20 years, beginning on the date provided in Exhibit B. The Cooperator is not eligible for reimbursement for any Project work conducted or costs incurred prior to the effective date of this Agreement.

4. Scope of Work.

The Cooperator shall perform the services necessary to complete the Project in accordance with the Project Plan. The Cooperator shall commence and complete Project tasks in accordance with the Project Schedule, including any properly authorized extensions of time. Time is of the essence in the performance of each obligation under this Agreement. The Cooperator shall promptly advise the District of issues that arise that may impact the successful and timely completion of the Project. The Cooperator shall be solely responsible for managing and controlling the Project and its operation and maintenance, including the engagement and supervision of any consultants or contractors.

5. Funding.

5.1 The total cost of the Project is identified in the CFI Project Agreement. The Cooperator shall pay Project costs prior to requesting reimbursement from the DISTRICT. The District shall reimburse the Cooperator for Project costs up to the amount of its share identified in the CFI Project Agreement, subject to Paragraph 6 below. The Cooperator

shall provide all remaining funds necessary for the satisfactory completion of the Project.

- 5.2 Any state or federal appropriations or grant funds received by the Cooperator for the Project will be applied to reduce each party's share in accordance with their respective funding percentages as described in the CFI Project Agreement. If the District is a recipient of state or federal grant funds for the Project, the District's reimbursement obligation of such funding amounts is contingent upon the District's receipt of such grant funds.
- 5.3 Reimbursement for expenditures of contingency funds is contingent upon the District's approval and determination, in its sole discretion, that the expenditures were necessary to achieve the resource benefit of the Project and were not in excess of what was reasonably necessary to complete the Project. The term "contingency funds" shall include funds that are allocated for unanticipated or extra work needed to complete the Project. Items not considered for reimbursement include those unrelated to the resource benefit or resulting from design errors and defects in the work. The Cooperator may submit up to 5% of the total cost of the Project for contingency reimbursement. The District's total reimbursement obligation of contingency expenses is limited to its funding percentage identified in CFI Project Agreement. If an invoice includes expenditures of contingency funds, the Cooperator shall complete and submit the Contingency Funds Justification form attached as an exhibit to explain the basis of each line item expenditure.
- 5.4 The Cooperator shall evaluate the cost benefit of utilizing owner direct purchases for the Project and shall advise the District as to the reason the Cooperator did or did not choose to utilize owner direct purchase for major Project components.
- 5.5 Costs associated with in-kind services provided by the Cooperator are not reimbursable by the District and may not be included in the Cooperator's share of Project funding.

6. Funding Contingency.

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 District's funding percentage is subject to change due to subsequent Governing Board approvals. However, once funds are appropriated for the Project in a given fiscal year and the Cooperator has expended allowable Project costs, the appropriated amount will not be reduced. If the District does not approve additional funds needed for the Project in a future fiscal year, the District is obligated to reimburse its share of Cooperator expenses incurred in the amount of funds the District appropriated as of the date of the District's non-appropriation. In this event, the District and the Cooperator, by mutual agreement, will reduce the Project scope. The Cooperator's performance and payment pursuant to this Agreement are contingent on the Cooperator's governing body or the Florida Legislature, as applicable, lawfully appropriating legally available funds.

7. Invoice and Payment.

7.1 The District shall reimburse the Cooperator for allowable Project costs in accordance with the Project Budget. The District shall reimburse the Cooperator its share of allowable Project costs in each invoice, but at no point in time will the District's expenditure amounts under this Agreement exceed the District's funding percentage identified in the CFI Project Agreement.

7.2 Each invoice must include the following certification:

"I certify that the costs requested for reimbursement and the Cooperator's matching funds are directly related to the performance under the Agreement between the Southwest Florida Water Management District and the Cooperator (Agreement No. _____), are allowable, allocable, properly documented, and are in accordance with the approved Project Budget. This invoice includes \$__ of contingency funds expenditures."

If the invoice includes the use of federal or state appropriations or grant funds, the certification must also include the following sentence:

"The Cooperator received a total of \$__ in federal and state appropriations or grant monies for the Project and \$__ has been allocated to this invoice, reducing the District's and Cooperator's share of this invoice to \$__ / \$__ respectively."

- 7.3 With the exception of the payment of contingency funds, the District shall reimburse the Cooperator within 45 days of receipt of an invoice with adequate supporting documentation to satisfy auditing purposes and submitted in the manner prescribed by this Agreement. The District shall reimburse the Cooperator for expenditures of contingency funds within a reasonable time to accommodate the process provided for in Subparagraph 5.3. The Cooperator shall submit original invoices to the District every 3 months electronically at invoices@WaterMatters.org. If the Cooperator does not have the capability to submit invoices electronically, the invoices may be mailed to the Accounts Payable Section, Southwest Florida Water Management District, Post Office Box 15436, Brooksville, Florida 34604-5436. Copies of invoices may also be submitted to the District's Contract Manager to expedite the review process.
- 7.4 Any travel expenses authorized under this Agreement will be reimbursed in accordance with Section 112.061, Florida Statutes (F.S.), as may be amended from time to time.
- 7.5 Surcharges added to third party invoices are not considered an allowable cost under this Agreement.
- 7.6 The Cooperator shall comply with applicable procurement laws when procuring consultants and contractors to accomplish the Project. The District shall only be obligated to reimburse the Cooperator for costs incurred under contracts for Project work that is included in the Project Plan and is necessary to achieve the resource benefits of the Project, to be determined by the District in its sole discretion. Additionally, the District shall only be obligated to reimburse the Cooperator for costs that are reasonable, to be determined by the District in its sole discretion. In order for the District to make the above-determinations, the Cooperator shall provide all solicitations to the District prior to posting, and contracts prior to execution, unless the solicitation has been posted or contract has been executed before the parties' execution of this Agreement, in which case, the documents must be provided within 30 days of execution of this Agreement. The District shall provide a response to the Cooperator within 21 days of receipt of the solicitation or contract. Upon written District approval, the budget amounts for the Project work set forth in a contract will refine the Project Budget and be incorporated herein by reference. The District shall not reimburse the Cooperator for costs incurred under consultant and contractor contracts until the requirements of this Subparagraph are satisfied.

8. Dispute Resolution.

If an issue or dispute arises during the course of the Project, including whether expenses are reimbursable under this Agreement, the Cooperator shall continue to perform the Project work in accordance with the Project Plan. The Cooperator shall seek clarification and resolution of any issue or dispute by providing the details and basis of the issue or dispute to the District's Contract Manager no later than 10 days after the issue or dispute arises. If not resolved by the District's Contract Manager, in consultation with his or her Bureau Chief, within 10 days of receipt of notice, the dispute will be forwarded to the District's Assistant Executive Director. The District's Assistant Executive Director in consultation with the District's Office of General Counsel will issue the District's final determination. The Cooperator's continuation of the Project work as required under this Paragraph will not constitute a waiver of any legal remedy available to the Cooperator concerning the dispute.

9. Force Majeure.

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 obligation to meet the timeframes provided in this Agreement shall be suspended for the period of time the condition continues to exist. 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 2 days after the notice is delivered. The suspension of the party's obligations provided for in this Paragraph shall be the party's sole remedy for the delays set forth herein.

10. Project Records and Audit.

The Cooperator, upon request, shall permit the District to examine or audit all Project related records and documents during or following Project completion at no cost to the District. These records shall be available at all reasonable times for inspection, review, or audit. "Reasonable" shall be construed according to circumstances, but ordinarily shall mean normal business hours of 8:00 a.m. to 5:00 p.m., local time, Monday through Friday. The Cooperator shall similarly require its consultants and contractors to maintain and allow access to such records for inspection, review, or audit purposes. Payments made to the Cooperator under this Agreement shall be reduced for amounts found to be not allowable under this Agreement by an audit. If an audit is undertaken by the District, all required records shall be maintained until the audit has been completed and all questions arising from it are resolved. The Cooperator shall maintain all such records and documents for at least 5 years following completion of the Project. If an audit has been initiated and audit findings have not been resolved at the end of the 5 years, the records shall be retained until resolution of the audit findings, which would include an audit follow-up by the inspector general if the findings result from an external auditor, or any litigation. The Cooperator understands and will comply with its duty, pursuant to Section 20.055(5), F.S., to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing. The Cooperator shall similarly require its consultants and contractors to comply with their duty, pursuant to Section 20.055(5), F.S., to cooperate with the inspector general in any investigation, audit, inspection, review or hearing. This Paragraph shall survive the expiration or termination of this Agreement.

11. Reports.

11.1 The Cooperator shall provide the District with a quarterly report, or monthly report if required in the Project Plan, describing the progress of the Project tasks, adherence to the Project Schedule and any developments affecting the Project. Quarterly means the calendar quarters ending March 31, June 30, September 30 and December 31. The Cooperator shall submit quarterly reports to the District's Contract Manager no later than 30 days following the completion of the applicable quarter, or no later than the 7th day of the month for the preceding month's report.

11.2 Upon request by the District, the Cooperator shall provide the District with copies of data, reports, models, studies, maps and other documents resulting from the Project. This Subparagraph shall survive the expiration or termination of this Agreement.

11.3 If required in the Project Plan, the Cooperator shall submit all water resource data collected under this Agreement to the District for upload to District databases, and to the Florida Department of Environmental Protection's (FDEP) database for water quality data in accordance with Rule 62-40.540, Florida Administrative Code. This Subparagraph shall survive the expiration or termination of this Agreement. The Cooperator shall provide the documents referenced in this Paragraph at no cost to the District.

12. Risk, Liability, and Indemnity.

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

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

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

12.4 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.

12.5 This Paragraph, including all subparagraphs, shall survive the expiration or termination of this Agreement.

13. Default.

A party may terminate this Agreement upon another party's failure to comply with any term or condition of this Agreement, provided the terminating party is not in default of this Agreement at the time of termination. The terminating party shall provide the defaulting party with a written notice stating its intent to terminate and describing all terms and conditions with which the defaulting party has failed to comply (Notice of Termination). If the defaulting party has not remedied its default within 30 days after receiving the Notice of Termination, this Agreement shall automatically terminate. If a default cannot reasonably be cured within 30 days, then the cure time may be extended at the terminating 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.

14. Release of Information.

The parties will not 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 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.

15. District Recognition.

The Cooperator shall recognize District funding in any reports, models, studies, maps or other documents resulting from this Agreement, and the form of said recognition shall be subject to District approval.

16. Permits and Real Property Rights.

The Cooperator shall obtain all permits, local government approvals and all real property rights necessary to complete and operate the Project prior to commencing any construction of the Project. The District shall not reimburse the Cooperator for allowable costs under this Agreement until the Cooperator has obtained all permits, approvals, and property rights necessary to complete the Project. This Paragraph shall survive the expiration or termination of this Agreement.

17. Law Compliance.

The Cooperator shall comply with all applicable federal, state and local laws, rules, regulations and guidelines related to performance under this Agreement.

18. 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 Cooperator shall encourage Project participation of minority owned and woman owned and small business enterprises, as prime contractors and subcontractors, in accordance with applicable laws.

18.1 If requested, the District shall assist the Cooperator by sharing information to help the Cooperator ensure that minority owned and woman owned and small businesses are afforded an opportunity to participate in the performance of this Agreement.

18.2 If the District's share of Project costs is greater than or equal to \$100,000, the Cooperator shall provide the District with the Minority/Women Owned and Small Business Utilization Report attached as an exhibit, indicating all contractors and subcontractors who performed Project work, the amount paid to 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. The report is required upon Project completion prior to final payment, or within 30 days of the execution of any amendment that increases the total Project cost, for information up to the date of the amendment and prior to the disbursement of any additional funds by the District.

19. Assignment.

No party may assign any of its rights or obligations under this Agreement, including any operation or maintenance obligations, without the prior written consent of the other party. Any attempted assignment in violation of this Paragraph is void. This Paragraph shall survive the expiration or termination of this Agreement.

20. Miscellaneous.

Nothing in this Agreement shall be construed or implied to create any relationship between the District and any consultant or contractor of the Cooperator. Nothing in this Agreement shall be construed to benefit any person or entity not a party to this Agreement. This Agreement is governed by Florida law and venue for resolving disputes under this Agreement shall be exclusively in Hillsborough County, Florida. Unless otherwise stated in this Agreement, if a court of competent jurisdiction deems any term or condition of this Agreement to be invalid, illegal, or unenforceable, the remaining terms and conditions are severable and shall remain in full force and effect. This Paragraph shall survive the expiration or termination of this Agreement.

21. Lobbying Prohibition.

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

22. Counterparts and Authority to Sign.

The signatures of all parties need not appear on the same counterpart. Unless otherwise indicated in the CFI Project Agreement, in accordance with the Electronic Signature Act of 1996, electronic signatures, including facsimile transmissions, may be used and shall have the same force and effect as a written signature. Each person signing this Agreement warrants that he or she is duly authorized to do so and to bind the respective party to the Agreement.

23. Entire Agreement.

This Agreement, including the attached, referenced, and incorporated exhibit(s), constitutes the entire agreement between the parties and, unless otherwise provided herein, may only be amended through a formal amendment, signed by all parties to this Agreement. In the event of a conflict of contract terminology, priority shall be given first to the CFI Project Agreement; the exhibits, except Exhibit A, in the order presented in the CFI Project Agreement; then Exhibit A; and then the attachments in the order presented in the CFI Project Agreement.

Exhibit B
Southwest Florida Water Management District
Special Terms and Conditions
(Construction or Restoration)

1. Project Funding.

1.1 The District Governing Board approved the funding of the Project based upon the expectation that the Measurable Benefit as provided in the Project Plan would be achieved. The Cooperator is solely responsible for implementing the Project in such a manner that the Measurable Benefit is achieved. If at any point during the progression of the Project, the District determines that it is likely that the Measurable Benefit will not be achieved, the District shall provide the Cooperator with 15 days advance written notice that the District will withhold payments to the Cooperator until such time as the Cooperator demonstrates that the Project will achieve the Measurable Benefit.

1.2 The District shall not reimburse the Cooperator for any costs under this Agreement until the notice to proceed with construction has been issued to the Cooperator's contractor.

2. Repayment.

2.1 The Cooperator shall repay the District all funds the District paid to the Cooperator under this Agreement if: a) the Cooperator fails to complete the Project in accordance with the terms and conditions of this Agreement; b) the District determines, in its sole discretion, that the Cooperator has failed to maintain scheduled progress of the Project thereby endangering the timely completion of the Project; c) the Cooperator fails to appropriate sufficient funds to meet the Project task deadlines; d) the District determines, in its sole discretion, that a permit, approval, or property right legal challenge has caused an unreasonable delay or cancellation of the Project; e) the Project is used for compensatory water quality treatment or mitigation or water use permitting withdrawal credits in violation of this Agreement; or f) any contractual requirement or expectation of the resource benefits resulting from the Project, including any requirement applicable to reclaimed water projects, is held to be invalid, illegal or unenforceable during the term of this Agreement, including the O&M Period. Should any of the above conditions exist that require the Cooperator to repay the District, this Agreement shall terminate in accordance with the procedure set forth in the Default Paragraph.

2.2 Notwithstanding the above, if the Project fails to achieve the Measurable Benefit, the Cooperator may request that the District Governing Board waive the repayment obligation, in whole or in part.

2.3 If the Cooperator is obligated to repay the District, the Cooperator shall repay the District within a reasonable time, as determined by the District in its sole discretion.

2.4 The Cooperator shall pay attorneys' fees and costs incurred by the District, including appeals, resulting from the Cooperator's failure to repay the District as required by this Agreement.

- 2.5 This Paragraph, including all subparagraphs, shall survive the expiration or termination of this Agreement.
3. Operation and Maintenance. *Checked paragraph applies. All subparagraphs apply.*
- The Cooperator shall operate and maintain the Project for at least 20 consecutive years (O&M Period) beginning at Project completion in such a manner that the Project's resource benefits are achieved. If the Cooperator ceases to operate and maintain the Project, the Cooperator shall repay the District 5% of total District monies contributed to the Project for each year or a fraction of a year in which the Project is not operated and maintained. The rights and remedies in this Paragraph are in addition to any other rights and remedies provided by law or this Agreement.
 - The Cooperator shall operate and maintain the Project in perpetuity to ensure the proper hydraulic operation and compliance with all environmental permits. If the Cooperator ceases to operate and maintain the Project, the Cooperator shall repay the District 5% of total District monies contributed to the Project for each year or a fraction of a year in which the Project is not operated and maintained. The rights and remedies in this Paragraph are in addition to any other rights and remedies provided by law or this Agreement.
- 3.1 Within 30 days of Project completion, or as extended by the District in writing, the Cooperator shall provide the District with construction record drawings, signed and sealed by a professional engineer, certifying that the Measurable Benefit has been achieved. The Cooperator shall provide the District with an operation and maintenance plan that provides reasonable assurance that the Project will be operated and maintained as required by this Agreement. Every 2 years during the O&M Period, the Cooperator shall generate a report describing the operation and maintenance activities that took place during the reporting period and certifying that the required resource benefits have been achieved. The Cooperator's obligation to generate and maintain such reports shall continue throughout the O&M Period.
- 3.2 The District retains the right to audit any certification and, if requested by the District, the Cooperator shall provide documentation to support its certification that the required resource benefits have been achieved.
- 3.3 This Paragraph, including all subparagraphs, shall survive the expiration or termination of this Agreement.
4. Design Submittal. *Checked paragraph applies.*
- The Cooperator shall provide the District with the final design drawings, signed and sealed by a professional engineer, including supporting documentation. The District shall provide written notice to the Cooperator within 14 days of receipt of the design submittal advising if it appears to meet the requirements of this Agreement. The Cooperator shall not advertise the construction bid documents until the requirements of this Paragraph are satisfied. The District's acceptance of the design submittal shall not be construed as 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 applicable rules, regulations or law, including the District's.

- The Cooperator must ensure that the design of the Project maximizes the resource benefits to the greatest extent practicable. The Cooperator shall provide the District with the 30%, 60%, 90% and final design drawings, including supporting documentation. A professional engineer shall, at a minimum, sign and seal the final design drawings. The District shall provide written notice to the Cooperator within 14 days of receipt of each design submittal, advising if it appears to meet the requirements of this Agreement. The Cooperator shall not advertise the construction bid documents until the requirements of this Paragraph are satisfied. The District's acceptance of any design submittal shall not be construed as an approval of the design, or the architectural, engineering, mechanical, electrical, or other components of the construction bid documents, or that such documents are in compliance with applicable rules, regulations or law, including the District's.
 - The Cooperator shall provide the District with the final design drawings, signed and sealed by a professional engineer, including supporting documentation. The District shall provide written notice to the Cooperator within 14 days of receipt of the design submittal advising if it appears to meet the requirements of this Agreement. The District's acceptance of the design submittal shall not be construed as an approval of the design, or the architectural, engineering, mechanical, electrical, or other components of the construction bid documents, or that such documents are in compliance with applicable rules, regulations or law, including the District's.
 - The Cooperator must ensure that the design of the Project maximizes the resource benefits to the greatest extent practicable. The Cooperator shall provide the District with the 30%, 60%, 90% and final design drawings, including supporting documentation. A professional engineer shall, at a minimum, sign and seal the final design drawings. The District shall provide written notice to the Cooperator within 14 days of receipt of each design submittal, advising if it appears to meet the requirements of this Agreement. The District's acceptance of any design submittal shall not be construed as an approval of the design, or the architectural, engineering, mechanical, electrical, or other components of the construction bid documents, or that such documents are in compliance with applicable rules, regulations or law, including the District's.
5. Compensatory Treatment Mitigation.
The Project shall not be used by the Cooperator or any other entity as compensatory water quality treatment or wetland mitigation, or any other required mitigation due to impacts for any projects. The Project shall not be used for water use permitting withdrawal credits. The Project may 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.
6. Additional Clauses. *Checked paragraphs apply.*
- Signage.
The Cooperator shall provide signage at the Project site that recognizes the District's funding for the Project. All signage must receive the District's written approval as to form, content and location, and must be in accordance with local sign ordinances.

□ Conservation Easements.

The Cooperator shall convey a perpetual conservation easement as defined in Section 704.06, F.S., to the District, over the Project area, without encumbrances unless such encumbrances do not adversely affect the ecological viability of the Project. The conservation easement will cover that portion of the property that is being improved with funds provided under this Agreement. The form and content of the conservation easement is subject to District review and approval prior to execution and should be substantially similar to the template attached hereto as an exhibit. Within 60 days of construction commencement, the Cooperator must submit a Title Insurance Commitment, legal description with a boundary survey signed and sealed by a Florida registered surveyor, evidence of ownership or legal control of the property, and a draft conservation easement for District review and approval. If the Cooperator is a municipality, political subdivision or state agency, it may use an Ownership and Encumbrance Report acceptable to the District in lieu of a Title Insurance Commitment. The Cooperator will have 90 days to remove any encumbrances identified by the District as unacceptable or demonstrate to the District's satisfaction that the encumbrance or encumbrances will not affect the ecological viability of the Project. Within 30 days after construction is complete, the Cooperator must execute and record the conservation easement. Within 30 days after recording, the Cooperator must submit the recorded conservation easement for the Project area to the District. Within 90 days after recording, the Cooperator must submit a Title Insurance Policy consistent with the Title Insurance Commitment or Ownership and Encumbrance Report approved by the District. All costs associated with obtaining the conservation easement and the other required documents shall be the sole obligation of the Cooperator outside of this Agreement. This Paragraph shall survive the expiration or termination of this Agreement.

Exhibit B
Southwest Florida Water Management District
Special Terms and Conditions
(Construction – Water Quality/Flood Protection)

1. Project Funding.

- 1.1 The District Governing Board approved the funding of the Project based upon the expectation that the Resource Benefit as provided in the Project Plan would be achieved. Construction of the Project in accordance with the Measurable Benefit as provided in the Project Plan is expected to result in the Resource Benefit. The Cooperator is solely responsible for implementing the Project in such a manner that the Measurable Benefit is achieved. If at any point during the progression of the Project, the District determines that it is likely that the Measurable Benefit will not be achieved, the District shall provide the Cooperator with 15 days advance written notice that the District will withhold payments until such time as the Cooperator demonstrates that the Project will achieve the Measurable Benefit.
- 1.2 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 may not be achieved, the District may terminate this Agreement without any payment obligation. Such termination shall be effective 10 days following the Cooperator's receipt of written notice from the District.
- 1.3 The District shall not reimburse the Cooperator for any costs under this Agreement until the notice to proceed with construction has been issued to the Cooperator's contractor.

2. Repayment.

- 2.1 The Cooperator shall repay the District all funds the District paid to the Cooperator under this Agreement if: a) the Cooperator fails to complete the Project in accordance with the terms and conditions of this Agreement; b) the District determines, in its sole discretion, that the Cooperator has failed to maintain scheduled progress of the Project thereby endangering the timely completion of the Project; c) the Cooperator fails to appropriate sufficient funds to meet the Project task deadlines; d) the District determines, in its sole discretion, that a permit, approval, or property right legal challenge has caused an unreasonable delay or cancellation of the Project; e) the Project is used for compensatory water quality treatment or mitigation or water use permitting withdrawal credits in violation of this Agreement; or f) any contractual requirement or expectation of the resource benefits resulting from the Project, including any requirement applicable to reclaimed water projects, is held to be invalid, illegal or unenforceable during the term of this Agreement, including the O&M Period. Should any of the above conditions exist that require the Cooperator to repay the District, this Agreement shall terminate in accordance with the procedure set forth in the Default Paragraph.
- 2.2 Notwithstanding the above, if the Project fails to achieve the Measurable Benefit, the Cooperator may request the District Governing Board waive the repayment obligation, in whole or in part.

- 2.3 If the Cooperator is obligated to repay the District, the Cooperator shall repay the District within a reasonable time, as determined by the District in its sole discretion.
 - 2.4 The Cooperator shall pay attorneys' fees and costs incurred by the District, including appeals, resulting from the Cooperator's failure to repay the District as required by this Agreement.
 - 2.5 This Paragraph, including all subparagraphs, shall survive the expiration or termination of this Agreement.
3. Operation and Maintenance.
The Cooperator shall operate and maintain the Project for at least 20 consecutive years (O&M Period) beginning at Project completion in such a manner that the Project's resource benefits are achieved. If the Cooperator ceases to operate and maintain the Project, the Cooperator shall repay the District 5% of total District monies contributed to the Project for each year or a fraction of a year in which the Project is not operated and maintained. The rights and remedies in this Paragraph are in addition to any other rights and remedies provided by law or this Agreement.
- 3.1 Within 30 days of Project completion, or as extended by the District in writing, the Cooperator shall provide the District with construction record drawings, including Resource Benefit calculations and methodology, signed and sealed by a professional engineer, certifying that the Measurable Benefit has been achieved. The Cooperator shall provide the District with an operation and maintenance plan that provides reasonable assurance that the Project will be operated and maintained as required by this Agreement. Every 2 years during the O&M Period, the Cooperator shall certify that the Project is maintained per the permit. The Cooperator's obligation to generate and maintain such reports shall continue throughout the O&M Period.
 - 3.2 The District retains the right to audit any certification and, if requested by the District, the Cooperator shall provide documentation to support its certification that the required resource benefits have been achieved.
 - 3.3 This Paragraph, including all subparagraphs, shall survive the expiration or termination of this Agreement.
4. Design Submittal. *Checked paragraph applies.*
- The Cooperator shall provide the District with the final design drawings and Resource Benefit calculations and methodology, signed and sealed by a professional engineer, including supporting documentation. The District shall provide written notice to the Cooperator within 14 days of receipt of the design submittal advising if it appears to meet the requirements of this Agreement. The Cooperator shall not advertise the construction bid documents until the requirements of this Paragraph are satisfied. The District's acceptance of the design submittal shall not be construed as 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 applicable rules, regulations or law, including the District's.
 - The Cooperator must ensure that the design of the Project maximizes the resource benefits to the greatest extent practicable. The Cooperator shall provide

the District with the 30%, 60%, 90% and final design drawings and Resource Benefit calculations and methodology, including supporting documentation. A professional engineer shall sign and seal the final design drawings and Resource Benefit calculations and methodology. The District shall provide written notice to the Cooperator within 14 days of receipt of each design submittal, advising if it appears to meet the requirements of this Agreement. The Cooperator shall not advertise the construction bid documents until the requirements of this Paragraph are satisfied. The District's acceptance of any design submittal 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 applicable rules, regulations or law, including the District's.

- The Cooperator shall provide the District with the final design drawings and Resource Benefit calculations and methodology, signed and sealed by a professional engineer, including supporting documentation. The District shall provide written notice to the Cooperator within 14 days of receipt of the design submittal advising if it appears to meet the requirements of this Agreement. The District's acceptance of the design submittal shall not be construed as 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 applicable rules, regulations or law, including the District's.
- The Cooperator must ensure that the design of the Project maximizes the resource benefits to the greatest extent practicable. The Cooperator shall provide the District with the 30%, 60%, 90% and final design drawings and Resource Benefit calculations and methodology, including supporting documentation. A professional engineer shall sign and seal the final design drawings and Resource Benefit calculations and methodology. The District shall provide written notice to the Cooperator within 14 days of receipt of each design submittal, advising if it appears to meet the requirements of this Agreement. The District's acceptance of any design submittal 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 applicable rules, regulations or law, including the District's.

5. Compensatory Treatment Mitigation.

The Project shall not be used by the Cooperator or any other entity as compensatory water quality treatment or wetland mitigation, or any other required mitigation due to impacts for any projects. The Project shall not be used for water use permitting withdrawal credits. 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.

6. Additional Clauses. *Checked paragraphs apply.*

Signage.

The Cooperator shall provide signage at the Project site that recognizes the District's funding for the Project. All signage must receive the District's written

approval as to form, content and location, and must be in accordance with local sign ordinances.

Exhibit B
Southwest Florida Water Management District
Special Terms and Conditions
(Construction – Reclaimed Water)

1. Project Funding.

- 1.1 The District Governing Board approved the funding of the Project based upon the expectation that the Measurable Benefit as provided in the Project Plan would be achieved. The Cooperator is solely responsible for implementing the Project in such a manner that the Measurable Benefit is achieved. If at any point during the progression of the Project, the District determines that it is likely that the Measurable Benefit will not be achieved, the District shall provide the Cooperator with 15 days advance written notice that the District will withhold payments to the Cooperator until such time as the Cooperator demonstrates that the Measurable Benefit will be achieved.
- 1.2 The District shall not reimburse the Cooperator for any costs under this Agreement until the notice to proceed with construction has been issued to the Cooperator's contractor; and the related wastewater treatment facility is constructed and operational and, if the proposed user of the reclaimed water is a newly proposed development, until the development is fully permitted and under construction.

2. Repayment.

- 2.1 The Cooperator shall repay the District all funds the District paid to the Cooperator under this Agreement if: a) the Cooperator fails to complete the Project in accordance with the terms and conditions of this Agreement; b) the District determines, in its sole discretion, that the Cooperator has failed to maintain scheduled progress of the Project thereby endangering the timely completion of the Project; c) the Cooperator fails to appropriate sufficient funds to meet the Project task deadlines; d) the District determines, in its sole discretion, that a permit, approval, or property right legal challenge has caused an unreasonable delay or cancellation of the Project; e) the Project is used for compensatory water quality treatment or mitigation or water use permitting withdrawal credits in violation of this Agreement; or f) any contractual requirement or expectation of the resource benefits resulting from the Project, including any requirement applicable to reclaimed water projects, is held to be invalid, illegal or unenforceable during the term of this Agreement, including the O&M Period. Should any of the above conditions exist that require the Cooperator to repay the District, this Agreement shall terminate in accordance with the procedure set forth in the Default Paragraph.
- 2.2 Notwithstanding the above, if the Project fails to achieve the Measurable Benefit, the Cooperator may request the District Governing Board waive the repayment obligation, in whole or in part.
- 2.3 If the Cooperator is obligated to repay the District, the Cooperator shall repay the District within a reasonable time, as determined by the District in its sole discretion.

- 2.4 The Cooperator shall pay attorneys' fees and costs incurred by the District, including appeals, resulting from the Cooperator's failure to repay the District as required by this Agreement.
- 2.5 This Paragraph, including all subparagraphs, shall survive the expiration or termination of this Agreement.
3. Operation and Maintenance.
The Cooperator shall operate and maintain the reclaimed water infrastructure related to the Project for at least 20 consecutive years (O&M Period) beginning 5 years after Project completion in such a manner that the Project's resource benefits are achieved, except for adverse short-term conditions beyond the control of the Cooperator, as determined by the District in its sole discretion. The Cooperator shall provide written notice to the District of the existence of adverse short-term conditions and the Cooperator's plan of action to overcome the conditions. The District's Contract Manager will evaluate and determine the Cooperator's compliance with this Paragraph as part of the District required "Annual Reclaimed Water Supplier Report" evaluation. If the Project is not operated and maintained in such a manner that the Project's resource benefits are achieved, the Cooperator shall repay the District the percentage of District monies contributed to the Project equivalent to the percentage of the Project benefits not utilized, as determined by the District in its sole discretion. If the Cooperator ceases to operate and maintain the Project, the Cooperator shall repay the District, a pro-rated payment equivalent to the percentage of the total District monies contributed to the Project for the Project benefits not achieved. The rights and remedies in this Paragraph are in addition to any other rights and remedies provided by law or this Agreement.
- 3.1 Within 30 days of Project completion, or as extended by the District in writing, the Cooperator shall provide the District with construction record drawings, signed and sealed by a professional engineer, certifying the Measurable Benefit is capable of being achieved within the timeframe required by this Agreement. The Cooperator shall provide the District with an operation and maintenance plan that provides reasonable assurance that the Project will be operated and maintained as required by this Agreement. Every 2 years during the O&M Period, the Cooperator shall generate a report describing the operation and maintenance activities that took place during the reporting period and certifying that the required resource benefits have been achieved. The Cooperator's obligation to generate and maintain such reports throughout the O&M Period.
- 3.2 The District retains the right to audit any certification and, if requested by the District, the Cooperator shall provide documentation to support its certification that the required resource benefits have been achieved.
- 3.3 This Paragraph, including all subparagraphs, shall survive the expiration or termination of this Agreement.
4. Design Submittal. *Checked paragraph applies.*
- The Cooperator shall provide the District with the final design drawings, signed and sealed by a professional engineer, including supporting documentation. The District shall provide written notice to the Cooperator within 30 days of receipt of the design submittal advising if it appears to meet the requirements of this

Agreement. The Cooperator shall not advertise the construction bid documents until the requirements of this Paragraph are satisfied. The District's acceptance of the design submittal shall not be construed as an approval of the design, or the architectural, engineering, mechanical, electrical, or other components of the construction bid documents, or that such documents are in compliance with applicable rules, regulations or law, including the District's.

- The Cooperator shall provide the District with the final design drawings, signed and sealed by a professional engineer, including supporting documentation. The District shall provide written notice to the Cooperator within 30 days of receipt of the design submittal advising if it appears to meet the requirements of this Agreement. The District's acceptance of the design submittal shall not be construed as an approval of the design, or the architectural, engineering, mechanical, electrical, or other components of the construction bid documents, or that such documents are in compliance with applicable rules, regulations or law, including the District's.

5. Supplier Report.

5.1 The Cooperator shall provide the District with an "*Annual Reclaimed Water Supplier Report*" showing the reuse flow and customer information for the Cooperator's entire reclaimed water system. The reporting period will be October 1st through September 30th and the report shall be submitted by April 1st of the calendar year following the fiscal year period. The Annual Reclaimed Water Supplier Report form is available from the District's Contract Manager. The Cooperator shall obtain the District's approval of the report before the report is finalized. The District will not unreasonably withhold its approval. This Subparagraph shall survive the expiration or termination of this Agreement.

5.2 Reclaimed water infrastructure and facility location information shall be delivered to the District as one ESRI Geodatabase that contains the three feature classes and characteristics identified in the District's Reclaimed Water GIS Standards, which is available from the District's Contract Manager. The Cooperator shall obtain the District's approval of the GIS submission before the submission is finalized, and the District will not unreasonably withhold its approval.

6. Compensatory Treatment Mitigation.

The Project shall not be used by the Cooperator or any other entity as compensatory water quality treatment or wetland mitigation, or any other required mitigation due to impacts for any projects. The Project shall not be used for water use permitting withdrawal credits. 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.

7. Additional Clauses. *Checked paragraphs apply.*

□ Signage.

The Cooperator shall provide signage at the Project site that recognizes the District's funding for the Project. All signage must receive the District's written approval as to form, content and location, and must be in accordance with local sign ordinances

- Water Rate Structures.

The Cooperator shall adopt rate structures for water customers in the Cooperator's service area that will promote the conservation of water and the use of alternative water supplies. The Cooperator shall provide a copy of such rate structures to the District prior to the submission of the Cooperator's first invoice. The Cooperator shall implement the rate structures within 1 year of Project completion. This Paragraph shall survive the expiration or termination of this Agreement.
- Single-Family Residential Requirements.

Prior to the submission of the Cooperator's first invoice, the Cooperator shall provide written documentation that evidences the following:

 - a. Adoption of an ordinance requiring dual distribution (potable and reclaimed) lines in new developments within its reclaimed water service area, and provide for the necessary enforcement.
 - b. Adoption of an ordinance requiring residential reclaimed water customers to meter their reclaimed water use and to take measures to promote the efficient use of reclaimed water for aesthetic landscape irrigation, and provide for the necessary enforcement. A minimum of a subdivision level master meter is required. The ordinance must result in at least a 50% offset efficiency of groundwater, surface water, and/or potable water supplies used for irrigation.
 - c. Adoption of a policy guaranteeing full connection of the customer accounts in the Project's service area to the reclaimed water system within 5 years of Project completion. Additionally, the policy must guarantee a rate of connection of at least 50% of the customer accounts in the Project's service area to the reclaimed water system within 1 year of Project completion for existing homes or within 3 years for developments under construction.
 - d. The initiation of installation of reclaimed water meters for customers within the Project's service area. A minimum of 1 master meter per subdivision is required. The Cooperator shall maintain the meter(s) and record reclaimed water usage through the meter(s) throughout the O&M Period.
 - e. This Paragraph, including all subparagraphs, shall survive the expiration or termination of this Agreement.
- Non-Residential/Commercial Requirements.

Prior to the submission of the Cooperator's first invoice, the Cooperator shall provide written documentation that evidences the initiation of installation of reclaimed water meters for the non-residential/commercial customers identified in the Project Plan. The Cooperator shall maintain the meters and record reclaimed water usage through the meters throughout the O&M Period. This Paragraph shall survive the expiration or termination of this Agreement.
- Education Program. *Checked paragraph applies.*
 - The Cooperator shall continue its previously approved customer education program promoting the efficient use and conservation of reclaimed water. The Cooperator must obtain the District's approval of any modifications to the education program material prior to implementing the modified program. The District will not unreasonably withhold its approval.

- The Cooperator shall implement its customer education program promoting the efficient use and conservation of reclaimed water. The Cooperator must obtain the District's approval of the education program material prior to program implementation. The District will not unreasonably withhold its approval. The District shall not reimburse the Cooperator until the Cooperator's education program is implemented.
- 20-Year Customer Commitment Agreement. *Checked paragraphs apply.*
 - The Cooperator shall obtain written agreements with the single-family residential reclaimed water customers in the Project's service area that results in at least 50% of the Project benefits, under normal operating conditions, being achieved within 1 year of Project completion for existing homes or within 3 years for developments under construction. The Cooperator shall not initiate construction of the Project until it provides written notice to the District that the agreements have been secured. The agreements must include, at a minimum, the term of agreement, quantities to be supplied, rates, fees and seasonal availability. For developments under construction such agreements may be with the development owner. This Paragraph shall survive the expiration or termination of this Agreement.
 - The Cooperator shall secure written agreements with non-residential/commercial customers in the Project's service area that ensures the Project benefits are achieved throughout the O&M Period. The Cooperator shall ensure said customers will provide the Project's proposed benefits to existing or planned, potable, groundwater or surface water withdrawals, under normal operating conditions. The Cooperator shall not initiate construction of the Project until it provides written notice to the District that the agreements have been secured and shall be provided to the District's Contract Manager prior to initiating construction of the Project. This Paragraph shall survive the expiration or termination of this Agreement.

Exhibit B
Southwest Florida Water Management District
Special Terms and Conditions
(Construction – Underground Injection Projects, Aquifer Storage and Recovery)

1. Project Funding.

- 1.1 The District Governing Board approved the funding of the Project based upon the expectation that the Measurable Benefit as provided in the Project Plan would be achieved. The Cooperator is solely responsible for implementing the Project in such a manner that the Measurable Benefit is achieved. If at any point during the progression of the Project, the District determines that it is likely that the Measurable Benefit will not be achieved, the District shall provide the Cooperator with 15 days advance written notice that the District will withhold payments to the Cooperator until such time as the Cooperator demonstrates that the Project will achieve the Measurable Benefit.
- 1.2 The District shall not reimburse the Cooperator for any costs under this Agreement until the notice to proceed with construction has been issued to the Cooperator's contractor.

2. Repayment.

- 2.1 The Cooperator shall repay the District all funds the District paid to the Cooperator under this Agreement if: a) the Cooperator fails to complete the Project in accordance with the terms and conditions of this Agreement; b) the District determines, in its sole discretion, that the Cooperator has failed to maintain scheduled progress of the Project thereby endangering the timely completion of the Project; c) the Cooperator fails to appropriate sufficient funds to meet the Project task deadlines; d) the District determines, in its sole discretion, that a permit, approval, or property right legal challenge has caused an unreasonable delay or cancellation of the Project; e) the Project is used for compensatory water quality treatment or mitigation or water use permitting withdrawal credits in violation of this Agreement; or f) any contractual requirement or expectation of the resource benefits resulting from the Project, including any requirement applicable to reclaimed water projects, is held to be invalid, illegal or unenforceable during the term of this Agreement, including the O&M Period. Should any of the above conditions exist that require the Cooperator to repay the District, this Agreement shall terminate in accordance with the procedure set forth in the Default Paragraph.
- 2.2 Notwithstanding the above, if the Project fails to achieve the Measurable Benefit, the Cooperator may request the District Governing Board waive the repayment obligation, in whole or in part.
- 2.3 If the Cooperator is obligated to repay the District, the Cooperator shall repay the District within a reasonable time, as determined by the District in its sole discretion.
- 2.4 The Cooperator shall pay attorneys' fees and costs incurred by the District, including appeals, resulting from the Cooperator's failure to repay the District as required by this Agreement.

- 2.5 This Paragraph, including all subparagraphs, shall survive the expiration or termination of this Agreement.
3. Operation and Maintenance.
If the Department of Environmental Protection (FDEP) issues an operation permit for the Project, the Cooperator shall operate and maintain the Project for at least 20 consecutive years (O&M Period) beginning at Project completion in such a manner that the Project's resource benefits are achieved, except during adverse short-term conditions beyond the control of the Cooperator, as determined by the District in its sole discretion. The Cooperator shall provide written notice to the District of the existence of adverse short-term conditions and the Cooperator's plan of action to overcome the conditions. If reclaimed water is utilized for this Project, the District's Contract Manager will evaluate and determine the Cooperator's compliance with this Paragraph as part of the District required "Annual Reclaimed Water Supplier Report" evaluation. If the Project is not operated and maintained in such a manner that the Project's resource benefits are achieved, the Cooperator shall repay the District the percentage of District monies contributed to the Project equivalent to the percentage of Project benefits not utilized, as determined by the District in its sole discretion. If the Cooperator ceases to operate and maintain the Project, the Cooperator shall repay the District, a pro-rated payment equivalent to the percentage of the total District monies contributed to the Project for the Project benefits not achieved. The rights and remedies in this Paragraph are in addition to any other rights and remedies provided by law or this Agreement.
- 3.1 Within 30 days of the FDEP cycle testing completion, or as extended by the District in writing, the Cooperator shall provide the District with construction record drawings, signed and sealed by a professional engineer, certifying the Measurable Benefit is achievable based on the FDEP cycle test results. The Cooperator shall provide the District with an operation and maintenance plan that provides reasonable assurance that the Project will be operated and maintained as required by this Agreement. Every 2 years during the O&M Period, the Cooperator shall generate a report describing the operation and maintenance activities that took place during the reporting period and certifying that the required resource benefits have been achieved. The Cooperator's obligation to generate and maintain such reports shall continue throughout the O&M Period.
- 3.2 The District retains the right to audit any certification and, if requested by the District, the Cooperator shall provide documentation to support its certification that the required resource benefits have been achieved.
- 3.3 This Paragraph, including all subparagraphs, shall survive the expiration or termination of this Agreement.
4. Design Submittal. *Checked paragraph applies.*
- The Cooperator shall provide the District with the final design drawings, signed and sealed by a professional engineer, including supporting documentation. The District shall provide written notice to the Cooperator within 14 days of receipt of the design submittal advising if it appears to meet the requirements of this Agreement. The Cooperator shall not advertise the construction bid documents until the requirements of this Paragraph are satisfied. The District's

acceptance of the design submittal shall not be construed as an approval of the design, or the architectural, engineering, mechanical, electrical, or other components of the construction bid documents, or that such documents are in compliance with applicable rules, regulations or law, including the District's.

- The Cooperator must ensure that the design of the Project maximizes the resource benefits to the greatest extent practicable. The Cooperator shall provide the District with the 30%, 60%, 90% and final design drawings, including supporting documentation. A professional engineer shall, at a minimum, sign and seal the final design drawings. The District shall provide written notice to the Cooperator within 14 days of receipt of each design submittal advising if it appears to meet the requirements of this Agreement. The Cooperator shall not advertise the construction bid documents until requirements of this Paragraph are satisfied. The District's acceptance of any design submittal shall not be construed as an approval of the design, or the architectural, engineering, mechanical, electrical, or other components of the construction bid documents, or that such documents are in compliance with applicable rules, regulations or law, including the District's.
- The Cooperator shall provide the District with the final design drawings, signed and sealed by a professional engineer, including supporting documentation. The District shall provide written notice to the Cooperator within 14 days of receipt of the design submittal advising if it appears to meet the requirements of this Agreement. The District's acceptance of the design submittal shall not be construed as an approval of the design, or the architectural, engineering, mechanical, electrical, or other components of the construction bid documents, or that such documents are in compliance with applicable rules, regulations or law, including the District's.
- The Cooperator must ensure that the design of the Project maximizes the resource benefits to the greatest extent practicable. The Cooperator shall provide the District with the 30%, 60%, 90% and final design drawings, including supporting documentation. A professional engineer shall, at a minimum, sign and seal the final design drawings. The District shall provide written notice to the Cooperator within 14 days of receipt of each design submittal, advising if it appears to meet the requirements of this Agreement. The District's acceptance of any design submittal shall not be construed as an approval of the design, or the architectural, engineering, mechanical, electrical, or other components of the construction bid documents, or that such documents are in compliance with applicable rules, regulations or law, including the District's.

5. Supplier Report.

5.1 If reclaimed water is used for the Project, the Cooperator shall provide the District with an "*Annual Reclaimed Water Supplier Report*" showing the reuse flow and customer information for the Cooperator's entire reclaimed water system. The reporting period shall be October 1st through September 30th and the report must be submitted by April 1st of the calendar year following the fiscal year period. The Annual Reclaimed Water Supplier Report form is available from the District's Contract Manager. The Cooperator shall obtain the District's

approval of the report before the report is finalized. The District will not unreasonably withhold its approval. Annual submission of this report will eliminate the requirement for the Reclaimed Water Offset Report by the Cooperator from any ongoing or previously completed reclaimed water projects with the District. This Subparagraph shall survive the expiration or termination of this Agreement.

5.2 If reclaimed water is used for the Project, reclaimed water infrastructure and facility information shall be delivered to the District as one ESRI Geodatabase that contains the three feature classes and characteristics identified in the District's Reclaimed Water GIS Standards, which is available from the District's Contract Manager. The Cooperator shall obtain the District's approval of the GIS submission before the submission is finalized, and the District will not unreasonably withhold its approval.

6. Compensatory Treatment Mitigation.

The Project shall not be used by the Cooperator or any other entity as compensatory water quality treatment or wetland mitigation, or any other required mitigation due to impacts for any projects. The Project shall not be used for water use permitting withdrawal credits. 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.

7. Additional Clauses. *Checked paragraphs apply.*

Signage.

The Cooperator shall provide signage at the Project site that recognizes the District's funding for the Project. All signage must receive the District's written approval as to form, content and location, and must be in accordance with local sign ordinances.

Exhibit B
Southwest Florida Water Management District
Special Terms and Conditions
(Non-Construction - Feasibility Study, Conservation, Watershed Management Plan)

1. Project Funding.

The District Governing Board approved the funding of this Project based upon the expectation that the Measurable Benefit as provided in the Project Plan would be achieved. The Cooperator is solely responsible for implementing the Project in such a manner that the Measurable Benefit is achieved. If at any point during the progression of the Project, the District determines that it is likely that the Measurable Benefit will not be achieved, the District shall provide the Cooperator with 15 days advance written notice that the District will withhold payments to the Cooperator until such time as the Cooperator demonstrates that the Measurable Benefit will be achieved.

2. Repayment.

2.1 The Cooperator shall repay the District all funds the District paid to the Cooperator under this Agreement if: a) the Cooperator fails to complete the Project in accordance with the terms and conditions of this Agreement; b) the District determines, in its sole discretion, that the Cooperator has failed to maintain scheduled progress of the Project thereby endangering the timely completion of the Project; c) the Cooperator fails to appropriate sufficient funds to meet the Project task deadlines; d) the District determines, in its sole discretion, that a permit, approval, or property right legal challenge has caused an unreasonable delay or cancellation of the Project; or e) any contractual requirement or expectation of the resource benefits resulting from the Project, including any requirement applicable to reclaimed water projects, is held to be invalid, illegal or unenforceable during the term of this Agreement, including any O&M Period. Should any of the above conditions exist that require the Cooperator to repay the District, this Agreement shall terminate in accordance with the procedure set forth in the Default Paragraph.

2.2 Notwithstanding the above, if the Project fails to achieve the Measurable Benefit, the Cooperator may request the District Governing Board waive the repayment obligation, in whole or in part.

2.3 If the Cooperator is obligated to repay the District under any Paragraph of this Agreement, the Cooperator shall repay the District within a reasonable time, as determined by the District in its sole discretion.

2.4 The Cooperator shall pay attorneys' fees and costs incurred by the District, including appeals, resulting from the Cooperator's failure to repay the District as required by this Agreement.

2.5 This Paragraph, including all subparagraphs, shall survive the expiration or termination of this Agreement.

3. Compensatory Treatment Mitigation.

If the Project progresses into the construction phase, the project shall not be used by the Cooperator or any other entity as compensatory water quality treatment or wetland mitigation, or any other required mitigation due to impacts for any projects.

The project shall not be used for water use permitting withdrawal credits. 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.

4. Additional Clauses. *Checked paragraphs apply.*

Feasibility Study Alternatives.

The parties acknowledge that the Project is a feasibility study. If, during the course of the Project, an alternative is determined not to be feasible due to cost, water quality, permitability, supply availability, or other pertinent considerations, the Cooperator shall notify the District and cease work on the infeasible alternative. The Cooperator may request reallocating funds to another alternative in accordance with this Agreement. The approval of such request for reallocation of funds shall be in the District's sole discretion.

Ownership of Documents and Other Materials.

All documents and goods or products, including the associated intellectual property rights, developed in connection with this Agreement shall be the property of the District and the Cooperator, jointly. Notwithstanding the above, all Project infrastructure shall be the sole property of the Cooperator. This Paragraph shall survive the expiration or termination of this Agreement.

Project Deliverables.

The Cooperator shall provide the District with each deliverable set forth under the Deliverables for District Comments section in the Project Plan, including any supporting documentation. The District shall provide a written response to the Cooperator within:

- 15 days of receipt.
- 30 days of receipt.

The Cooperator shall provide a written response to the District's questions and concerns within:

- 10 days of receipt.
- 20 days of receipt.