

**JOINT FUNDING AGREEMENT  
BETWEEN THE  
SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT  
AND THE  
CITY OF TAMPA  
FOR IMPLEMENTATION OF RECOVERY PROJECTS TO MEET THE MINIMUM  
FLOW OF THE LOWER HILLSBOROUGH RIVER**

THIS 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 TAMPA, a municipal corporation of the State of Florida, whose address is 306 E. Jackson Street Tampa, 33602 Water Department, 5th floor, hereinafter referred to as the "CITY."

**WITNESSETH:**

WHEREAS, Section 373.042, Florida Statutes ("F.S.") requires that the DISTRICT develop minimum flows and levels for surface watercourses and aquifers to ensure that adequate flows or levels are maintained to protect the State's water resources; and

WHEREAS, in accordance with Section 373.042, F.S., the DISTRICT has proposed minimum flows for the Lower Hillsborough River through the adoption of Rule 40D-8.041, Florida Administrative Code ("F.A.C."); and

WHEREAS, the DISTRICT has determined that the Lower Hillsborough River is not achieving the proposed minimum flow; and

WHEREAS, Section 373.0421, F.S., requires that the DISTRICT expeditiously develop recovery strategies for water bodies that are, or are projected to fall, below minimum flows or levels; and

WHEREAS, the DISTRICT has adopted Rule 40D-80.073(4), F.A.C., that provides the recovery strategy for the Lower Hillsborough River ("Recovery Strategy"); and

WHEREAS, the Recovery Strategy requires the CITY to meet the Minimum Flows for the Lower Hillsborough River by October 1, 2017, and provides a schedule for interim projects to be completed by the CITY; and

WHEREAS, the DISTRICT desires to assist the CITY in funding projects that will enable the CITY to meet its obligations for the under the Recovery Strategy within the time schedule set forth therein; and

WHEREAS, the CITY and the District have identified projects designed to achieve the requirements of the minimum flows for the Lower Hillsborough River and interim

recovery goals of the Recovery Strategy to the DISTRICT for funding consideration under the DISTRICT's cooperative funding program; and

WHEREAS, the CITY may propose alternative projects to those identified in the Recovery Strategy which after submittal and mutual approval by the CITY and District, the District commits to assist the CITY in co-funding the alternative projects to provide water to meet the minimum flow requirements; and

WHEREAS, in order for the CITY to receive DISTRICT funding, it will be necessary for the parties to execute a funding agreement which will describe the proposed project plan and may contain additional terms and conditions; and

WHEREAS, the Recovery Strategy also requires the parties to cooperate in the investigation of options for storage of water, monitoring and analysis of the water resources, and to assist with the recovery of the Lower Hillsborough River and restoration of a wetland adjacent to McKay Bay; and

WHEREAS, the parties have agreed that it is in their best interests to work cooperatively to achieve the requirements and goals of the Recovery Strategy.

NOW THEREFORE, the DISTRICT and the CITY in consideration of the mutual terms, covenants and conditions set forth herein, agree as follows:

1. **RECITALS.** The Recitals are adopted and incorporated herein as an integral part of this Agreement.
2. **PROJECT MANAGER AND NOTICES.** The DISTRICT and the CITY hereby designate the employee set forth below as its respective Project Manager. Project Managers will assist with PROJECT coordination and will be each party's prime contact person. Notices and reports will be sent to the attention of each party's Project Manager by U.S. mail, postage paid, to the parties' addresses as set forth in the introductory paragraph of this Agreement.

Project Manager for the DISTRICT:	Marty Kelly, Ecologic Evaluation Manager
Project Manager for the CITY:	Brad Baird, Director, City of Tampa Water Department

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

3. **SCOPE OF WORK.** Any work funded by the DISTRICT and performed by the CITY pursuant to this Agreement will be necessary to determine the feasibility of and/or complete a project in furtherance of the requirements and goals of the Recovery Strategy.

The CITY may also propose alternative projects to the DISTRICT for funding consideration. Upon approval of a project by the DISTRICT, the parties will execute a mutually agreeable funding agreement in substantially similar form as the example agreement attached hereto as Exhibit "2." The CITY agrees to perform the work necessary to complete the approved projects in accordance with the terms and conditions of the funding agreements. Projects that are eligible for DISTRICT funding include, but are not limited to, those proposed projects described in the document attached hereto as Exhibit "1" which are intended to address the recovery goals identified in Rule 40D-80.073(4), F.A.C. Additionally, other projects and activities that will assist the CITY in achieving the requirements and goals of the Recovery Strategy will be considered for DISTRICT funding, including, but not limited to, the investigation of options for storage of water ("Storage Projects") more specifically described in Paragraph 6 of this Agreement.

3.1 The Scope of Work for the feasibility analysis of the transmission pipeline project shall be mutually agreeable to the CITY and the DISTRICT. The feasibility analysis consists of peer review of the projected water savings resulting from the Transmission Pipeline Project. The Peer Review shall be conducted by a three (3) member panel selected as follows: the CITY and the DISTRICT, at their own expense, each choose one (1) panel member, and those two (2) members shall choose the third member who must be mutually agreeable to the CITY and the DISTRICT. The cost and expenses of the third member shall be co-funded by the CITY and the DISTRICT. The CITY and the DISTRICT shall jointly develop the charge for the peer review panel, which must be mutually agreeable to the CITY and the DISTRICT. The feasibility analysis, peer review selection and report including the recommendations of the peer review panel must be completed no later than October 1, 2008. The parties agree to be bound by the findings of the peer review panel.

4. ELIGIBLE COSTS. "Eligible" project costs will mean design (which includes feasibility studies, planning, initial design, and final design), engineering, and construction costs actually expended in the development of a project approved by the District for funding. Eligible project costs will include costs for design and engineering activities that may also support a permit application. Costs that are not Eligible project costs include permitting (which will include the preparation, filing and the defense of permit applications), land acquisition, project financing, public relations, operating, and bid protests, including related litigation. The DISTRICT and the CITY agree to equally co-fund the costs of the feasibility analysis and peer review thereof of the proposed transmission pipeline project. The costs of these are not included in the estimate for the projects and will not reduce the amount available to fund the projects.

5. FUNDING. The DISTRICT agrees to make available to the CITY twenty-two million, two hundred and fifty thousand dollars, (\$22,250,000) in joint funding for projects designed to achieve the requirements of the minimum flows for the Lower Hillsborough River. The parties estimate that the total Eligible cost of the projects designed to achieve the requirements of the minimum flows as identified in the Recovery Strategy or which may be proposed as alternative projects as provided in the

Recovery Strategy is \$44,500,000. This amount is based upon the estimated costs for each proposed project as set forth in Exhibit "1," entitled "Proposed Jointly Funded Recovery Strategy Projects for the Lower Hillsborough River" and would be the maximum amount anticipated cumulatively including any alternative projects which might be proposed by the CITY. The DISTRICT agrees to fund Eligible project costs for projects approved pursuant to paragraph 3. above to assist in meeting the minimum flow up to twenty-two million, two hundred and fifty thousand dollars (\$22,250,000) and will have no obligation to pay costs beyond this maximum amount under this Agreement.

5.1 The parties agree that any state or federal appropriations, trust funds or grant monies received by either party for the projects will be applied to lower the total Eligible cost of the projects prior to the application of any other funds.

5.2 After application of the funds described above, the DISTRICT agrees to reimburse the CITY fifty percent (50%) of the Eligible project costs pursuant to the terms and conditions of the funding agreements.

5.3 The CITY agrees to fund fifty percent (50%) of the Eligible project costs and will be responsible for all costs remaining for the projects exclusive of those paid by the DISTRICT and other external sources.

5.4 In the event the DISTRICT provides funding for a project in excess of the DISTRICT's share after all state and federal appropriations, trust funds and grant monies have been applied as set forth herein, the CITY will promptly refund such overpaid amounts to the DISTRICT.

5.5 The DISTRICT's performance and payment pursuant to this Agreement are contingent upon the DISTRICT's Governing Board and Basin Boards appropriating funds for the projects.

5.6 If any conflict occurs between the funding provisions found herein and those of an individual project funding agreement, then the provisions set forth in the individual project funding agreement will control. Each individual project funding agreement shall be mutually agreeable to the CITY and the DISTRICT in order to achieve the goals set forth in the Recovery Strategy

5.7 The City's performance and payment pursuant to this Agreement are contingent upon the City appropriating funds for the projects and the City Council approving the individual project Agreements.

6. OPERATION AND MAINTENANCE. The CITY will own and have responsibility for operating and maintaining each funded project in accordance with the required capacities and other terms and conditions contained within funding agreements to ensure the CITY meets the required Minimum Flows by October 1, 2017.

7. ADDITIONAL PROJECTS.

7.1 STORAGE PROJECTS. Pursuant to Rule 40D-80.073(4)(c), F.A.C., the parties agree to cooperate in the investigation of Storage Projects and additional source options in sufficient quantities, that upon discharge to the base of the dam, together with the other sources of flow described in Rule 40D-80.073(4)(b), F.A.C., will meet the Minimum Flows beginning October 1, 2017, or earlier.

7.2 OTHER PROJECTS. The parties agree to cooperate with each other to investigate, develop and implement any other projects to supplement, or substitute for, projects listed in Exhibit "1" in furtherance of the Recovery Strategy.

8. MONITORING AND ANALYSIS. Pursuant to Rule 40D-80.073(4)(g), F.A.C., the parties agree to continue the existing monitoring and analysis of the water resources within the Lower Hillsborough River and DISTRICT staff will provide this information to the DISTRICT Governing Board as part of five year review and report described in Rule 40D-80.073(4)(h), F.A.C.

9. WETLAND RESTORATION PROJECT. Pursuant to Rule 40D-80.073(4)(i), F.A.C., the CITY agrees to provide up to 7.1 million gallons per day of reclaimed water, as needed for the wetland restoration project adjacent to McKay Bay, if undertaken by the DISTRICT no later than October 1, 2017.

10. CONTRACT PERIOD. This Agreement will become effective upon execution by the DISTRICT and the CITY and will remain in effect through October 31, 2018, unless terminated pursuant to Paragraph 11 below, or if amended in writing by the parties.

11. TERMINATION. Either party may terminate this Agreement upon the other party's failure to comply with any term or condition of this Agreement, as long as the terminating party is not in default of any term or condition of this Agreement. To initiate termination, the terminating party must 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 the default or not initiated good faith efforts to remedy its default within thirty (30) days after receiving the Notice of Termination, this Agreement will automatically terminate. This Agreement may also be terminated upon the written mutual consent of both parties.

12. PROJECT RECORDS AND DOCUMENTS. The DISTRICT and the CITY will maintain all records and documents for at least three (3) years following termination of this Agreement, unless state or federal funds are involved in which case records and documents will be maintained for at least five (5) years. All records and documents generated or received by the DISTRICT or the CITY in relation to this Agreement is subject to the Public Records Act, Chapter 119, F.S.

13. NO AGENCY RELATIONSHIP. Nothing herein will be construed to create an agency relationship between the parties.

14. ASSIGNMENT. No party may assign any of its rights under this Agreement, voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law, or any other manner without the prior written consent of the other party. For purposes of this paragraph, a change in control is deemed an assignment.

15. THIRD PARTY BENEFICIARIES. Nothing in this Agreement will be construed to benefit any person or entity not a party to this Agreement.

16. ENTIRE AGREEMENT. This Agreement and the attached exhibits listed below constitute the entire agreement between the DISTRICT and the CITY and, unless otherwise provided herein, may be amended only in writing, signed by the parties to this Agreement.

17. DOCUMENTS. The following documents are attached and made a part of this Agreement. In the event of a conflict of contract terminology, priority will be first given to the language in the body of this Agreement, then to Exhibit "1," then to Exhibit "2."

- Exhibit "1" Proposed Jointly Funded Recovery Strategy Projects for the Lower Hillsborough River
- Exhibit "2" Example Funding Agreement Form

Remainder of page left intentionally blank

IN WITNESS WHEREOF, the DISTRICT and the CITY 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: David L. Moore 8-30-07  
David L. Moore, Executive Director Date

CITY OF TAMPA

By: Pam Iorio 10/19/07  
Pam Iorio, Mayor Date

Attest: Shirley Foxx-Knowles  
Shirley Foxx-Knowles  
City Clerk

(SEAL)

APPROVED AS TO FORM:

By: Janice M. McLean  
Janice M. McLean  
Assistant City Attorney

Reviewed and Approved by Legal  
Raf  
BWFWMO ATTORNEY

Exhibit "1"

**Proposed Jointly Funded Recovery Strategy Projects for the Lower Hillsborough River**

Proposed projects to be jointly funded by the District and City of Tampa to implement minimum flow recovery strategy on the Lower Hillsborough River. Project implementation, except Sulphur Springs Weir, subject to feasibility studies as indicated herein or in the Recovery Strategy Rule 40D-80.073(4), F.A.C.

Proposed Project	Anticipated Development Costs	Timeline for Implementation
The Sulphur Springs weir modifications including installation of a variable speed pump and pump station	\$2.5 million	October 1, 2010
A) The Blue Sink Project, or B) reroute flows to Sulphur Springs and then to base of dam	A) \$7 million B) \$11 million	October 1, 2011
A) Transmission Pipeline Analysis & Peer Review  B) The Transmission Pipeline Project – provided that District funding of this project is subject to feasibility analysis and peer review in A above demonstrating that actual water savings due to the pipeline would result.	Jointly Co-Funded as indicated in the Agreement  \$26 million	October 1, 2008  October 1, 2013
Investigation of Storage or Additional Supply Options	\$5 million (est. costs for implementation)	October 1, 2010 (completion of investigation), Implementation by October 1, 2016

EXHIBIT 2

AGREEMENT NO. \_\_\_\_\_

FUNDING AGREEMENT  
BETWEEN THE  
SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT  
AND THE  
CITY OF TAMPA  
FOR THE RECOVERY OF THE LOWER HILLSBOROUGH RIVER  
- *SULPHUR SPRINGS DIVERSION PROJECT (H4\_\_\_)*

THIS FUNDING 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, for itself and on behalf of the Hillsborough River Basin Board, hereinafter collectively referred to as the "DISTRICT," and the CITY OF TAMPA, a municipality of the State of Florida, whose address is 306 E. Jackson Street, Tampa, Florida 33602 hereinafter referred to as the "CITY."

WITNESSETH:

WHEREAS, Rule 40D-80.073(4), Florida Administrative Code ("F.A.C."), hereinafter the "Recovery Strategy," requires the CITY to meet the Minimum Flows for the Lower Hillsborough River by October 1, 2016, and provides a schedule for interim recovery goals to be achieved by the CITY; and

WHEREAS, the DISTRICT and the CITY entered into a Recovery Agreement for the Lower Hillsborough River wherein the parties agreed that the CITY would propose projects designed to achieve the requirements and interim recovery goals of the Recovery Strategy to the DISTRICT for funding assistance; and

WHEREAS, Rule 40D-80.073(4)(b)3., F.A.C., sets forth an interim recovery goal such that, beginning October 1, 2009, or as soon thereafter as is practicable, the CITY is to provide to the base of the Hillsborough River dam certain flows from Sulphur Springs; and

WHEREAS, the project consists of \_\_\_\_\_, hereinafter referred to as the "PROJECT;" and

WHEREAS, the PROJECT is critical to achieving the interim recovery goal set forth in the Recovery Strategy; and

WHEREAS, the CITY proposed the PROJECT to the DISTRICT for funding consideration; and

WHEREAS, the DISTRICT finds the PROJECT consistent with the Recovery Agreement and desires to assist the CITY in funding the PROJECT.

NOW THEREFORE, the DISTRICT and the CITY, in consideration of the mutual terms, covenants and conditions set forth herein, agree as follows:

1. PROJECT MANAGER AND NOTICES. Each party hereby designates the employee set forth below as its respective Project Manager. Project Managers will assist with PROJECT coordination and will be each party's prime contact person. Notices and reports will be sent to the attention of each party's Project Manager by U.S. mail, postage paid, to the parties' addresses as set forth in the introductory paragraph of this Agreement.

Project Manager for the DISTRICT:	Marty Kelly, Ecologic Evaluation Manager
Project Manager for CITY:	Brad Baird, Director, Water Department

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

- 1.1 The DISTRICT's Project Manager is hereby authorized to approve requests to extend a PROJECT task deadline set forth in this Agreement. Such request must be in writing and explain the reason for the extension. Such approval must be signed by the Project Manager and his or her Department Director, or Deputy Executive Director if the Department Director is the Project Manager. The DISTRICT's Project 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 Paragraph 5, Contract Period.
- 1.2 The DISTRICT's Project Manager is authorized to adjust a line item amount of the PROJECT Budget contained in the Proposed Project Plan set forth in Exhibit "B" or, if applicable, the refined budget as set forth in Paragraph 3.3 below. The adjustment must be in writing, explain the reason for the adjustment, and be signed by the Project Manager, his or her Department Director and Deputy Executive Director. The DISTRICT's Project Manager is not authorized to make changes to the Scope of Work and is not authorized to approve any increase in the DISTRICT's maximum amount set forth in the funding section of this Agreement.

2. SCOPE OF WORK. The CITY agrees to perform the services necessary to complete the PROJECT in accordance with the Special Project Terms and

Conditions set forth in Exhibit "A" and the CITY's Proposed Project Plan set forth in Exhibit "B." Any changes to this Scope of Work and associated costs, except as provided herein, must be mutually agreed to in a formal written amendment approved by the DISTRICT and the CITY, such approvals not to be unreasonably withheld, prior to being performed by the CITY, subject to the provisions of Paragraph 3, Funding, and all subsections thereunder. The CITY will be solely responsible for managing the PROJECT, including the hiring and supervising of any consultants or contractors it engages in order to complete the PROJECT.

3. FUNDING. The parties anticipate that the total ELIGIBLE cost of the PROJECT, as defined in Paragraph 3.9 below and as set forth in Exhibit "B," will be \_\_\_\_\_ Dollars (\$ ). The DISTRICT agrees to fund ELIGIBLE PROJECT costs up to \_\_\_\_\_ Dollars (\$ ) and will have no obligation to pay any costs beyond this maximum amount. The CITY agrees to fund all remaining PROJECT costs exclusive of those paid by the DISTRICT and other external sources. The CITY will be the lead party to this Agreement and pay ELIGIBLE PROJECT costs prior to requesting reimbursement from the DISTRICT.
  - 3.1 The DISTRICT and the CITY agree that any state or federal appropriations, trust funds or grant monies received by either party for the PROJECT, will be applied to lower the total ELIGIBLE cost of the PROJECT prior to the application of any other funds.
  - 3.2 After the application of funds pursuant to Paragraph 3.1 above, the DISTRICT agrees to fund fifty percent (50%) of the remaining ELIGIBLE costs of the PROJECT, subject to annual DISTRICT and Basin Board appropriations. DISTRICT staff will use its best efforts to secure future DISTRICT funding for the PROJECT. If future DISTRICT funding identified above is not available, the CITY will be responsible for all funding necessary to complete the PROJECT. In the event the DISTRICT provides funding for the PROJECT in excess of the DISTRICT's share after all state and federal appropriations, trust funds and grant monies have been applied as set forth herein, the CITY will promptly refund such overpaid amounts to the DISTRICT.
  - 3.3 The DISTRICT will reimburse the CITY for the DISTRICT's share of the ELIGIBLE PROJECT costs in accordance with the PROJECT Budget contained in the Proposed Project Plan set forth in Exhibit "B" and Paragraphs 3.1 and 3.2 above. The CITY may contract with consultant(s) or contractor(s) or both in accordance with the Special Project Terms and Conditions set forth in Exhibit "A." Upon written DISTRICT approval, the budget amounts for the work set forth in such contract(s) will refine the amounts set forth in the PROJECT Budget and be incorporated herein by reference. At no point will the DISTRICT's expenditure amount under this Agreement exceed expenditures made by the CITY. Payment will be

made to the CITY in accordance with the Local Government Prompt Payment Act, Part VII of Chapter 218, F.S., upon receipt of an invoice, with the appropriate support documentation, which will be submitted to the DISTRICT monthly at the following address:

Accounts Payable Section  
Southwest Florida Water Management District  
Post Office Box 1166  
Brooksville, Florida 34605-1166

- 3.4 The CITY will annually prepare and submit to the DISTRICT, a Schedule of Costs on a cash basis for the PROJECT from inception through completion, with totals by fiscal year, that specifically identifies actual ELIGIBLE and INELIGIBLE costs expended for the PROJECT in the form of the Summary of Tasks attached in Exhibit "B."
- 3.5 The Project Budget includes any travel expenses which may be authorized under this Agreement and reimbursement will be paid in accordance with Section 112.061, F.S., and District Procedure 13-5, attached hereto as Exhibit "C," as both may be amended from time to time.
- 3.6 The CITY will not use any DISTRICT funds for any purposes not specifically identified in the above Scope of Work.
- 3.7 The DISTRICT will have no obligation to reimburse the CITY for any costs under this Agreement prior to the contract period commencement date set forth in Paragraph 5.
- 3.8 The CITY recognizes that the DISTRICT has approved \_\_\_\_\_ Dollars (\$\_\_\_\_\_) for the PROJECT through Fiscal Year 20\_\_\_\_. The DISTRICT's share of the remaining ELIGIBLE costs for the PROJECT are contingent upon approval of such amounts by the DISTRICT, in its sole discretion and judgment, in its annual budget for Fiscal Years 20\_\_\_\_ through 20\_\_\_\_. Additionally, the DISTRICT's performance and payment pursuant to this Agreement are contingent upon the DISTRICT's Governing Board and Basin Board appropriating funds for the PROJECT.
- 3.9 "ELIGIBLE" project costs will mean design (which includes feasibility studies, planning, initial design, and final design), engineering, and construction costs actually expended in the development of the PROJECT. ELIGIBLE project costs will include costs for design and engineering activities that may also be used to support a permit application. Costs that are not ELIGIBLE project costs include permitting (which will include the preparation, filing and the defense of permit

applications), land acquisition, project financing, public relations, operating, and bid protests, including related litigation.

3.10 In providing its share of the funding for the PROJECT, it is the intent of the DISTRICT that the PROJECT will be constructed, maintained and operated so as to be capable of water delivery in accordance with the capacities as described in the Proposed Project Plan. However, it is not the intent of the DISTRICT that the CITY be required to continually operate the facilities funded under this Agreement at those capacities. Accordingly, the CITY will maintain ownership of the PROJECT infrastructure and will ensure that the PROJECT infrastructure is constructed, maintained and operated in such a manner that it is capable of delivering the quantity of water when needed described in the Proposed Project Plan. This provision will survive the CONTRACT PERIOD until December 31, 2042.

3.11 The CITY's invoices must include the following certification, and the CITY hereby delegates authority by virtue of this Agreement to its Project Manager to affirm said certification:

"I hereby certify that the costs requested for reimbursement and CITY's matching funds, as represented in this invoice, are directly related to the performance under this \_\_\_\_\_ Agreement between the Southwest Florida Water Management District and the CITY (Agreement No. \_\_\_\_\_), and are ELIGIBLE, allowable, allocable, properly documented, and are in accordance with the approved project budget."

3.12 If the CITY fails to perform its obligations in accordance with this Agreement and in accordance with generally-accepted professional standards and in accordance with the PROJECT scope of work and budget, the DISTRICT, upon giving notice to the CITY of such failure, will have the right to cease further payment authorization, will require the CITY to remedy such failure within a reasonable period of time and the CITY will be responsible for any additional costs incurred in making said remedy.

3.13 It will be considered a breach of this Agreement if the CITY abandons or significantly modifies the Project Plan without the consent of the DISTRICT. If the DISTRICT, in its sole discretion, determines that such a breach has occurred, then the DISTRICT will give the CITY written notice of the breach and allow the CITY thirty (30) days to remedy the breach. If the CITY fails to remedy within this time period, then this Agreement will automatically terminate except that the CITY will repay to the DISTRICT all monies paid under this Agreement. The term "significantly modifies" will mean modified in an important and meaningful manner. The DISTRICT will not act in an arbitrary or capricious manner.

4. \*FLORIDA SINGLE AUDIT ACT. Funding for this Agreement includes *federal and state* financial assistance and is therefore subject to the *United States Office of Management and Budget (OMB) Circular A-133 and the Florida Single Audit Act (FSAA)*, Section 215.97, F.S. CITY is a subrecipient of *federal and state* financial assistance under this Agreement and therefore may be subject to audits and monitoring as described in the Special Audit Requirements set forth in Exhibit "D." CITY must also use the Florida Single Audit Act Checklist For Non-State Organizations - Recipient/Subrecipient vs. Vendor Determination (Attachment 2 of Exhibit "D"), to evaluate the applicability of the FSAA to non-state organizations to which CITY provides State resources to assist in carrying out activities related to this Agreement.

*\*This paragraph will be used when state or federal funds are used for the Project.*

5. CONTRACT PERIOD. This Agreement will be effective \_\_\_\_\_, and will remain in effect through \_\_\_\_\_, unless terminated, pursuant to Paragraph 9 below, or if amended in writing by the parties.

6. PROJECT RECORDS AND DOCUMENTS. Each party, upon request, will permit the other party to examine or audit all PROJECT related records and documents during or following completion of the PROJECT. Each party will maintain all such records and documents for at least *\*three (3) years* following completion of the PROJECT. All records and documents generated or received by either party in relation to the PROJECT are subject to the Public Records Act, Chapter 119, F.S.

*\* Replace 3 years with 5 years if state or federal funding is used for the project.*

7. REPORTS. The CITY will provide the DISTRICT with copies of any and all reports, models, studies, maps or other documents resulting from the PROJECT.

8. LIABILITY. Each party hereto agrees to indemnify and hold the other harmless, to the extent allowed under Section 768.28, F.S., from all claims, loss, damage and expense, including attorney fees and costs and attorney fees and costs on appeal, arising from the negligent acts or omissions of the indemnifying party's officers, employees, contractors and agents related to its performance under this Agreement. This provision does not constitute a waiver of either party's sovereign immunity under Section 768.28, F.S., or extend either party's liability beyond the limits established in Section 768.28, F.S.

9. DEFAULT. Either party may terminate this Agreement upon the other party's failure to comply with any term or condition of this Agreement, as long as the terminating party is not in default of any term or condition of this Agreement. To initiate termination, the terminating party must 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 the default or not initiated good faith efforts to remedy its default within thirty (30) days after receiving the Notice of Termination, this Agreement will automatically terminate.

10. DISTRICT RECOGNITION. The CITY will recognize DISTRICT funding and, if applicable, Basin Board funding in any reports, models, studies, maps or other documents resulting from this Agreement, and the form of said recognition will be subject to DISTRICT approval. If construction is involved, the CITY will provide signage at the PROJECT site that recognizes funding for this PROJECT provided by the DISTRICT and, if applicable, the Basin Board. All signage must meet with DISTRICT written approval as to form, content and location, and must be in accordance with local sign ordinances.
11. PERMITS AND REAL PROPERTY RIGHTS. The CITY must 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.
12. LAW COMPLIANCE. Each party will comply with all applicable federal, state and local laws, rules, regulations and guidelines, related to performance under this Agreement.
13. COMPLIANCE WITH DISTRICT RULES & REGULATIONS. If the PROJECT involves design services, the CITY's professional designers and the DISTRICT's regulation and projects staff will 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.
14. DIVERSITY IN CONTRACTING AND SUB-CONTRACTING. The DISTRICT is committed to supplier diversity in the performance of all contracts associated with DISTRICT cooperative funding projects. The DISTRICT requires the CITY to make good faith efforts to encourage the participation of minority owned and woman owned and small business enterprises, both as prime contractors and sub-contractors, in the performance of this Agreement, in accordance with applicable laws.
  - 14.1 If requested, the DISTRICT will assist the CITY by sharing information to help the cooperator in ensuring that minority owned and woman owned and small businesses are afforded an opportunity to participate in the performance of this Agreement.
  - 14.2 The CITY agrees to provide to the DISTRICT, upon final completion of the PROJECT, a report indicating all contractors and sub-contractors who performed work in association with the PROJECT, the amount spent with

each contractor or sub-contractor, and to the extent such information is known, whether each contractor or sub-contractor was a minority owned or woman owned or small business enterprise. If no minority owned or woman owned or small business enterprises were used in the performance of this Agreement, then the report shall so indicate. The Minority/Women Owned and Small Business Utilization Report form is attached as Exhibit "E."

- 14.3 The CITY agrees to provide to the DISTRICT, within thirty (30) days of the execution of any amendment that increases PROJECT funding, a report indicating all contractors and sub-contractors who performed work in association with the PROJECT, the amount spent with each contractor or sub-contractor up to the date of the amendment, and to the extent such information is known, whether each contractor or sub-contractor 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.
15. ASSIGNMENT: Except as provided herein, no party may assign any of its rights under this Agreement, voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law, or any other manner without the prior written consent of the other party. The CITY may delegate its performance in accordance with the Special Project Terms and Conditions set forth in Exhibit "A" except that CITY may not delegate operation and maintenance duties without the prior written consent of the DISTRICT. Despite any such delegation, CITY will remain liable for the performance it delegated. Any purported assignment of rights of delegation of performance in violation of this paragraph is void.
16. SUBCONTRACTORS. Nothing in this Agreement will be construed to create, or be implied to create, any relationship between the DISTRICT and any subcontractor of the CITY.
17. THIRD PARTY BENEFICIARIES. Nothing in this Agreement will be construed to benefit any person or entity not a party to this Agreement.
18. LOBBYING PROHIBITION. Pursuant to Section 216.347, F.S., the CITY is hereby prohibited from using funds provided by this Agreement for the purpose of lobbying the Legislature, the judicial branch or a state agency.
19. 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 thirty-six (36) months following the date of being placed on the convicted vendor list. CITY agrees to include this provision in all subcontracts issued as a result of this Agreement.

20. DISCRIMINATION. Pursuant to Subsection 287.134(2)(a), F.S., an entity or affiliate who has been placed on the discriminatory vendor list 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. The CITY agrees to include this provision in all subcontracts issued as a result of this Agreement.
21. ENTIRE AGREEMENT. This Agreement and the attached exhibits listed below constitute the entire agreement between the parties and, unless otherwise provided herein, may be amended only in writing, signed by all parties to this Agreement.
22. DOCUMENTS. The following documents are attached and made a part of this Agreement. In the event of a conflict of contract terminology, priority will first be given to the language in the body of this Agreement, then to Exhibit "A," then to Exhibit "C," then to Exhibit "D," and then to Exhibit "B."

Exhibit "A"	Special Project Terms and Conditions
Exhibit "B"	CITY's Proposed Project Plan
Exhibit "C"	District Travel Procedure 13-5
Exhibit "D"	Special Audit Requirements
Exhibit "E"	Minority/Women Owned and Small Business Utilization Report Form

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EXHIBIT "A"  
SPECIAL PROJECT TERMS AND CONDITIONS

1. CONTRACTING WITH CONSULTANT AND CONTRACTOR. The CITY may engage the services of a consultant(s), hereinafter referred to as the "CONSULTANT," to design and a contractor(s), hereinafter referred to as the "CONTRACTOR," to construct the PROJECT in accordance with the CITY's Proposed Project Plan previously submitted to the DISTRICT and attached as Exhibit "B." The CITY will be responsible for administering the contracts with the CONSULTANT and CONTRACTOR and will give notice to proceed to the CONSULTANT no later than \_\_\_\_\_, 20\_\_\_\_. The CITY agrees that all consultants, contractors and any other person performing work on the PROJECT, regardless of whether such persons are engaged directly by the CITY, will be procured in accordance with the competitive solicitation requirements set forth in the CITY's procurement ordinance and all other laws applicable to procurements by the CITY.
  
2. APPROVAL OF CONSTRUCTION BID DOCUMENTS. The CITY must obtain the DISTRICT's written approval of all construction bid documents prior to being advertised or otherwise solicited. The DISTRICT will not unreasonably withhold its approval. The DISTRICT's approval of the construction bid documents does not constitute a representation or warranty that the DISTRICT has verified the architectural, engineering, mechanical, electrical, or other components of the construction documents, or that such documents are in compliance with DISTRICT rules and regulations or any other applicable rules, regulations, or laws. The DISTRICT's approval will not constitute a waiver of the CITY's obligation to assure that the design professional performs according to the standards of his or her profession. The CITY will require the design professional to warrant that the construction documents are adequate for bidding and construction of the PROJECT.
  
3. *Where consultant has already been selected by the CITY prior to the effective date of the Recovery Agreement, the following paragraph will not apply.*

DISTRICT PARTICIPATION IN SELECTING CONSULTANT AND REVIEW OF THE CITY'S SELECTION OF CONTRACTOR. Upon notifying the CITY's Project Manager, the DISTRICT will have the option of participating as an evaluator in the CITY's process for selecting the CONSULTANT in accordance with Section 287.055, F.S. The CITY will provide the DISTRICT with a tabulation of CONTRACTOR bids and a recommendation to award. The CITY must obtain the DISTRICT's approval of the selected CONTRACTOR prior to proceeding with construction of the PROJECT and the DISTRICT will not unreasonably withhold its approval.

4. APPROVAL OF CONTRACT. The CITY must obtain the DISTRICT's prior written approval of all contracts entered into with its CONSULTANTS and its CONTRACTORS as referenced above in item number one of this exhibit. The DISTRICT will not unreasonably withhold its approval.
  
5. COMPLETION DATES. The CITY will commence construction on the PROJECT by \_\_\_\_\_, 20\_\_\_\_, and will complete the PROJECT by \_\_\_\_\_. However, in the event of any national, state or local emergency which significantly affects the CITY's ability to perform, such as hurricanes, tornados, floods, acts of God, acts of war, or other such catastrophes, or other man-made emergencies beyond the control of the CITY's such as labor strikes or riots, then the CITY's obligation to complete said work within aforementioned time frames will be suspended for the period of time the condition continues to exist. This will be the CITY's sole remedy for the delays set forth in this paragraph.

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