

COOPERATIVE FUNDING AGREEMENT
BETWEEN THE
SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT
AND
MANATEE COUNTY
FOR
MANATEE COUNTY TOILET REBATE PROJECT – PHASE 6 (N443-1)

THIS COOPERATIVE 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, 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 providing financial incentives to single family residential, multi-family residential and commercial accounts customers for replacing an estimated 1,450 conventional 3.5 gallon per flush or higher toilets with ultra low-flow toilets (ULFT) or high-efficiency toilets (HET), 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.

Contract Manager for the DISTRICT:
Jessica S. Sutton
Southwest Florida Water Management District
2379 Broad Street
Brooksville, Florida 34604-6899
(352) 796-7211, Ext. 4536

Project Manager for the COUNTY:
Olga Wolanin, Superintendent
Water Division Compliance
Manatee County Utilities Department
4520 66th Street West
Bradenton, Florida 34210
(941) 792-8811, Ext. 5416
olga.wolanin@mymanatee.org

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

- 1.1. The DISTRICT'S Contract Manager is 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 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 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 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 section of this Agreement.
2. SCOPE OF WORK. Upon receipt of written notice to proceed from the DISTRICT, the COUNTY shall perform the services necessary to complete the PROJECT in accordance with the COUNTY'S 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 COUNTY. The COUNTY 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 PROJECT will be Two Hundred Seventeen Thousand Five Hundred Dollars (\$217,500). The DISTRICT agrees to fund PROJECT costs up to One Hundred Eight Thousand Seven Hundred Fifty Dollars (\$108,750) and shall have no obligation to pay any costs beyond this maximum amount. The COUNTY agrees to provide all remaining funds necessary for the satisfactory completion of the PROJECT. The COUNTY shall pay PROJECT costs prior to requesting reimbursement from the DISTRICT.
 - 3.1. Any federal, state, local or grant monies received by the COUNTY for this PROJECT shall be applied to equally reduce each party's share of PROJECT costs. The COUNTY shall provide the DISTRICT with written documentation detailing its allocation of any such funds appropriated for this PROJECT.

- 3.2. The DISTRICT shall reimburse the COUNTY for the DISTRICT'S share of the allowable PROJECT costs in accordance with the PROJECT budget contained in the Project Plan set forth in Exhibit "A." The COUNTY may contract with consultant(s), contractor(s) or both to accomplish the PROJECT. Upon written DISTRICT approval, the budget amounts for the work set forth in such contract(s) shall refine the amounts set forth in the PROJECT budget and be incorporated herein by reference. The DISTRICT shall not reimburse the COUNTY for costs incurred under consultant and contractor agreements until the DISTRICT approvals required under this provision have been obtained. The DISTRICT shall reimburse the COUNTY for fifty (50%) percent of all allowable costs in each DISTRICT approved invoice received from the COUNTY, but at no point in time will the DISTRICT'S expenditure amount under this Agreement exceed expenditures made by the COUNTY. Payment shall be made to the COUNTY 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 1166
Brooksville, Florida 34605-1166

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 COUNTY to submit invoices to the DISTRICT in the manner provided herein shall relieve the DISTRICT of its obligation to pay within the aforementioned timeframe.

- 3.3. 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 parties also acknowledge that the COUNTY 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 expected resource benefits as set forth in the Project Plan will not be achieved the DISTRICT shall withhold payments to the COUNTY until such time as the COUNTY demonstrates that the PROJECT shall achieve the required resource benefits.
- 3.4. Any travel expenses which may be authorized under this Agreement shall be paid in accordance with Section 112.061, F.S., as may be amended from time to time.
- 3.5. The DISTRICT shall not reimburse the COUNTY for any purpose not specifically identified in Paragraph 2, Scope of Work.
- 3.6. Surcharges added to third party invoices are not considered an allowable cost under this Agreement.

- 3.7. Each COUNTY invoice must include the following certification, and the COUNTY 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 COUNTY'S matching funds, as represented in this invoice, are directly related to the performance under the Manatee County Toilet Rebate Project – Phase 6 (N443-1) agreement between the Southwest Florida Water Management District and Manatee County (Agreement No. 13C00000024), are allowable, allocable, properly documented, and are in accordance with the approved project budget. The COUNTY has been allocated a total of \$__ in federal, state, local or grant monies for this PROJECT. \$__ has been allocated to this invoice, reducing the DISTRICT'S and COUNTY'S share to \$__."

- 3.8. 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'S payment of any financial obligation under this Agreement is subject to appropriation by the COUNTY'S Board of legally available funds.

4. COMPLETION DATES. The COUNTY shall commence the PROJECT by April 1, 2013, shall complete the PROJECT by June 30, 2014, and shall otherwise meet the task deadlines established in this Agreement, as may be extended by the DISTRICT in accordance with Paragraph 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 COUNTY, the COUNTY'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 COUNTY 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 COUNTY'S obligations provided for in this provision shall be the COUNTY'S sole remedy for the delays set forth herein.

5. REPAYMENT.

- 5.1. The COUNTY shall repay the DISTRICT all funds the DISTRICT paid to the COUNTY under this Agreement, if: a) the COUNTY fails to complete the PROJECT in accordance with the terms and conditions of this Agreement; b) the DISTRICT determines, in its sole discretion and judgment, that the COUNTY has failed to maintain scheduled progress of the PROJECT thereby endangering the timely performance of this Agreement; c) the COUNTY fails to appropriate sufficient funds to meet the task deadlines unless extended in accordance with Paragraph 1.1; or d) a provision or provisions of this Agreement setting forth the requirements or expectations of a measurable resource 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 COUNTY

to repay the DISTRICT, this Agreement shall terminate in accordance with the procedure set forth in Paragraph 10, Default.

- 5.2. In the event the COUNTY is obligated to repay the DISTRICT under any provision of this Agreement, the COUNTY shall repay the DISTRICT within a reasonable time, as determined by the DISTRICT in its sole discretion.
- 5.3. The COUNTY shall pay attorneys' fees and costs incurred by the DISTRICT, including appeals, as a result of COUNTY'S failure to repay the DISTRICT as required by this Agreement.
6. CONTRACT PERIOD. This Agreement shall be effective upon execution by the parties and shall remain in effect through December 31, 2014, or upon satisfactory completion of the PROJECT and subsequent reimbursement to the COUNTY, whichever occurs first, unless amended in writing by the parties. The COUNTY 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 COUNTY 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 COUNTY 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 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.
8. REPORTS.
 - 8.1. The COUNTY 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 COUNTY shall promptly advise the DISTRICT of issues that arise that may impact the successful and timely completion of the PROJECT.
 - 8.2. Upon request by the DISTRICT, the COUNTY shall provide the DISTRICT with copies of reports, models, studies, maps or other documents resulting from the PROJECT. Additionally, two (2) sets, electronic and hardcopy, of any final reports must be submitted to the DISTRICT as Record and Library copies.
 - 8.3. The COUNTY shall provide the 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 COUNTY assumes all risks relating to the PROJECT and agrees to be solely liable for, and to indemnify, defend 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 implementation of the PROJECT. The acceptance of the DISTRICT'S funding by the COUNTY does not in any way constitute an agency relationship between the DISTRICT and the COUNTY.

9.2. The COUNTY agrees to indemnify, defend, 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 COUNTY'S officers, employees, contractors and agents related to its performance under this Agreement. The DISTRICT shall have the right to approve the COUNTY'S staff attorneys or outside counsel selected by the COUNTY, which approval shall not be unreasonably withheld. This Paragraph 9 shall not be construed as a waiver of the COUNTY'S sovereign immunity or an extension of COUNTY'S liability beyond the limits established in Section 768.28, F.S. Additionally, this Paragraph 9 will not be construed to impose contractual liability on the COUNTY for underlying tort claims as described above beyond the limits specified in Section 768.28, F.S., nor be construed as consent by the COUNTY to be sued by third parties in any manner arising out of this Agreement.

9.3. 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.

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 provision 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 provision 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 COUNTY 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.
13. LAW COMPLIANCE. The COUNTY 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 COUNTY 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 COUNTY by sharing information to help the COUNTY 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 COUNTY agrees to provide the DISTRICT with a report indicating all contractors and subcontractors who performed work in association with the PROJECT, the amount spent with each contractor or subcontractor, and to the extent such information is known, whether each contractor or subcontractor was a minority owned or woman owned or small business enterprise. 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 "B." The report is required upon final completion of the PROJECT prior to final payment, or within thirty (30) days of the execution of any amendment that increases PROJECT funding, for information up to the date of the amendment and prior to the disbursement of any additional funds by the DISTRICT.
15. 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.
16. 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 COUNTY.
17. THIRD PARTY BENEFICIARIES. Nothing in this Agreement shall 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 COUNTY is 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 36 months following the date of being placed on the convicted vendor list. The COUNTY agrees to include this provision in all subcontracts issued as a result of this Agreement.
20. GOVERNING LAW. This Agreement is governed by Florida law and venue for resolving disputes under this Agreement shall be in Hernando County, Florida.
21. 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 resource 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 5.1.
22. 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 Subparagraph 3.1, and Paragraphs 5, 7, 9, and 21 and any provisions requiring an offset or other continuing resource benefit.
23. 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.
24. 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, then to Exhibit "A," then to Exhibit "B."

Exhibit "A" COUNTY'S Project Plan
Exhibit "B" Minority/Women Owned and Small Business Utilization Report Form

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: _____
Robert R. Beltran, P.E. Date
Assistant Executive Director

MANATEE COUNTY

By: _____
Larry Bustle, Chairman Date
Board of County Commissioners

Attest: _____
R. B. Shore Date
Clerk of Circuit Court

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SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT
AND
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FOR THE
MANATEE COUNTY TOILET REBATE PROJECT – PHASE 6 (N443-1)

DISTRICT APPROVAL	INITIALS	DATE
LEGAL	_____	_____
RISK MGMT	_____	_____
CONTRACTS	_____	_____
BUREAU CHIEF	_____	_____
DIRECTOR	_____	_____
GOVERNING BOARD	_____	_____

EXHIBIT "A"
PROJECT PLAN

PROJECT DESCRIPTION:

The PROJECT is a water conservation incentive program that will provide COUNTY retail water customers with up to a \$100 rebate per toilet for the purchase and installation of an ultra low flow toilet (ULFT) (1.6 gallons per flush) or high efficiency toilet (HET) (1.28 gallons per flush) that replaces a high-volume toilet installed prior to 1995.

MEASURABLE BENEFITS:

The PROJECT will replace approximately 1,450 high-volume toilets producing a water savings of approximately 34,800 gallons per day. The PROJECT'S estimated cost/benefit ratio is \$1.72 per thousand gallons (20 years at 8% interest).

DELIVERABLES:

The COUNTY shall provide quarterly status reports and a final report. The final report shall be submitted with the final invoice and shall contain the following information: Number of toilets installed and rebate issued, reported by rebate type; full accounting of all funds expended during and in relation to the PROJECT; description of all public awareness efforts; customer surveys to determine the satisfaction with the toilets and the PROJECT; description of old toilet removal and disposal methods; calculation of water savings.

PROJECT BUDGET:

ITEM	COUNTY	DISTRICT	TOTAL
1,450 Toilet Rebates, to include: Single, Multi-family, and Commercial toilets @ \$100.00 each	\$72,500	\$72,500	\$145,000
Program Administration: 1,450 @ up to \$50.00 each	\$36,250	\$36,250	\$72,500
Educational Materials, Program Promotion, Surveys. Includes: printing, assembly, & postage.	In-Kind	\$0.00	\$0.00
TOTAL PROJECT COSTS	\$108,750	\$108,750	\$217,500

*NOTE: In no instance will the rebate exceed the actual cost of the rebated toilet(s) and installation(s).

COMPLETION SCHEDULE:

TASK	START DATE	END DATE
Toilet Rebates	April 1, 2013	March 31, 2014
Final Report		June 30, 2014

IMPLEMENTATION:

The COUNTY is responsible for, but not limited to:

- Working with customers to guide them through the program.
- Tracking all program activity.
- Procuring and collecting customer survey data and performing subsequent data analysis.
- Promotion of the PROJECT through interaction with the plumbing industry.
- Establishing PROJECT policy.
- Providing program marketing.
- Overseeing program operations.
- Providing for collection and disposal of replaced toilets.

INSPECTIONS:

The COUNTY shall be responsible for ensuring that all installed toilets are inspected prior to issuance of rebates. All inspections shall include the following, at a minimum:

- Toilet(s) is secured and properly installed.
- Insure that the toilet(s) being replaced was installed prior to 1995.
- Installed HET(s) must be certified to meet WaterSense criteria through the Environmental Protection Agency's (EPA's) WaterSense labeling program. To be eligible for a rebate, the COUNTY shall verify that each HET installed is on the EPA's approved list.
- ULFT(s) flushes with no more than 1.6 gallons, and HET(s) flushes with no more than 1.28 gallons.
- Toilet(s) does not exhibit any evidence of leakage.
- Observation of the flush out and refill of the toilet(s) to ensure proper operation and to confirm the water level in the tank and bowl is consistent with the manufacturing standards.
- Mark the toilet(s) with the application number using permanent ink.

EDUCATION:

The COUNTY shall provide participants with educational materials on indoor water conservation, leak detection and proper maintenance practices specific to the make and model of the new toilet to ensure the low volume toilets remain water conservative fixtures.

