

**COOPERATIVE FUNDING AGREEMENT (4)
BETWEEN THE
SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT
AND
MANATEE COUNTY
FOR
MILL CREEK WATERSHED MANAGEMENT PLAN (N619)**

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 "COUNTY."

WITNESSETH:

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

WHEREAS, the project consists of acquisition and review of topographic information and completion of the Watershed Evaluation element and the Watershed Management Plan element, including computer modeling and floodplain analysis, 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 COUNTY in funding the PROJECT.

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

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

Project Manager for the DISTRICT: Jezabel Pagan Garcia
Southwest Florida Water Management District
2379 Broad Street
Brooksville, Florida 34604-6899

Project Manager for the COUNTY: Thomas R. Gerstenberger, P.E.
Manatee County
1022 26th Avenue East
Bradenton, Florida 34208

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

- 1.1 Project Managers are hereby authorized to approve requests to extend a PROJECT task deadline set forth in this Agreement. Such approval must be in writing, explain the reason for the extension and be signed in accordance with each party's signature authority. Project Managers are not authorized to approve any time extension which will result in an increased cost, or which will exceed the expiration date set forth in Paragraph 5, Contract Period.
 - 1.2 Project Managers are authorized to adjust a line item amount of the PROJECT budget contained in the Project Plan set forth in Exhibit "A" or, if applicable, the refined budget as set forth in Subparagraph 3.2 below. The authorization must be in writing, explain the reason for the adjustment, and be signed in accordance with each party's signature authority. Project Managers are not authorized to make changes to the Scope of Work and are not authorized to approve any increase in the amounts set forth in the funding section of this Agreement, or a line item amount if the adjusted amount exceeds the COUNTY'S appropriation of funds necessary to complete any Project Task in the fiscal year in which the adjustment is requested.
2. **SCOPE OF WORK.** The DISTRICT shall perform the services necessary to complete the PROJECT in accordance with the Project Plan set forth in Exhibit "A." 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 COUNTY prior to being performed by the DISTRICT. The DISTRICT shall be solely responsible for managing the PROJECT, including the hiring and supervising of any consultants or contractors it engages.
3. **FUNDING.** The parties anticipate that the total cost of the PROJECT shall be Five Hundred Seventy-Five Thousand Dollars (\$575,000). The COUNTY agrees to fund PROJECT costs up to Two Hundred Eighty-Seven Thousand Five Hundred Dollars (\$287,500) and shall have no obligation to pay any costs beyond this maximum amount. The COUNTY has fully appropriated from legally available funds the amounts for all Project Tasks with completion dates ending in the first fiscal year of this Agreement as set forth in Exhibit "A." No later than October 10th of each year thereafter, the COUNTY shall provide documentation to the DISTRICT confirming that the COUNTY has fully appropriated from legally available funds the amounts for all Project Tasks to be completed in the then current fiscal year as set forth in Exhibit "A." The COUNTY shall ensure that appropriated funds shall remain available for the PROJECT until all reimbursements have been made to the DISTRICT as required by this Agreement. In the event the COUNTY fails to appropriate sufficient funds to complete the Project Tasks in any fiscal year, the DISTRICT may terminate this Agreement by providing ten (10) days written notice to the COUNTY. The DISTRICT agrees to fund PROJECT costs up to Two Hundred Eighty-Seven Thousand Five Hundred Dollars (\$287,500) and shall have no obligation to pay any costs beyond this maximum amount. In the event that the total cost of the PROJECT exceeds \$575,000, the DISTRICT and COUNTY by mutual agreement, may provide additional funding or reduce the PROJECT scope. The DISTRICT shall pay PROJECT costs prior to requesting reimbursement from the COUNTY.

- 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 COUNTY recognizes that the DISTRICT has approved \$350,000 for the PROJECT through Fiscal Year 2015. The additional funds identified in this Agreement are contingent upon approval of such amounts by the DISTRICT Governing Board, in its sole discretion, in its annual budgets for future fiscal years. The COUNTY'S payment of any financial obligation under this Agreement is subject to appropriation by the COUNTY'S Board of legally available funds.
- 3.2 The COUNTY shall reimburse the DISTRICT for the COUNTY'S share of the allowable PROJECT costs in accordance with the PROJECT budget contained in the Project Plan set forth in Exhibit "A." The DISTRICT may contract with consultant(s), contractor(s) or both and 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. The COUNTY shall reimburse the DISTRICT for fifty percent (50%) of all allowable costs in each invoice received from the DISTRICT, but at no point in time shall the COUNTY'S expenditure amount under this Agreement exceed expenditures made by the DISTRICT. Payment shall be made to the DISTRICT within forty-five (45) days of receipt of an invoice with adequate supporting documentation to satisfy auditing purposes. Invoices shall be submitted to the COUNTY at the following address:
- Thomas R. Gerstenberger, P.E.
1022 26th Avenue East
Bradenton, Florida 34208
- 3.3 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 COUNTY shall not reimburse the DISTRICT for any purposes not specifically identified in Paragraph 2, Scope of Work. Surcharges added to third party invoices are not considered an allowable cost under this Agreement.
- 3.4 Each DISTRICT invoice must include the following certification, and the DISTRICT 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 DISTRICT'S matching funds, as represented in this invoice, are directly related to the performance under the MILL CREEK WATERSHED MANAGEMENT PLAN agreement between the Southwest Florida Water Management District and Manatee County (Agreement No. 2015REV0005), are allowable, allocable, properly documented, and are in accordance with the approved project budget."
- 3.5 In the event any dispute or disagreement arises during the course of the PROJECT, including whether expenses are reimbursable under this Agreement, the DISTRICT will continue to perform the PROJECT work in accordance with the Project Plan. The DISTRICT 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 COUNTY'S Project Manager no later than ten (10) days after the precipitating event. If not resolved by the Project 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 DISTRICT'S continuation of the PROJECT work as required under this provision shall not constitute a waiver of any legal remedy available to the DISTRICT concerning the dispute.

4. **COMPLETION DATES.** The DISTRICT shall commence and complete the PROJECT and meet the task deadlines in accordance with the project schedule set forth in Exhibit "A," including any extensions of time provided by the DISTRICT in accordance with Subparagraph 1.1 of this Agreement. 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 DISTRICT, the DISTRICT'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. The suspension of the DISTRICT'S obligations provided for in this provision shall be the DISTRICT'S sole remedy for the delays set forth herein.
5. **CONTRACT PERIOD.** This Agreement shall be effective October 1, 2014 and shall remain in effect through December 31, 2017, or upon satisfactory completion of the PROJECT and subsequent reimbursement to the DISTRICT, whichever occurs first, unless amended in writing by the parties.
6. **PROJECT RECORDS AND DOCUMENTS.** Upon request by the COUNTY, the DISTRICT shall permit the COUNTY to examine or audit all PROJECT related records and documents during or following completion of the PROJECT at no cost to the COUNTY. Payments made to the DISTRICT under this Agreement shall be reduced for amounts found to be not allowable under this Agreement by an audit. The DISTRICT shall refund to the COUNTY all such disallowed payments. 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 allow public access to PROJECT documents and materials made or received by either party in accordance with the Public Records Act, Chapter 119, F.S. Should 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.
7. **REPORTS.** Upon request by the COUNTY, the DISTRICT shall provide the COUNTY with copies of any and all data, 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 attorneys' fees and costs and attorneys' 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 Paragraph 8 does not constitute a waiver of either party's sovereign immunity or extend either party's liability beyond the limits established in Section 768.28, F.S. Additionally, this Paragraph 8 shall not be construed to impose contractual liability on either party for underlying tort claims as described above beyond the limits specified in Section 768.28, F.S., nor be construed as consent by either party to be sued by third parties in any manner arising out of this Agreement.

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 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 provision are in addition to any other rights and remedies provided by law or this Agreement.
10. **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 provision shall not be construed as preventing the parties from complying with the public records disclosure laws set forth in Chapter 119, F.S.
11. **RECOGNITION.** The DISTRICT shall recognize COUNTY funding in any reports, models, studies, maps or other documents resulting from this Agreement, and the form of said recognition shall be subject to COUNTY approval.
12. **LAW COMPLIANCE.** Each party shall comply with all applicable federal, state and local laws, rules, regulations and guidelines, including those of the DISTRICT, related to performance under this Agreement. If the PROJECT involves design services, the DISTRICT'S consultants, regulation, and projects staff shall meet regularly during the PROJECT design to discuss ways of ensuring that the final design for the proposed PROJECT technically complies with all applicable DISTRICT rules and regulations.
13. **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.
14. **CONTRACTORS.** Nothing in this Agreement shall be construed to create, or be implied to create, any relationship between the COUNTY and any contractor of the DISTRICT.

15. **THIRD PARTY BENEFICIARIES.** Nothing in this Agreement shall be construed to benefit any person or entity not a party to this Agreement.
16. **LOBBYING PROHIBITION.** Pursuant to Section 216.347, F.S., the DISTRICT is hereby prohibited from using funds provided by this Agreement for the purpose of lobbying the Legislature, the judicial branch or a state agency.
17. **GOVERNING LAW.** This Agreement is governed by Florida law and venue for resolving disputes under this Agreement shall be exclusively in Hernando County, Florida.
18. **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.
19. **SURVIVAL.** The provisions of this Agreement that require performance after the expiration or termination of this Agreement shall remain in force notwithstanding the expiration or termination of this Agreement including Paragraphs 3.2, 6, 8, 13, 17 and 18.
20. **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.
21. **DOCUMENTS.** The following documents are attached and made a part of this Agreement. In the event of a conflict of contract terminology, priority shall first be given to the language in the body of this Agreement, and then to Exhibit "A."

Exhibit "A" Project Plan

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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.

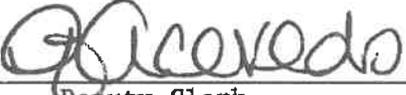
SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT

By:  3/25/14
Brian J. Armstrong, P.G. Date
Assistant Executive Director

Board of County Commissioners of
MANATEE COUNTY, Florida

By:  2/24/15
Betsy Benac, Chairperson Date
Board of County Commissioners

ATTEST: R. B. Shore
CLERK OF THE CIRCUIT COURT

By: 
Deputy Clerk



COOPERATIVE FUNDING AGREEMENT (4)
BETWEEN THE
SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT
AND
MANATEE COUNTY
FOR
MILL CREEK WATERSHED MANAGEMENT PLAN (N619)

DISTRICT APPROVAL	INITIALS	DATE
LEGAL	<u>rnz/vr</u>	<u>12/11/14</u>
RISK MGMT	<u>N/A</u>	<u>---</u>
CONTRACTS	<u>SP</u>	<u>12/10/14</u>
BUREAU CHIEF	<u>WWS</u>	<u>12/17/14</u>
DIRECTOR	<u>MH</u>	<u>12/17/14</u>
GOVERNING BOARD	<u>N/A</u>	<u>---</u>

EXHIBIT "A" PROJECT PLAN

1.0 PROJECT DESCRIPTION

This is a multi-year funded PROJECT to develop a watershed management plan (WMP) for the Mill Creek watershed (Watershed), which covers an area of approximately 14 square miles located in northeastern Manatee County, Florida. This WMP will include LiDAR data acquisition; watershed model; floodplain analysis; peer review; public meeting; and Board approval of final floodplain results. Currently, flood analysis models are not available and the Watershed includes regional or intermediate stormwater systems. The information developed from the PROJECT will assist the COUNTY with floodplain and water quality management as well as planning and development decisions. It will also support the DISTRICT'S Resource Management and Environmental Resource Permitting programs. The following elements of the DISTRICT'S Watershed Management Program will be performed: (1) Digital Topographic Information, (2) Watershed Evaluation, and (3) Watershed Management Plan.

All work related to this PROJECT will be performed in accordance with the DISTRICT'S Watershed Management Program Guidance documents, effective as of the date of the execution of this Agreement. A list of these Guidance documents can be found at: [http://ftp.swfwmd.state.fl.us/pub/GWIS/WMP Guidance Documents](http://ftp.swfwmd.state.fl.us/pub/GWIS/WMP_Guidance_Documents) (WMP_Guidance.zip) (User Name - Anonymous; Password - your email address).

2.0 PROJECT TASKS

- 2.1 Digital Topographic Information is the collection of ground elevation data using aerial photogrammetric single-beam, infrared Light Detection and Ranging (LiDAR) methods in conjunction with supplemental ground topographic survey, as needed, to construct derived mapping products (digital terrain models, contours, etc.) for the Watershed.
- 2.2 Watershed Evaluation is the systematic acquisition of watershed features and their assessment to gain an understanding of the complexity of the Watershed. It consists of tasks related to the creation of a Geographic Information System (GIS) database and associated analyses for developing information about watershed features. An independent peer review to enhance the PROJECT quality control process will begin towards the end of the Watershed Evaluation task.
- 2.3 Watershed Management Plan development consists of tasks related to the management of surface water resources. It consists of tasks related to developing a Watershed model, identifying associated floodplains and independent peer review.

3.0 RESOURCE BENEFIT

Analyze flooding and water quality problems that exist in the Watershed to identify risk of flood damage, water quality issues, and cost effective alternatives.

4.0 PROJECT DELIVERABLES

- Monthly Status Reports
- Project Development Documents
- LiDAR Data Set
- Watershed Evaluation
- Watershed Model
- Geodatabase
- Watershed Management Plan
- Two (2) sets, electronic and hardcopy, of any final reports

5.0 PERFORMANCE SCHEDULE

Additional milestones for the following tasks will be completed within the timeframes set forth in Task Work Assignments (TWAs) issued to the DISTRICT'S consultant. The DISTRICT will issue a notice to proceed to its consultant no later than 6 months from the execution of this Agreement.

TASK DESCRIPTION	COMPLETION DATE
Digital Topographic Information	04/30/2015
Watershed Evaluation	04/30/2016
Watershed Management Plan	09/30/2017

6.0 PROJECT BUDGET

TASK DESCRIPTION	DISTRICT	COUNTY	TOTAL
Digital Topographic Information	\$17,500	\$17,500	\$35,000
Watershed Evaluation	\$157,500	\$157,500	\$315,000
Watershed Management Plan	\$112,500	\$112,500	\$287,500
TOTAL	\$287,500	\$287,500	\$575,000

Budget amounts for tasks can be adjusted by the PROJECT manager in accordance with subparagraph 1.2 of the Agreement.

AGREEMENT
BETWEEN THE
SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT
AND
MANATEE COUNTY
FOR
MILL CREEK WATERSHED MANAGEMENT PLAN (N619)

This AGREEMENT, effective as of the 31st day of December 2017, 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 "COUNTY."

WITNESSETH:

WHEREAS, the DISTRICT and the COUNTY entered into an agreement effective October 1, 2014, (Agreement No. 2015REV0005) for the acquisition and review of topographic information and completion of the Watershed Evaluation element and the Watershed Management Plan element, including computer modeling and floodplain analysis, which expired on December 31, 2017, hereinafter referred to as the "Expired Agreement"; and

WHEREAS, the parties hereto wish to enter into a new agreement, incorporating the terms and conditions of the Expired Agreement, and replacing certain terms and conditions with new terms and conditions to extend the contract period and modify the Project Schedule.

NOW THEREFORE, in consideration of the mutual terms, covenants and conditions contained herein, the parties hereby mutually agree as follows:

1. Except as otherwise provided herein, the terms, covenants and conditions of the Expired Agreement incorporated herein by reference, are hereby ratified, approved and confirmed, and are binding upon the parties.
2. The Contract Period Paragraph is hereby amended to extend the expiration date of December 31, 2017 to June 30, 2019.

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3. The Performance Schedule section set forth in Exhibit "A" is hereby replaced in its entirety with the following:

PERFORMANCE SCHEDULE

Additional milestones for the following tasks will be completed within the timeframes set forth in Task Work Assignments (TWAs) issued to the DISTRICT'S consultant. The DISTRICT will issue a notice to proceed to its consultant no later than 6 months from the execution of this Agreement.

TASK DESCRIPTION	COMPLETION DATE
Digital Topographic Information	12/23/2015
Watershed Evaluation	05/31/2017
Watershed Management Plan	05/31/2019

4. The Project Budget section set forth in Exhibit "A" is hereby replaced in its entirety with the following:

PROJECT BUDGET

TASK DESCRIPTION	DISTRICT	COUNTY	TOTAL
Digital Topographic Information	\$17,500	\$17,500	\$35,000
Watershed Evaluation	\$157,500	\$157,500	\$315,000
Watershed Management Plan	\$112,500	\$112,500	\$225,000
TOTAL	\$287,500	\$287,500	\$575,000

Budget amounts for tasks can be adjusted by the PROJECT manager in accordance with subparagraph 1.2 of the Agreement.

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 8-23-18
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: Priscilla Ince
Chairperson

Date: 8/7/18



ATTEST: MANATEE COUNTY
CLERK OF CIRCUIT COURT AND
COUNTY COMPTROLLER
BY: Debra Jessman
DEPUTY CLERK

AGREEMENT
BETWEEN THE
SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT
AND
MANATEE COUNTY
FOR
MILL CREEK WATERSHED MANAGEMENT PLAN (N619)

DISTRICT APPROVAL	INITIALS	DATE
LEGAL	<u>EL</u>	<u>6-29-18</u>
RISK MGMT		
CONTRACTS	<u>RS</u>	<u>7-3-18</u>
BUREAU CHIEF	<u>Jen</u>	<u>7-5-18</u>
DIRECTOR	<u>JMO</u>	<u>7-6-18</u>
GOVERNING BOARD		