

COOPERATIVE FUNDING AGREEMENT (Type 1)
BETWEEN THE
SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT
AND
MANATEE COUNTY
FOR

CONSERVATION - MANATEE COUNTY TOILET REBATE PROJECT, PHASE 12 (N982)

THIS COOPERATIVE FUNDING AGREEMENT (Agreement) is made and entered into by and between the SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT, a public corporation of the State of Florida, whose address is 2379 Broad Street, Brooksville, Florida 34604-6899, hereinafter referred to as the "DISTRICT," and MANATEE COUNTY, a political subdivision of the State of Florida, whose address is 1112 Manatee Avenue West, Bradenton, Florida 34205, hereinafter referred to as the "COOPERATOR."

WITNESSETH:

WHEREAS, the COOPERATOR proposed a project to the DISTRICT for funding consideration under the DISTRICT'S cooperative funding program; and

WHEREAS, the project consists of a water conservation incentive program that will provide county retail water customers with a toilet rebate, hereinafter referred to as the "PROJECT"; and

WHEREAS, the DISTRICT considers the resource benefits to be achieved by the PROJECT worthwhile and desires to assist the COOPERATOR in funding the PROJECT.

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

1. PROJECT CONTACTS AND NOTICES.

Each party hereby designates the individual set forth below as its prime contact for matters relating to this Agreement. Notices shall be sent to the attention of each party's prime contact as set forth herein by U.S. mail, postage paid, by nationally recognized overnight courier, or personally to the parties' addresses as set forth below. Notice is effective upon receipt.

Contract Manager for the DISTRICT:
Vivianna Bendixson
Southwest Florida Water Management District
2379 Broad Street
Brooksville, Florida 34604
vivianna.bendixson@watermatters.org

Project Manager for the COOPERATOR:
Olga Wolanin
Manatee County
4520 66th Street West
Brandenton, Florida 34210

Any changes to the above contact information must be provided to the other party in writing.

Reports required under this Agreement may be provided to the DISTRICT Contract Manager via email.

1.1 The DISTRICT'S Contract Manager is authorized to approve requests to extend a PROJECT task deadline set forth in the Project Plan. Such approval must be in writing, explain the reason for the extension and be signed by the Contract Manager and his or her Bureau Chief, or Director if the Bureau Chief is the Contract Manager, unless the DISTRICT'S Signature Authority provides otherwise. The DISTRICT'S Signature Authority supersedes the approval requirements provided in this provision. The DISTRICT'S Contract Manager is not authorized to approve any time extension which will result in an increased cost to the DISTRICT or which will exceed the expiration date set forth in this Agreement.

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

2. SCOPE OF WORK.

Upon receipt of written notice to proceed from the DISTRICT, the COOPERATOR shall perform the services necessary to complete the PROJECT in accordance with the Project Plan. Any changes to this Agreement, except as provided herein, must be mutually agreed to in a formal written amendment approved by the DISTRICT and the COOPERATOR prior to being performed by the COOPERATOR. The COOPERATOR shall be solely responsible for managing and controlling the PROJECT, including the hiring and supervising of any consultants or contractors it engages.

The parties agree that time is of the essence in the performance of each obligation under this Agreement.

3. FUNDING.

The parties anticipate that the total cost of the will be One Hundred Fifty One Thousand Dollars (\$151,000). The DISTRICT agrees to fund PROJECT costs up to Seventy Five Thousand Five Hundred Dollars (\$75,500), and shall have no obligation to pay any costs

beyond this maximum amount. The COOPERATOR agrees to provide all remaining funds necessary for the satisfactory completion of the PROJECT.

- 3.1 The DISTRICT'S performance and payment pursuant to this Agreement are contingent upon the DISTRICT'S Governing Board appropriating funds in its approved budget for the PROJECT in each fiscal year of this Agreement. The COOPERATOR'S payment of any financial obligation under this Agreement is subject to appropriation by the COOPERATOR'S Board of legally available funds.
- 3.2 The COOPERATOR shall pay PROJECT costs prior to requesting reimbursement from the DISTRICT. The DISTRICT shall reimburse the COOPERATOR for the DISTRICT'S share of allowable PROJECT costs in accordance with the Project Budget contained in the Project Plan. Reimbursement for expenditures of contingency funds is contingent upon approval by the DISTRICT. If a reimbursement request includes the expenditure of contingency funds, the COOPERATOR shall provide sufficient documentation to the DISTRICT to explain the basis of the expense. The DISTRICT shall not reimburse the COOPERATOR for any expended contingency funds that the DISTRICT determines, in its sole discretion, to be in excess of what was reasonably necessary to complete the PROJECT. The DISTRICT shall reimburse the COOPERATOR for fifty percent (50%) of all allowable costs in each DISTRICT approved invoice received from the COOPERATOR, but at no point in time will the DISTRICT'S expenditure amounts under this Agreement exceed expenditures made by the COOPERATOR.
- 3.3 Unless otherwise provided in the Project Plan, any federal, state, local or grant monies received by the COOPERATOR for this PROJECT shall be applied to equally reduce each party's share of PROJECT costs. The COOPERATOR shall provide the DISTRICT with written documentation detailing its allocation of any such funds appropriated for this PROJECT. This Subparagraph shall survive the expiration or termination of this Agreement.
- 3.4 The COOPERATOR may contract with consultant(s), contractor(s) or both to accomplish the PROJECT. Prior to posting solicitations, the COOPERATOR must obtain the DISTRICT'S written input regarding whether costs to be paid are allowable under this Agreement. The COOPERATOR must also obtain the DISTRICT'S written approval prior to entering into agreements for PROJECT work to ensure that costs to be reimbursed by the DISTRICT are reasonable. The DISTRICT shall provide a written response to the COOPERATOR within fifteen (15) business days of receipt of the solicitation or agreement. Upon written DISTRICT approval, the budget amounts for the work set forth in such agreement(s) shall refine the amounts set forth in the Project Budget and be incorporated herein by reference. The DISTRICT shall not reimburse the COOPERATOR for costs incurred under consultant and contractor agreements until the DISTRICT approvals required under this provision have been obtained.
- 3.5 Payment shall be made to the COOPERATOR within forty-five (45) days of receipt of an invoice with adequate supporting documentation to satisfy auditing purposes. Invoices shall be submitted to the DISTRICT every two (2) months electronically at invoices@WaterMatters.org, or at the following address:

Accounts Payable Section
Southwest Florida Water Management District
Post Office Box 15436
Brooksville, Florida 34604-5436

The above-referenced payment due date shall not apply to that portion of an invoice that includes expenditures of contingency funds. The DISTRICT agrees to reimburse the COOPERATOR for expenditures of contingency funds within a reasonable time to accommodate the process provided for in Subparagraph 2 of this Funding Paragraph.

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

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

- 3.6 The parties acknowledge that the PROJECT was approved for funding by the DISTRICT based upon the resource benefits expected to be achieved by the PROJECT (the "Measurable Benefit"). The parties also acknowledge that the COOPERATOR is solely responsible for implementing the PROJECT in such a manner that the expected resource benefits are achieved. If at any point during the progression of the PROJECT, the DISTRICT determines that it is likely that the Measurable Benefit as set forth in the Project Plan will not be achieved, the DISTRICT shall provide the COOPERATOR with fifteen (15) days advance written notice that the DISTRICT shall withhold payments to the COOPERATOR until such time as the COOPERATOR demonstrates that the PROJECT shall achieve the required resource benefits, to provide the COOPERATOR with an opportunity to cure the deficiencies.
- 3.7 Any travel expenses which may be authorized under this Agreement shall be paid in accordance with Section 112.061, Florida Statutes (F.S.), as may be amended from time to time. The DISTRICT shall not reimburse the COOPERATOR for any purpose not specifically identified in the Scope of Work Paragraph. Surcharges added to third party invoices are not considered an allowable cost under this Agreement. Costs associated with in-kind services provided by the COOPERATOR are not reimbursable by the DISTRICT and may not be included in the COOPERATOR'S share of funding contributions under this Agreement.

- 3.8 Each COOPERATOR invoice must include the following certification, and the COOPERATOR hereby delegates authority by virtue of this Agreement to its Project Manager to affirm said certification:

"I hereby certify that the costs requested for reimbursement and the COOPERATOR'S matching funds, as represented in this invoice, are directly related to the performance under the Conservation - Manatee County Toilet Rebate Project, Phase 12 (N982) agreement between the Southwest Florida Water Management District and Manatee County (Agreement No. 19CF0001806), are allowable, allocable, properly documented, and are in accordance with the approved Project Budget. This invoice includes \$__ of contingency expenses. The COOPERATOR has been allocated a total of \$__ in federal, state, local or grant monies for this PROJECT (not including DISTRICT funds) and \$__ has been allocated to this invoice, reducing the DISTRICT'S and COOPERATOR'S share to \$__ / \$__ respectively."

- 3.9 In the event any dispute or disagreement arises during the course of the PROJECT, including whether expenses are reimbursable under this Agreement, the COOPERATOR will continue to perform the PROJECT work in accordance with the Project Plan. The COOPERATOR is under a duty to seek clarification and resolution of any issue, discrepancy, or dispute by providing the details and basis of the dispute to the DISTRICT'S Contract Manager no later than ten (10) days after the precipitating event. If not resolved by the Contract Manager, in consultation with his or her Bureau Chief, within ten (10) days of receipt of notice, the dispute will be forwarded to the DISTRICT'S Assistant Executive Director. The DISTRICT'S Assistant Executive Director in consultation with the DISTRICT'S Office of General Counsel will issue the DISTRICT'S final determination. The COOPERATOR'S continuation of the PROJECT work as required under this provision shall not constitute a waiver of any legal remedy available to the COOPERATOR concerning the dispute.

4. COMPLETION DATES.

The COOPERATOR shall commence and complete the PROJECT and meet the task deadlines in accordance with the Project Schedule set forth in the Project Plan, including any extensions of time provided by the DISTRICT in accordance with Subparagraph 1 of the Project Contacts and Notices Paragraph. In the event of hurricanes, tornados, floods, acts of God, acts of war, or other such catastrophes, or other man-made emergencies such as labor strikes or riots, which are beyond the control of the COOPERATOR, the COOPERATOR'S obligations to meet the time frames provided in this Agreement shall be suspended for the period of time the condition continues to exist. During such suspension, this Agreement shall remain in effect. When the COOPERATOR is able to resume performance of its obligations under this Agreement, in whole or in part, it shall immediately give the DISTRICT written notice to that effect and shall resume performance no later than two (2) working days after the notice is delivered. The suspension of the COOPERATOR'S obligations provided for in this provision shall be the COOPERATOR'S sole remedy for the delays set forth herein.

5. REPAYMENT.

- 5.1 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, including failing to meet the Measurable Benefit; b) the DISTRICT determines, in its sole discretion and judgment, that the COOPERATOR has failed to maintain scheduled progress of the PROJECT thereby endangering the timely performance of this Agreement; c) the COOPERATOR fails to appropriate sufficient funds to meet the task deadlines, unless extended in accordance with Subparagraph 1 of the Project Contacts and Notices Paragraph; or d) a provision or provisions of this Agreement setting forth the requirements or expectations of a Measurable Benefit resulting from the PROJECT is held to be invalid, illegal or unenforceable during the term of this Agreement. 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.
- 5.2 Notwithstanding the above, the parties acknowledge that if the PROJECT fails to achieve the Measurable Benefit specified in this Agreement, the COOPERATOR may request the DISTRICT Governing Board to waive the repayment obligation, in whole or in part.
- 5.3 In the event the COOPERATOR is obligated to repay the DISTRICT under any provision of this Agreement, the COOPERATOR shall repay the DISTRICT within a reasonable time, as determined by the DISTRICT in its sole discretion.
- 5.4 The COOPERATOR shall pay attorneys' fees and costs incurred by the DISTRICT, including appeals, as a result of the COOPERATOR'S failure to repay the DISTRICT as required by this Agreement.
- 5.5 This Repayment Paragraph, including all subparagraphs, shall survive the expiration or termination of this Agreement.

6. CONTRACT PERIOD.

This Agreement shall be effective October 1, 2018 and shall remain in effect through January 1, 2021, or upon satisfactory completion of the PROJECT and subsequent reimbursement to the COOPERATOR, whichever occurs first, unless amended in writing by the parties. The COOPERATOR shall not be eligible for reimbursement for any work that is commenced, or costs that are incurred, prior to the effective date of this Agreement.

7. PROJECT RECORDS AND DOCUMENTS.

Upon request by the DISTRICT, the COOPERATOR shall permit the DISTRICT to examine or audit all PROJECT related records and documents during or following completion of the PROJECT at no cost to the DISTRICT. Payments made to the 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 either party, all required records shall be maintained until the audit has been completed and all questions

arising from it are resolved. Each party shall maintain all such records and documents for at least three (3) years following completion of the PROJECT. Each party shall comply with Chapter 119, F.S., the Public Records Act, including allowing public access to PROJECT documents and materials made or received by either party. Should either party assert any exemption to the requirements of Chapter 119, F.S., the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon the asserting party. This Paragraph shall survive the expiration or termination of this Agreement.

8. REPORTS.

8.1 The COOPERATOR shall provide the DISTRICT with a quarterly report describing the progress of the PROJECT tasks, adherence to the Performance Schedule and any developments affecting the PROJECT. The COOPERATOR shall promptly advise the DISTRICT of issues that arise that may impact the successful and timely completion of the PROJECT. Quarterly reports shall be submitted to the DISTRICT'S Contract Manager no later than forty-five (45) days following the completion of the quarterly reporting period. It is hereby understood and agreed by the parties that the term "quarterly" shall reflect the calendar quarters ending March 31, June 30, September 30 and December 31.

8.2 Upon request by the DISTRICT, the COOPERATOR shall provide the DISTRICT with copies of all data, reports, models, studies, maps or other documents resulting from the PROJECT. Additionally, one (1) set, electronic and hardcopy, of any final reports must be submitted to the DISTRICT as Record and Library copies. This Subparagraph shall survive the expiration or termination of this Agreement.

8.3 The COOPERATOR shall provide the data, reports and documents referenced in this provision at no cost to the DISTRICT.

9. RISK, LIABILITY, AND INDEMNITY.

9.1 To the extent permitted by Florida law, the COOPERATOR assumes all risks relating to the PROJECT and agrees to be solely liable for, and to indemnify and hold the DISTRICT harmless from all claims, loss, damage and other expenses, including attorneys' fees and costs and attorneys' fees and costs on appeal, arising from the design, construction, operation, maintenance or implementation of the PROJECT; provided, however, that the 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.

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

- 9.3 This Risk, Liability, and Indemnity 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 Risk, Liability, and Indemnity 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.
- 9.4 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.
- 9.5 This Risk, Liability, and Indemnity Paragraph, including all subparagraphs, shall survive the expiration or termination of this Agreement.

10. DEFAULT.

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

11. RELEASE OF INFORMATION.

The parties agree not to initiate any oral or written media interviews or issue press releases on or about the PROJECT without providing notices or copies to the other party no later than three (3) business days prior to the interview or press release. This Paragraph shall not be construed as preventing the parties from complying with the public records disclosure laws set forth in Chapter 119, F.S.

12. 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. If construction is involved, the COOPERATOR shall provide signage at the PROJECT site that recognizes funding for this PROJECT

provided by the DISTRICT. All signage must meet with DISTRICT written approval as to form, content and location, and must be in accordance with local sign ordinances.

13. LAW COMPLIANCE.

The COOPERATOR shall comply with all applicable federal, state and local laws, rules, regulations and guidelines, including those of the DISTRICT, related to performance under this Agreement.

14. DIVERSITY IN CONTRACTING AND SUBCONTRACTING.

The DISTRICT is committed to supplier diversity in the performance of all contracts associated with DISTRICT cooperative funding projects. The DISTRICT requires the COOPERATOR to make good faith efforts to encourage the participation of minority owned and woman owned and small business enterprises, both as prime contractors and subcontractors, in the performance of this Agreement, in accordance with applicable laws.

14.1 If requested, the DISTRICT shall assist the COOPERATOR 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.

15. SCRUTINIZED COMPANIES.

Pursuant to Section 287.135, F.S., a company that, at the time of submitting a bid or proposal for a new contract or renewal of an existing contract, is on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel, is ineligible to, and may not bid on, submit a proposal for, or enter into or renew a contract with an agency or local governmental entity for goods or services in any amount. If the goods or services are in the amount of \$1 million dollars or more, the company must also not be on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or be engaged in business operations in Cuba or Syria.

By signing this Agreement, the COOPERATOR certifies that it is not on any of the lists or engaged in any of the prohibited activities identified above, as applicable based upon the amount of this Agreement. The COOPERATOR agrees to notify the DISTRICT if it is placed on any of the applicable lists or engages in any of the prohibited activities during the term of this Agreement. The DISTRICT may immediately terminate this Agreement at its option if the COOPERATOR is found to have submitted a false certification, is placed on any of the applicable lists or engages in any prohibited activities.

16. ASSIGNMENT.

Except as otherwise provided in this Agreement, no party may assign any of its rights or delegate any of its obligations under this Agreement, including any operation or maintenance duties related to the PROJECT, without the prior written consent of the other party. Any attempted assignment in violation of this provision is void. This Paragraph shall survive the expiration or termination of this Agreement.

17. CONTRACTORS.

Nothing in this Agreement shall be construed to create, or be implied to create, any relationship between the DISTRICT and any consultant or contractor of the COOPERATOR.

18. THIRD PARTY BENEFICIARIES.

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

19. 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.

20. PUBLIC ENTITY CRIMES.

Pursuant to Subsections 287.133(2) and (3), F.S., a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, F.S., for Category Two, for a period of 36 months following the date of being placed on the convicted vendor list. The COOPERATOR agrees to include this provision in all contracts issued as a result of this Agreement.

21. GOVERNING LAW.

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

22. SEVERABILITY.

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

23. COUNTERPARTS.

The parties may execute this Agreement, and any amendments related to this Agreement, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all of the parties need not appear on the same counterpart.

24. ENTIRE AGREEMENT.

This Agreement and the attached exhibit 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.

25. DOCUMENTS.

The following document is attached and made a part of this Agreement. In the event of a conflict of contract terminology, priority shall first be given to the language in the body of this Agreement, then to Exhibit "A."

Exhibit "A" Project Plan

The remainder of this page intentionally left blank.

IN WITNESS WHEREOF, the parties hereto, or their lawful representatives, have executed this Agreement on the day and year set forth next to their signatures below.

SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT

By: Jennette Seachrist 1-10-19
Jennette M. Seachrist, P.E. Date
Director, Resource Management Division

MANATEE COUNTY, a political subdivision of the State of Florida

By: its Board of County Commissioners

By: _____
Chairperson
Date: Disalle, Ivan 12/18/18



ATTEST: ANGELINA COLONNESO
CLERK OF THE CIRCUIT COURT AND COMPTROLLER

By: Uibe Jessner
Deputy Clerk

COOPERATIVE FUNDING AGREEMENT (Type 1)
BETWEEN THE
SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT
AND
MANATEE COUNTY
FOR
CONSERVATION - MANATEE COUNTY TOILET REBATE PROJECT, PHASE 12 (N982)

EXHIBIT "A"
PROJECT PLAN

PROJECT DESCRIPTION

This PROJECT is a water conservation incentive program that will make available approximately 1,000 rebates/credits to the COOPERATOR'S retail water customers up to \$100 per toilet. This will provide for the purchase and installation of a high efficiency toilet (HET) (1.28 gallons per flush) for residential accounts and an ultra-low flow toilet (ULFT) (1.6 gallons per flush) for commercial accounts that replaces a high-volume toilet installed prior to 1995.

The PROJECT will conserve an estimated 26,380 gallons per day if the PROJECT is fully implemented.

MEASURABLE BENEFIT

The implementation of the program and completion of the COOPERATOR's final report in accordance with the requirements of this Agreement.

PROJECT TASKS

Key tasks to be performed by the COOPERATOR:

1. **TOILET REBATES/CREDITS** – The COOPERATOR shall ensure all HETs with no more than 1.28 gallons per flush meet the Environmental Protection Agency's (EPA) WaterSense criteria and ULFTs replaced in commercial accounts flush with no more than 1.6 gallons. Additionally, the COOPERATOR shall ensure that all toilets being replaced were installed prior to 1995 and provide for proper disposal of replaced toilets.
2. **PROGRAM ADMINISTRATION/INSPECTION** – The COOPERATOR shall ensure that a minimum of 20% of all newly installed toilets are inspected prior to issuance of rebates and ensure proper disposal of all replaced toilets. Inspections shall be assigned randomly, and at a minimum include the following: 1) verification the toilet being replaced meets the qualification requirements for replacement and rebate under this Agreement, specifically that the replaced toilet was installed prior to 1995 and is a high flow model (greater than 3.5 gallons per flush); 2) confirmation of EPA WaterSense certification and label of newly installed toilets; 3) confirmation newly installed toilets show no evidence of leakage; and 4) confirmation of proper operation of newly installed toilets and confirmation that the water level in the tank and bowl is consistent with the manufacturing standards.
3. **PROMOTION AND EDUCATION** – The COOPERATOR shall promote the PROJECT through marketing and interaction with the plumbing industry and direct utility customers. The COOPERATOR shall provide participants with educational materials on indoor water conservation, leak detection and proper maintenance practices specific to the flush volume of the new toilet to ensure the low volume toilets remain water conservative fixtures.
4. **DRAFT/FINAL REPORTS** – The COOPERATOR shall provide a draft final report and final report. The report shall contain the following information: 1) number of toilets installed and rebates/credits issued; 2) full accounting of all funds expended under this Agreement; 3)

description of all public awareness efforts; 4) customer surveys to determine the satisfaction with the toilets and the PROJECT; 5) description of old toilet removal and disposal methods; 6) all pertinent information regarding the program findings, associated conclusions and recommendations for future programs; and 7) calculation of water savings based on number of participating residences.

DELIVERABLES

The COOPERATOR shall provide quarterly status reports, a draft final report and a final report. The final report shall be submitted with the final invoice.

PROJECT SCHEDULE

DESCRIPTION	COMMENCE	COMPLETE
Toilet Rebates/Credits, Program Administration, Inspection, Promotion and Education	03/01/2019	03/31/2020
Draft Final Report	04/01/2020	06/01/2020
Final Report	06/01/2020	07/01/2020

PROJECT BUDGET

DESCRIPTION	DISTRICT	COOPERATOR	TOTAL
1,000 Toilet Rebates/Credits up to \$100.00 each	\$50,000	\$50,000	\$100,000
Program Administration and Inspection: 1,000 at \$51.00 each.	\$25,500	\$25,500	\$51,000
Educational Materials, Program Promotion, and Surveys. Includes: printing, assembly, & postage.	\$0	\$0	\$0
TOTAL PROJECT COSTS	\$75,500	\$75,500	\$151,000

In no instance will the rebate exceed the actual cost of the rebated toilet(s) and installation(s). The above costs and quantities are estimated pending vendor contract costs.

The remainder of this page intentionally left blank.



OFFICE OF THE COUNTY ATTORNEY

MITCHELL O. PALMER, COUNTY ATTORNEY*
William E. Clague, Assistant County Attorney
Sarah A. Schenk, Assistant County Attorney**
Christopher M. De Carlo, Assistant County Attorney
Geoffrey K. Nichols, Assistant County Attorney
Pamela J. D'Agostino, Assistant County Attorney
Anne M. Morris, Assistant County Attorney
Katharine M. Zamboni, Assistant County Attorney
Alexandria C. Nicodemi, Assistant County Attorney

MEMORANDUM

DATE: October 10, 2018

TO: Olga Wolanin, Superintendent-Water Division Compliance, Utilities Department

THROUGH: Mitchell O. Palmer, County Attorney *MOP 10-10-18*

FROM: Katharine M. Zamboni, Assistant County Attorney *KMZ*

RE: **Cooperative Funding Agreement for Toilet Rebate Project - Phase 12 (N982)
Request for Legal Services (RLS); CAO Matter No. 2018-0503**

Pursuant to the above Request for Legal Services (RLS), the Utilities Department requested legal review of a proposed Cooperative Funding Agreement (CFA) between Manatee County and the Southwest Florida Water Management District (SWFWMD). There were no specific legal issues raised in the RLS. Therefore, I have limited my review to identifying legal issues that could give rise to claim or case against the County. I express no opinion as to the business judgment of entering into the Agreement.

I have reviewed the proposed CFA and find it to be legally sufficient and consistent with Resolution R-07-31, which authorizes financial incentives for indoor water conservation projects. The form and content of the agreement are very similar to previous CFAs between the County and SWFWMD for this multi-year project, with some revisions, which I have highlighted below.

First, the proposed CFA for Phase 12 includes new language that permits the County to submit required reports via email to the Contract Manager. As a result of this additional language, I recommend that staff request SWFWMD to include the Contract Manager's email address with the contact information provided in paragraph 1.

Second, subparagraph 3.4 contains a new requirement that the County obtain SWFWMD's "input" as to whether contractor costs are "allowable" under the Agreement, *prior to posting solicitations* for a contract. Previous versions of the CFA for this project required that the County obtain SWFWMD's approval *prior to entering into an agreement* with a contractor. Failure to comply with this provision could affect the County's ability to be reimbursed for contractor costs.

* Board Certified in Construction Law

** Board Certified in City, County, & Local Government Law

Third, SWFWMD has eliminated subparagraph 14.2, which appeared in previous CFAs and required the County to provide a report to SWFWMD indicating whether each contractor or subcontractor is a minority-owned or woman-owned or small business enterprise. As a result, the proposed CFA does not include an Exhibit B for such a report.

Fourth, the proposed CFA contains a new paragraph 15 for Scrutinized Companies. While it is highly unlikely the County would ever appear on a list of scrutinized companies, staff should be aware of this new provision.

Fifth, paragraph 21 on Governing Law changes the exclusive venue for resolving disputes under the CFA from Hernando County to Hillsborough County. While this Office generally counsels against agreeing to venue outside of Manatee County, based on past experiences with this multi-year project, SWFWMD will not agree to change the venue to Manatee County.

Next, paragraph 23 on Counterparts is also a new provision, which is standard contract language. This paragraph specifically enables the parties to execute different signature pages without affecting the effectiveness of the contract.

Finally, the signature page provided contains a stamp over SWFWMD's signature block indicating that the agreement cannot be executed until after the FY2019 budget is approved. I recommend that staff request a new signature page from SWFWMD that does not contain that stamp. At the same time, staff should request that the County's signature block be modified to conform with this Office's standard layout for the Commission Chairperson's signature as follows:

MANATEE COUNTY, a political subdivision of the State of Florida

By: its Board of County Commissioners

By: _____
Chairperson

Date: _____

ATTEST: ANGELINA COLONNESO
CLERK OF THE CIRCUIT COURT AND COMPTROLLER

By: _____
Deputy Clerk

Ms. Wolanin
October 10, 2018
Page 3

I trust this response adequately addresses your request. Should you have any further questions, please do not hesitate to contact this Office.

KMZ

Copies to: Ed Hunzeker, County Administrator
Dan Schlandt, Deputy County Administrator
Cheri Coryea, Deputy County Administrator
C. Mike Gore, Director, Utilities Department
Mark Simpson, Deputy Director, Utilities Department



Parks and Natural Resources
Administration Division
5502 33rd Avenue Drive West
Bradenton, FL 34209
Phone: (941) 742-5923
www.mymanatee.org

Dennis Ragosta
Government Affairs Regional Manager
Southern Planning Region
Southwest Florida Water Management District
6750 Fruitville Road
Sarasota, FL 34240

October 3, 2018

Dear Mr. Ragosta,

Manatee County appreciates the opportunity to submit applications for the FY 2020 Cooperative Funding Initiative. We are grateful for the support and consideration given to our projects in the past years and look forward to continuing to work with the District on these important projects.

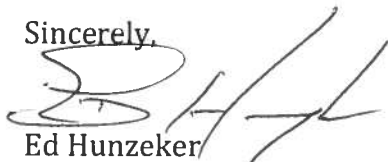
The Manatee County Board of County Commissioners has approved the FY 2019 budget and the Capital Improvement Budget. Additionally, the U.S. Department of the Treasury has approved Manatee County's RESTORE Act Direct Component MultiYear Implementation Plan for Water Quality Study funding.

We have ranked the FY 2020 applications in the following order:

1. Rubonia Subdivision Stormwater Management Improvement Program
2. Bowlees Creek Water Quality Study
3. Johnson Preserve at Braden River
4. Toilet Rebate Program

If there are any questions or additional information needed, please contact Nan Summers, Grants Coordinator, at (941) 742-5923 ext. 6052 or by email at Nan.Summers@mymanatee.org.

Sincerely,



Ed Hunzeker
County Administrator

CC: Board of County Commissioners
Jan Brewer

RESOLUTION NO. R-07-31

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF MANATEE COUNTY, FLORIDA, ESTABLISHING INDOOR WATER CONSERVATION FINANCIAL INCENTIVES; PROVIDING RECITALS; PROVIDING PURPOSE; PROVIDING DEFINITIONS; PROVIDING FOR ADMINISTRATION; PROVIDING FOR FUNDING; PROVIDING ELIGIBILITY; PROVIDING INCENTIVES; REPEALING AND SUPERSEDING CONFLICTING RESOLUTIONS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Manatee County, a political subdivision of the State of Florida, owns and operates the Manatee County Public Utilities System pursuant to Section 125.01, Florida Statutes, Chapter 153, Florida Statutes, Chapter 63-1598, Laws of Florida, as amended, Chapter 2-31, Article IV, Manatee County Code of Ordinances, and other applicable provisions of law; and

WHEREAS, Policy 3.2.3.1 of the Conservation Element of the 2020 Manatee County Comprehensive Plan provides for the county to continue to encourage residents and businesses to maintain or improve water conserving habits; and

WHEREAS, Policy 3.2.3.5 of the Conservation Element of the 2020 Manatee County Comprehensive Plan provides for the county to explore the costs and benefits of revising codes to require the use of low volume plumbing fixtures in new development and redevelopment; and

WHEREAS, Objective 9.6.1 of the Water Supply Sub-Element of the 2020 Manatee County Comprehensive Plan provides for the county to require that potable water conservation is practiced to conserve water supplies for future residents; and

WHEREAS, the Energy Policy Act of 1992, codified in 42 U.S.C.A. § 6295, provides federal energy conservation standards for water closets and toilets; and

RESOLUTION NO. R-07-31

WHEREAS, 42 U.S.C.A. § 6295(k)(1)(A) provides that the maximum water use allowed for water closets and toilets, other than blowout toilets, manufactured after January 1, 1994, is 1.6 gallons per flush; and

WHEREAS, the Board of County Commissioners of Manatee County desires to establish financial incentives to assist current customers in installing ultra low flow toilets in place of high flow toilets; and

WHEREAS, the Board of County Commissioners of Manatee County finds that such financial incentives are consistent with and implement objectives and policies of the 2020 Manatee County Comprehensive Plan and the Energy Policy Act of 1992; and

WHEREAS, the Board of County Commissioners of Manatee County finds that the expenditure of county funds for such financial incentives to conserve potable water promotes the health, safety, and general welfare of the people of the county and serves a paramount public purpose; and

WHEREAS, any benefit to the customers of the Manatee County Public Utilities System receiving such financial incentives will be incidental in nature and is not intended as an impermissible lending of the county's credit; and

WHEREAS, Manatee County Resolution No. R-96-21, as amended and supplemented (the "Bond Resolution"), provides that the county may establish classes and subclasses of users of the Manatee County Public Utilities System if the Board of County Commissioners finds a rational basis which would further the health, safety or welfare of the residents of the county; and

WHEREAS, the Board of County Commissioners of Manatee County finds that all

RESOLUTION NO. R-07-31

eligible customers as described in section 6 of this resolution receiving financial incentives constitute a separate and distinct class of users of the Manatee County Public Utilities System since such users further the public purpose of conserving the county's potable water supply, which conservation efforts further the health and welfare of all residents of the county; and

WHEREAS, the Board of County Commissioners of Manatee County has determined that it is in the best interest of the county to establish the financial incentives as provided in this resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MANATEE COUNTY, FLORIDA:

Section 1. Recitals. The above recitals are adopted by the Board of County Commissioners as findings of the county and are incorporated herein by reference.

Section 2. Purpose. Indoor water conservation financial incentives are hereby established for the purpose of providing assistance to eligible customers who install ultra low flow toilets in place of high flow toilets.

Section 3. Definitions. As used in this resolution, the following words and terms shall have the following meanings unless a different meaning clearly appears from the context:

a. Commercial shall mean the retail service classification for commercial established in the county utility rate resolution.

b. Consumption quantity shall mean the total quantity of potable water used as shown on monthly utility bills from the county.

RESOLUTION NO. R-07-31

c. Contractor shall mean a general contractor, building contractor, residential contractor, or plumbing contractor as defined in Section 489.105, Florida Statutes.

d. County shall mean Manatee County, Florida, a political subdivision of the State of Florida.

e. County administrator shall mean the administrator of the county or the county administrator's designee.

f. Customer shall mean the owner or owners of real property, as recorded on the county ad valorem tax rolls, served by the county public utilities system. The term shall include customers within the cities of Anna Maria, Bradenton Beach and Holmes Beach, but shall exclude property served directly by the City of Bradenton, City of Palmetto, Town of Longboat Key, and Sarasota County.

g. Documented cost shall mean expenses incurred by the customer in parts, materials and labor to purchase, install and replace the toilet as documented by copies of paid receipts.

h. Dwelling unit shall have the same definition as provided in the county utility rate resolution.

i. High flow toilet shall mean a toilet with a minimum capacity of 3.5 gallons per flush.

j. Industrial shall mean the retail service classification for industrial established in the county utility rate resolution.

k. Licensed contractor shall mean a certified contractor or registered contractor as defined in Section 489.105, Florida Statutes.

RESOLUTION NO. R-07-31

l. Multifamily residential shall mean the retail service classification for residential, multifamily, established in the county utility rate resolution.

m. Single-family residential shall mean the retail service classification for residential, single-family, established in the county utility rate resolution.

n. Ultra low flow toilet shall mean a toilet with a maximum capacity of 1.6 gallons per flush and which contains the labeled or stamped ASME/ANSI standard.

o. Unit shall mean a dwelling unit or structure served by an individual meter and defined as single-family residential, multifamily residential, commercial, or industrial.

p. Utility account shall mean an account with the county which includes consumption quantity for potable water.

Section 4. Administration. The county administrator is authorized to administer the financial incentives established by this resolution. In the sole discretion of the county administrator, rebates may be paid by county checks issued to or may be applied as credits on utility accounts for eligible customers who comply with the requirements of this resolution.

Section 5. Funding. The financial incentives shall be funded by revenues derived from the county public utilities system after all current obligations under the Bond Resolution have been satisfied. No county funds payable from tax revenues shall be expended or used for any financial incentives established by this resolution. The provision of financial incentives by the county in the manner described in this resolution does not constitute a debt of the county within the meaning of any constitutional or statutory prohibition. Neither the taxing power nor the full faith and credit of the county is pledged

RESOLUTION NO. R-07-31

in any way to provide the financial incentives contemplated under this resolution. The county may discontinue the financial incentives established by this resolution sixty (60) days after publishing notice in a newspaper of general circulation in the county of the county's intent to discontinue the financial incentives.

Section 6. Eligibility.

a. Eligibility for the financial incentives is limited to all single-family residential, multifamily residential, commercial, and industrial potable water customers whose units have one (1) or more high flow toilets and who own the property where potable water service is delivered. Eligible customers may receive rebates for a maximum of two (2) toilets per unit as described in section 7 of this resolution, provided that the application for all rebates is submitted at the same time and the toilets which qualify for the rebates are installed within three hundred sixty-five (365) calendar days from the date of approval of the application by the county administrator. An eligible customer may submit only one (1) application for rebates for each utility account in the eligible customer's name.

b. Except as otherwise provided in this subsection, a licensed contractor shall be responsible for installation and replacement of any toilet under this resolution. Owners of property may install toilets in single-family residences on such property for the use of such owners if such property is not offered for sale or lease. For the purpose of this subsection, the term "owners of property" includes the owner of a mobile home situated on a leased lot.

c. Rebates are subject to the following conditions:

(1) Verification that the toilet being replaced is a high flow toilet;

RESOLUTION NO. R-07-31

- (2) Confirmation that the replacement toilet is an ultra low flow toilet;
- (3) Inspection of the replacement toilet by the county to ensure that the toilet has been installed and completed; and
- (4) Proof that the high flow toilet is ready for disposal.

Section 7. Incentives. Any eligible customer who installs an ultra low flow toilet in place of a high flow toilet may receive a rebate of \$100.00 and a low flow shower head free of charge for each toilet replaced not to exceed two (2) toilets per unit. To receive the toilet rebate, eligible customers must:

- a. Purchase the ultra low flow toilet after the effective date of this resolution;
- b. Submit a completed application;
- c. Submit copies of all paid receipts for the documented cost; and
- d. Submit the name, address, telephone number, and contractor license number of the licensed contractor who installed the toilet, if applicable.

Section 8. Conflicting Resolutions. All conflicting resolutions are hereby repealed, rescinded, superseded and replaced by this resolution.

Section 9. Severability. In the event that any provision, portion or section of this resolution is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining provisions, portions or sections of this resolution which shall remain in full force and effect.

Section 10. Effective Date. This resolution shall take effect immediately upon adoption.

RESOLUTION NO. R-07-31

PASSED AND ADOPTED by the Board of County Commissioners of Manatee County, Florida, with a quorum present and voting, on the 22nd day of January, 2007.



BOARD OF COUNTY COMMISSIONERS
OF MANATEE COUNTY, FLORIDA

By: *Andy Sturis*
Chairman

ATTEST: R. B. Shore
Clerk of the Circuit Court

By: *Jessie Levine*
RC

APPROVED in Open Session

Manatee County Board of County
Commissioners

Manatee County Government Administrative Center
Patricia M. Glass Commission Chambers, First Floor
9:00 a.m. - December 18, 2018

12/18/18

December 18, 2018 - Regular Meeting
Agenda Item #54

Subject

Cooperative Funding Agreement No. 19CF0001806 for the Toilet Rebate Project

Briefings

None

Contact and/or Presenter Information

Olga Wolanin, EXT 5416

Action Requested

Authorization for Chairperson to execute Cooperative Funding agreement between Southwest Florida Water Management District (SWFWMD) and Manatee County for Toilet Rebate Project (Phase 12, N982).

Enabling/Regulating Authority

The Conservation Element of the Manatee County Comprehensive Plan provides for the County to continue to encourage residents and businesses to maintain or improve water conservation habits.

The Energy Policy Act of 1992 provides that the maximum water use allowed for water closets and toilets, other than blowout toilets, manufactured after January 1, 1994, is 1.6 or less gallons per flush.

Indoor Water Conservation Resolution R-07-31 implemented the Indoor Water Conservation Incentive, which includes a \$100 toilet rebate for each toilet with a 3.5 or greater gallons per flush replaced with a 1.6 or lower gallons per flush (for a maximum of two (2) toilets per unit).

Background Discussion

- January 23, 2007 - The Board of County Commissioners (BCC) adopted Resolution R-07-31 implementing the Indoor Water Conservation Incentive, which includes a \$100 toilet rebate for each toilet with a 3.5 or greater gallons per flush replaced with a 1.6 or lower gallons per flush (for maximum of two (2) toilets per unit).
- October 3, 2017 - The County Administrator approved submittal of Application for Toilet Rebate Project, Phase 12.
- July 2018 - The Southwest Florida Water Management District (SWFWMD) approved funding for Manatee County Toilet Rebate Project, Phase 12.
- October 10, 2018 - The County Attorney's Office approved agreement No. 19CF0001806 for BCC execution.

County Attorney Review

Formal Written Review (Opinion memo must be attached)

Explanation of Other

Reviewing Attorney
Zamboni

Interoffice Olga 12/19/18

Instructions to Board Records

Please return two fully executed original contracts to Olga Wolanin for transmittal to SWFWMD.

Cost and Funds Source Account Number and Name

\$151,000 total cost with \$75,500 SWFWMD and \$75,500 County (4010020000 582000, 401002000 534000)

Amount and Frequency of Recurring Costs

One (1) year

Attachment: [Toilet Rebate, Phase 12, N982, Agreement No.19CF0001806.pdf](#)

Attachment: [Attorney Response Memorandum.pdf](#)

Attachment: [EH Letter FY2020 Coop Funding Initiative 10.4.18.pdf](#)

Attachment: [EH Letter FY2020 Coop Funding Initiative Match 10.4.18.pdf](#)

Attachment: [R07-031.pdf](#)