MEMORANDUM OF UNDERSTANDING BETWEEN

**THE SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT**

**AND THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT**

**REGARDING THE CITY OF CAPE CORAL’S PROPOSED INTERDISTRICT TRANSFER OF SURFACE WATER FROM THE SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT TO THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT**

The Southwest Florida Water Management District (“SWFWMD”) and the South Florida Water Management District (“SFWMD”) (collectively, the “Districts”) enter into this Memorandum of Understanding (“MOU”) to accomplish the goals and purposes stated below.

WITNESSETH:

 WHEREAS, on January 23, 2019, the City of Cape Coral (“City”) submitted Water Use Permit (“WUP”) Application No. 20020808.000 (“Application”) to the SWFWMD for the purpose of converting an existing rock and sand mine to a water supply reservoir (the “Southwest Aggregates Mine Reservoir”), from which quantities of surface water would be withdrawn and piped to the City to augment its irrigation and fire flow supply; and

 WHEREAS, the Application requests authorization to withdraw 3,945,200 gallons of surface water per day from the Southwest Aggregates Mine Reservoir on an annual average basis and 16,000,000 gallons per day on a peak month basis for irrigation and fire flow; and

WHEREAS, the proposed surface water withdrawal is located within the SWFWMD’s boundaries, and the proposed usage of the water is within SFWMD’s boundaries; and

WHEREAS, the SWFWMD and SFWMD regulate the consumptive use of water pursuant to Part II of Chapter 373, Florida Statutes, (“F.S.”); and

WHEREAS, the SWFWMD and SFWMD regulate the transfer of surface water in accordance with Section 373.223, F.S., and

WHEREAS, Rule 62-40.422(1), Florida Administrative Code (“F.A.C.”), provides, in pertinent part, that “[t]he transfer or use of surface water across District boundaries shall require approval of each involved District”; and

WHEREAS, Rule 62-40.422(2), F.A.C., provides that in deciding whether the transfer and use of surface water across District boundaries is consistent with the public interest, the Districts must consider the extent to which:

(a) Comprehensive water conservation and reuse programs are implemented and enforced in the area of need;

(b) The major costs, benefits, and environmental impacts have been adequately determined including the impact on both the supplying and receiving areas;

(c) The transfer is an environmentally and economically acceptable method to supply water for the given purpose;

(d) The present and projected water needs of the supplying area are reasonably determined and can be satisfied even if the transfer takes place;

(e) The transfer plan incorporates a regional approach to water supply and distribution including, where appropriate, plans for eventual interconnection of water supply sources; and

(f) The transfer is otherwise consistent with the public interest based upon evidence presented.

 NOW THEREFORE, the SWFWMD and the SFWMD hereby agree as follows:

1. The Districts considered, among other things, the factors listed in Rule 62-40.422(2)(a)-(e), F.A.C. and agree that the proposed transfer of surface water across District boundaries is consistent with this component of the public interest.
2. SWFWMD and SFWMD approve of the City’s proposed transfer of surface water from SWFWMD to SFWMD, provided that the SWFWMD determines that the City has demonstrated reasonable assurance that its SWFWMD WUP Application meets the requirements contained in Rule 40D-2.301, F.A.C., and the City obtains any and all applicable required permits and authorizations.
3. This MOU does not constitute an approval of the Application or an acknowledgement that any of the conditions for issuance in Rule 40D-2.301, F.A.C. have been met.
4. If the Application is not approved by the SWFWMD, this MOU is void and of no effect.
5. This MOU does not obviate the City’s need to obtain any and all applicable permits or modifications that may be necessary to accomplish its proposed project, including, but not limited to, a Consumptive Use Permit from the SFWMD.
6. Nothing herein shall be construed to conflict with any requirement of Chapter 373, F.S., or any District or Florida Department of Environmental Protection rule.
7. This MOU will commence upon execution by all parties and will remain in effect until either party terminates such agreement for its convenience upon ninety (90) days written notice to the other party.

IN WITNESS WHEREOF, each party, or its lawful representative, has executed this Agreement on the date set forth next to their signature below.

# SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Attest:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Mark Taylor, Chair Joel Schleicher, Secretary

Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Seal)

Approved as to Legal Form & Content

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**SOUTH FLORIDA WATER MANAGEMENT DISTRICT**

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Attest:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Jill Creech, P.E, Division Director Rosie Byrd, District Clerk

Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Seal)

Approved as to Legal Form & Content

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