

AGREEMENT #2016-48
PROFESSIONAL ENGINEERING SERVICES FOR THE BIG SLOUGH FLOOD REDUCTION STUDY
FOR THE DEPARTMENT OF PUBLIC WORKS

THIS AGREEMENT ("Agreement") is made and entered into this 27 day of September, 2016, by and between the City of North Port, a municipal corporation of the State of Florida, hereinafter referred to as the "City" and DeLoach Engineering Science, PLLC, 1845 Ivanhoe Road, Orlando, Florida 32804, a registered Florida Limited Liability Company to conduct business in the State of Florida, hereinafter referred to as "Consultant."

WITNESSETH:

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. CONSULTANT'S SERVICES

- A. The Consultant agrees to diligently and timely perform services for the City relating to Professional Engineering Services as identified in the Request for Proposal No. 2016-48 and the Consultant's proposal submitted June 29, 2016. The overall Scope of Services is described in **Attachment 1** with detailed tasks and associated Fees and Time Schedule in **Attachment 2**.
- B. The Consultant agrees to perform services subject to and consistent with the City's duties and obligations set forth in the *Cooperative Funding Agreement (Type 3) between the Southwest Florida Water Management District and City of North Port for City of North Port BMP Alternatives Analysis (N682)*, attached as **Attachment 3** hereto and incorporated as if set forth fully herein.
- C. This Agreement shall commence immediately upon the execution of the Agreement by both the City and the Consultant and upon the Consultant's receipt of the written Notice to Proceed from the City's Purchasing Office and shall continue through the completion of the project. The estimated completion date is September 30, 2017.

2. COMPENSATION AND PAYMENT FOR CONSULTANT'S SERVICES

A. COMPENSATION

1. The Consultant shall receive three hundred thousand dollars (\$300,000.00) as compensation for its services. This compensation shall include all profit, direct and indirect labor costs, personnel related costs, overhead and administrative costs, travel related out-of-pocket expenses and costs, and all other costs which are necessary to provide the services as outlined in this Agreement. The Scope of Services and Fees and Time Schedule (**Attachments 1 and 2, respectively**) are attached hereto and incorporated as if set forth fully herein.
2. The City's performance and obligation to pay under this Agreement are contingent upon an appropriation by the City Commission and the City's receipt of grant funding pursuant to the *Cooperative Funding Agreement (Type 3) between the Southwest Florida Water Management District and City of North Port for City of North Port BMP Alternatives Analysis (N682)*, attached as **Attachment 3**.

B. METHOD OF PAYMENT

1. The City shall pay the Consultant through payment issued by the Finance Department in accordance with the Florida Local Government Prompt Payment Act, Chapter 218, Florida Statutes, upon receipt of the Consultant's invoice and written approval of same by the City's Administrative Agent indicating that services have been rendered in conformity with this Agreement. The Consultant shall submit an invoice for payment to the City for those specific tasks as described in the Scope of Services that were completed during that invoicing period.

2. For those specific services that were partially completed, progress payments shall be paid in proportion to the percentage of completed work on those specific services approved in writing by the City's Administrative Agent based on the percentage of the amount for those specific services.
3. The Consultant's invoices shall be in a form satisfactory to the City of North Port Finance Department, which shall initiate disbursements.

3. LIABILITY OF CONSULTANT

The Consultant shall indemnify and hold harmless the City, its Commissioners, officers and employees, from all liabilities, damages, losses and costs (including, but not limited to, reasonable attorneys' fees and court costs, whether such fees and costs are incurred in negotiations, at the trial level or on appeal, or in the collection of attorneys' fees), to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant, or the Consultant's officers, employees, agents, and other persons employed or utilized by the Consultant in the performance of, or the failure to perform, the Agreement.

In the event of a claim, the City shall promptly notify the Consultant in writing by prepaid certified mail (return receipt requested) or by delivery through any nationally recognized courier service (such as Federal Express or UPS) which provides evidence of delivery, at the address provided for receipt of notices in this Agreement. Such notification may also be provided by fax transmission to the following e-mail dave.deloach@deloaches.com or fax number: N/A.

The City shall provide all available information and assistance that the Consultant may reasonably require regarding any claim. This agreement for indemnification shall survive termination or completion of the Agreement. The insurance coverage and limits required in this Agreement may or may not be adequate to protect the City and such insurance coverage shall not be deemed a limitation on the Consultant's liability under the indemnity provided in this section. In any proceedings between the parties arising out of or related to this Indemnity provision, the prevailing party shall be reimbursed all costs, expenses and reasonable attorney fees through all proceedings (at both trial and appellate levels).

Nothing in this Agreement shall be deemed to affect the rights, privileges and immunities of the City as set forth in Florida Statute Section 768.28.

4. CONSULTANT'S INSURANCE

A. INSURANCE

Before performing any work, the Consultant shall procure and maintain, during the life of the Agreement, the insurance listed below, unless otherwise specified. The policies of insurance shall be primary and written on forms acceptable to the City and placed with insurance carriers approved and licensed by the Insurance Department of the State of Florida and meet a minimum financial AM Best and Company rating of no less than "Excellent." No changes are to be made to these specifications without prior written specific approval by the City Manager or designee. The City Manager or designee may alter the amounts or types of insurance policies required by this Agreement upon agreement with the Consultant.

1. Workers Compensation: Coverage to apply for all employees at the statutory limits provided by state and federal laws. The policy must include Employers' Liability with a limit of \$500,000 each accident; \$500,000 each employee; and \$500,000 policy limit for disease.

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2. Professional Liability Insurance: Minimum \$1,000,000 per occurrence for this project, and with a \$1,000,000 policy term general aggregate. Coverage shall be extended beyond the policy year term either by a supplemental extended reporting period (ERP) with as great of duration as available, with no less coverage and reinstated aggregate limits, or by requiring that any new policy provide a retroactive date no later than the inception date of claims made. The City prefers all Professional Liability Insurance be written on an Occurrence Form; however, in the event that the professional liability insurance required by the Agreement is written on a claims-made basis, the Consultant warrants that any retroactive date under the policy shall precede the effective date of this Agreement; and that either continuous coverage will be maintained for a period of two (2) years or an extended reporting period (ERP) with tail coverage will be obtained and maintained for a period of two (2) years beginning at the time work under this Agreement is completed.
3. Comprehensive Commercial General Liability Insurance: Occurrence from required. Aggregate must apply separately to this Agreement. Minimum \$1,000,000 each occurrence; \$1,000,000 general aggregate; \$1,000,000 products and completed ops; and \$100,000 damage to rented premises.
4. Automobile Insurance: To include all vehicles owned, leased, hired and non-owned vehicles with limits of not less than \$1,000,000 per each accident and for property damage and bodily injury, with contractual liability coverage for all work performed under this Agreement.

The City of North Port is to be named additional insured on Comprehensive Commercial General Liability Policy and Commercial Automobile. Certification of same shall be required. All certificates of insurance must be on file with and approved by the City before commencement of any work activities under this Agreement.

Any and all deductibles to the above referenced policies are to be the responsibility of the Consultant. The Consultant's insurance is considered primary for any loss, regardless of any insurance maintained by the City. The Consultant is responsible for all insurance policy premiums, deductibles, SIR (self-insured retentions) or any loss or portion of any loss that is not covered by any available insurance policy.

All insurance policies must be issued by companies of recognized responsibility licensed to do business in Florida and must contain a provision that prohibits cancellation unless the City is provided notice as stated within the policy. It is the Consultant's responsibility to provide notice to the City.

B. WAIVER OF SUBROGATION

All required insurance policies are to be endorsed with a waiver of subrogation. The insurance companies, by proper endorsement or thru other means, agree to waive all rights of subrogation against the City, its officers, officials, employees and volunteers, and the City's insurance carriers, for losses paid under the terms of these policies that arise from the contractual relationship or work performed by the Consultant for the City. It is the Consultant's responsibility to notify their insurance company of the Waiver of Subrogation and request written authorization or the proper endorsement. Additionally, the Consultant, its officers, officials, agents, employees, volunteers, and any subcontractors, agree to waive all rights of subrogation against the City and its insurance carriers for any losses paid, sustained or incurred, but not covered by insurance, that arise from the contractual relationship or work performed. This waiver also applies to any deductibles or self-insured retentions the Consultant or its agents may be responsible for.

C. POLICY FORM

1. All policies, required by this Agreement, with the exception of Professional Liability and Workers Compensation, or unless specific approval is given by Risk Management through the City's Purchasing Office, are to be written on an occurrence basis, shall name the City of North Port, its Commissioners, officers, agents,

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employees and volunteers as additional insured as their interest may appear under this Agreement. Insurer(s), with the exception of Professional Liability and Workers Compensation, shall agree to waive all rights of subrogation against the City of North Port, its Commissioners, officers, agents, employees or volunteers.

2. Insurance requirements itemized in this Agreement, and required of the Consultant, shall be provided by or in behalf of all subcontractors to cover their operations performed under this Agreement. The Consultant shall be held responsible for any modifications, deviations, or omissions in these insurance requirements as they apply to subcontractors.
3. Each insurance policy required by this Agreement shall:
 - Apply separately to each insured against whom claim is made and suit is brought, except with respect to limits of the insurer's liability.
 - Be endorsed to state that coverage shall not be suspended, voided or cancelled by either party except after notice is delivered in accordance with the policy provisions. The Consultant is to notify the City Purchasing Office by written notice via certified mail, return receipt requested.
4. The City shall retain the right to review, at any time, coverage, form, and amount of insurance.
5. The procuring of required policies of insurance shall not be construed to limit the Consultant's liability nor to fulfill the indemnification provisions and requirements of this Agreement. The extent of the Consultant's liability for indemnity of the City shall not be limited by insurance coverage or lack thereof, or unreasonably delayed for any reason, including but not limited to, insurance coverage disputes between the Consultant and its carrier.
6. The Consultant shall be solely responsible for payment of all premiums for insurance contributing to the satisfaction of this Agreement and shall be solely responsible for the payment of all deductibles and retentions to which such policies are subject, whether or not the City is an insured under the policy.
7. Claims Made Policies will be accepted for professional liability and hazardous materials and such other risks as are authorized by the City's Purchasing Office. All Claims Made Policies contributing to the satisfaction of the insurance requirements herein shall have an extended reporting period option or automatic coverage of not less than two (2) years. If provided as an option, the Consultant agrees to purchase the extended reporting period on cancellation or termination unless a new policy is affected with a retroactive date, including at least the last policy year.
8. Certificates of Insurance evidencing Claims Made or Occurrences form coverage and conditions to this Agreement, as well as the Agreement number and description of work, are to be furnished to the City's Purchasing Office (4970 City Hall Boulevard, Suite 337, North Port, FL 34286) prior to commencement of work AND a minimum of thirty (30) calendar days prior to expiration of the insurance contract when applicable. All insurance certificates shall be received by the City's Purchasing Office before the Consultant will be allowed to commence or continue work. The Certificate of Insurance issued by the underwriting department of the insurance carrier shall certify compliance with the insurance requirements provided herein.
9. Notices of Accidents (Occurrences) and Notices of Claims associated with work being performed under this Agreement shall be provided to the Consultant's insurance company and the City's Purchasing Office as soon as practicable after notice to the insured.

5. RESPONSIBILITY OF CONSULTANT

- A. The Consultant shall be responsible for the professional quality, technical accuracy, and the coordination of all reports, designs, specifications, other documents and data produced by or at the behest of the Consultant under this Agreement. The Consultant shall, without additional compensation, correct or revise any errors or deficiencies in its reports, designs, specifications, other documents and data.
- B. If the Consultant is comprised of more than one legal entity, each entity shall be jointly and severally liable hereunder.
- C. The Consultant warrants that it has not employed or retained any company or person (other than a bona fide employee working solely for the Consultant), to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award of this Agreement.
- D. The Consultant shall perform its services in accordance with generally accepted industry standards and practices customarily utilized by competent consultant firms in effect at the time the Consultant's services are rendered. The Consultant covenants and agrees that it and its employees shall be bound by the Standards of Conduct of Florida Statutes Section 112.313, as it relates to work performed under this Agreement. The Consultant agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.
- E. The Consultant shall comply with all federal, state, and local laws, regulations and ordinances applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this Agreement.
- F. The Consultant shall maintain books, records, documents, and other evidence directly pertaining to or connected with the services under this Agreement which shall be available and accessible at the Consultant's offices for the purpose of inspection, audit, and copying during normal business hours by the City, or any of its authorized representatives. Such records shall be retained for a minimum of three (3) years after completion of the services.
- G. In accordance with Florida Statutes Section 119.0701, the Consultant shall comply with all public records laws, and shall specifically:
 - 1. Keep and maintain public records required by the City to perform the service.
 - a. The timeframes and classifications for records retention requirements must be in accordance with the General Records Schedule GS1-SL for State and Local Government Agencies. (See <http://dos.dos.state.fl.us/library-archives/records-management/general-records-schedules/>).
 - b. "Public records" means and includes those items specified in Florida Statutes 119.011(12), as amended from time to time, and currently defined as: All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business with the City. The Consultant's records under

this Agreement include but are not limited to, supplier/subcontractor invoices and contracts, project documents, meeting notes, emails and all other documentation generated during this Agreement.

2. Upon request from the City's custodian of public records, provide the City, at no cost, with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided for by law. All records kept electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.
3. Ensure that project records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and, if the Consultant does not transfer the records to the City following completion of the Agreement, for the time period specified in General Records Schedule GS1-SL for State and Local Government Agencies.
4. Upon completion of the Agreement, transfer, at no cost, to the City all public records in the Consultant's possession or keep and maintain public records required by the City to perform the service. If the Consultant transfers all public records to the City upon completion of the Agreement, the Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Consultant keeps and maintains public records upon the completion of the Agreement, the Consultant shall meet all applicable requirements for retaining public records.
5. **IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CUSTODIAN OF PUBLIC RECORDS, 4970 CITY HALL BOULEVARD, NORTH PORT, FLORIDA 34286, (941) 429-7063 OR HOTLINE 429-7270; EMAIL padkins@cityofnorthport.com.**
6. Failure of the Consultant to comply with these requirements shall be a material breach of this Agreement. Further, the Consultant may be subject to penalties under Florida Statutes Section 119.10.

6. OWNERSHIP AND USE OF DOCUMENTS

It is understood and agreed that all the documents, or reproducible copies, developed by the Consultant in connection with its services, including but not limited to reports, designs, specifications, and data, shall be delivered to, and shall become the property of the City as they are received by the City and when the Consultant has been fully compensated as set forth herein. The Consultant may keep copies of all work products for its records. The Consultant hereby assigns all its copyright and other proprietary interests in the products of this Agreement to the City. Specific written authority is required from the City's Administrative Agent for the Consultant to use any of the work products of this Agreement on any non-city project.

Notwithstanding the above, any reuse of the work products by the City on other projects will be at the risk of the City.

7. TIMELY PERFORMANCE OF CONSULTANT'S PERSONNEL

The timely performance and completion of the required services is vitally important to the interest of the City. The Consultant shall assign a Project Manager, together with such other personnel as are necessary, to assure faithful prosecution and timely delivery of services pursuant to the requirements of this Agreement. The personnel assigned by the Consultant to perform the services of this Agreement shall comply with the information presented in the professional services response proposal made a part hereof by reference. The Consultant shall ensure that all key personnel, support personnel, and other agents are fully qualified and capable to perform their assigned tasks. Any change or substitution to the Consultant's key personnel must receive the City's Administrative Agent's written approval before said changes or substitution can become effective.

- A. The services to be rendered by the Consultant shall commence within one (1) week of the Consultant's receipt of written Notice to Proceed from the City.
- B. The Consultant specifically agrees that all work performed under the terms and conditions of this Agreement shall be completed within the time limits as set forth, subject only to delays caused through no fault of the Consultant or the City. Time is of the essence in the performance of this Agreement.
- C. The Consultant agrees to provide to the City's Administrative Agent, monthly written progress reports concerning the status of the work. The City's Administrative Agent may determine the format for this progress report. The City shall be entitled at all times to be advised at its request, and in writing, as to the status of work to be performed by the Consultant.
- D. In the event unreasonable delays occur on the part of the City or regulatory agencies as to the approval of any plans, permits, reports or other documents submitted by the Consultant which delay the Project Schedule completion date, the City shall not unreasonably withhold the granting of an extension of the Project Schedule time limitation equal to the aforementioned delay. The Project Schedule is attached as **Attachment C** and incorporated herein.

8. OBLIGATIONS OF CITY

- A. The City's Administrative Agent is designated to serve as project coordinator and to do all things necessary to properly administer the terms and conditions of this Agreement. If necessary, a specific program manager will be authorized to perform the responsibilities of the City's Administrative Agent. The City shall designate any specific program manager in the Notice to Proceed. The responsibility of the City's Administrative Agent shall include:
 1. Examination of all reports, sketches, drawings, estimates, proposals, and other documents presented by the Consultant, and render in writing, decisions pertaining thereto within a reasonable time.
 2. Transmission of instructions, receipt of information, interpretation and definition of City policies and decisions with respect to design, materials, and other matters pertinent to the work covered by this Agreement.
 3. Review for approval or rejection all of the Consultant's documents and payment requests.
- B. The City shall, upon request, furnish the Consultant with all existing data, plans, studies and other information in the City's possession which may be useful in connection with the work of this Project, all of which shall be and remain the property of the City and shall be returned to the City's Administrative Agent upon completion of the services to be performed by the Consultant.

- C. The City's Administrative Agent shall conduct periodic reviews of the work of the Consultant necessary for the completion of the Consultant's services during the period of this Agreement, and may make other City personnel available, where required and necessary to assist the Consultant. The availability and necessity of said personnel to assist the Consultant shall be determined solely within the discretion of the City. The City's technical obligations to this Project, if any, are stated in Specific Authorizations and Work Authorizations.
- D. The City shall not provide any services to the Consultant in connection with any claim brought on behalf of or against the Consultant.

9. TERMINATION

- A. The City Manager or designee shall have the right at any time upon thirty (30) calendar days written notice to the Consultant to terminate the services of the Consultant and, in that event, the Consultant shall cease work and shall deliver to the City all documents (including but not limited to reports, designs, specifications, and all other data) prepared or obtained by the Consultant in connection with its services. The City shall, upon receipt of the aforesaid documents, pay to the Consultant and the Consultant shall accept as full payment for its services, a sum of money equal to (1) the fee for each completed and accepted task as shown in Attachment 1 – Scope of Services and Attachment 2 – Fees and Time Schedule, plus (2) the percentage of the work completed in any commenced but uncompleted task, less (3) all previous payments in accordance with Section 2 and any amounts withheld by the City to settle claims against or to pay indebtedness of the Consultant in accordance with the provisions of the Agreement.
- B. FUNDING IN SUBSEQUENT FISCAL YEARS: It is expressly understood by the City and the Consultant that funding for any subsequent fiscal year of the Agreement is contingent upon appropriation of monies by the City Commissioners, and the continuing receipt of state or federal grant funding, if applicable. In the event that funds are not available or appropriated, the City reserves the right to terminate the Agreement. The City will be responsible for payment of any outstanding invoices and work completed by the Consultant prior to such termination.
- C. In the event that the Consultant has abandoned performance under this Agreement, then the City Manager or designee may terminate this Agreement upon three (3) calendar days' written notice to the Consultant indicating its intention to do so. The written notice shall state the evidence indicating the Consultant's abandonment.
- D. The Consultant shall have the right to terminate services only in the event of the City failing to pay the Consultant's properly documented and submitted invoice within ninety (90) calendar days of the approval by the City's Administrative Agent, or if the project is suspended by the City for a period greater than ninety (90) calendar days.
- E. The City Manager or designee reserves the right to terminate and cancel this Agreement in the event the Consultant shall be placed in either voluntary or involuntary bankruptcy, a receiver is appointed for the Consultant or an assignment is made for the benefit of creditors.
- F. In the event the Consultant breaches this Agreement, the City shall provide written notice of the breach and the Consultant shall have ten (10) days from the date the notice is received to cure. If the Consultant fails to cure within the ten (10) days, the City Manager or designee shall have the right to immediately terminate the Agreement and/or refuse to make any additional payment, in whole or in part, and, if necessary, may demand the return of a portion or the entire amount previously paid to the Consultant due to:

1. The quality of a portion or all of the Consultant's work not being in accordance with the requirements of this Agreement;
2. The quantity of the Consultant's work not being as represented in the Consultant's Payment Request, or otherwise;
3. The Consultant's rate of progress being such that, in the City's opinion, substantial or final completion, or both, may be inexcusably delayed;
4. The Consultant's failure to use Agreement funds, previously paid the Consultant by the City, to pay the Consultant's project related obligations including, but not limited to, subcontractors, laborers and material and equipment suppliers;
5. Claims made, or likely to be made, against the City or its property;
6. Loss caused by the Consultant;
7. The Consultant's failure or refusal to perform any of the obligations to the City, after written notice and a reasonable opportunity to cure as set forth above.

In the event that the City makes written demand upon the Consultant for amounts previously paid by the City as contemplated in the clause, the Consultant shall promptly comply with such demand. The City's rights hereunder survive the term of this Agreement, and are not waived by final payment and/or acceptance.

10. INDEPENDENT CONTRACTOR

The Consultant is, and shall be, in the performance of all work services and activities under this Agreement, an independent contractor, and not an employee, agent or servant of the City. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Consultant's sole direction, supervision, and control. The Consultant shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Consultant's relationship and the relationship of its employees to the City shall be that of an independent contractor and not as employees or agents of the City. The Consultant does not have the power or authority to bind the City in any promise, agreement or representation other than as specifically provided for in this Agreement. The Consultant shall not pledge the City's credit or make it a guarantor of payment of surety for any contract, debt, obligation, judgment, lien or any form of indebtedness. The Consultant further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

11. ENTIRE AGREEMENT

This Agreement constitutes the sole and complete understanding between the parties and supersedes all agreements between them, whether oral or written with respect to the subject matter.

12. AMENDMENT

No amendment, change or addendum to this Agreement is enforceable unless agreed to in writing by both parties and incorporated into this Agreement. For any increase in the compensation for the services, the City Commissioners for the City and the duly authorized representative for the Consultant shall agree in writing to this change. For all

other changes, the City's Administrative Agent and the Consultant's representative shall agree in writing to the change.

13. ASSIGNMENT

The Consultant shall not assign any interest in this Agreement and shall not transfer any interest in same (whether by assignment or novation) without prior written consent of the City Manager or designee, except that claims for the money due or to become due the Consultant from the City under this Agreement may be assigned to a financial institution or to a trustee in bankruptcy without such approval from the City. Notice of any such transfer or assignment due to bankruptcy shall be promptly given to the City.

14. WAIVER

The exercise by either party of any rights or remedies provided herein shall not constitute a waiver of any other rights or remedies available under this Agreement or any applicable law.

15. GOVERNING LAW, VENUE AND SEVERABILITY

The rights, obligations and remedies of the parties under this Agreement shall be governed by the laws of the State of Florida and the exclusive venue for any legal or judicial proceedings in connection with the enforcement or interpretation of this Agreement shall be in Sarasota County, Florida. If any term, condition or covenant of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall be valid and binding on each party.

16. AUTHORITY

The parties covenant and agree that each is duly authorized to enter into and perform this Agreement and those executing this Agreement have all requisite power and authority to bind the parties.

17. NO HIRE

The Consultant shall not hire any City employee associated with this project throughout the duration of the Agreement and for a period of one (1) year after completion.

18. NOTICES

Any notices, invoices, reports, or any other type of documentation required by this Agreement shall be sent by certified mail, return receipt requested, or via a recognized national courier service in a manner that provides for written or electronic record of delivery, to the addresses listed below:

CONSULTANT'S REPRESENTATIVE:

David A. DeLoach, PE
DeLoach Engineering Science, PLLC
1845 Ivanhoe Road
Orlando, Florida 32804
407.497.8796

EMAIL: dave.deloach@deloaches.com

CITY'S ADMINISTRATIVE AGENT:

Elizabeth Wong, PE
City of North Port
1100 N. Chamberlain Blvd.
North Port, FL 34286
TEL 941.240.8321
FAX 941.240.8073

EMAIL: ewong@cityofnorthport.com

19. PARAGRAPH HEADINGS

Paragraph headings are for the convenience of the parties and for the reference purposes only and shall be given no legal effect.

20. ATTORNEYS' FEES

In any proceedings between the parties arising out of or related to this Agreement, the prevailing party shall be reimbursed all costs, expenses and reasonable attorney fees through all proceedings (at both trial and appellate levels).

21. CONFLICTS

In the event of any conflict between the provisions of this Agreement and RFP No. 2016-48 or the Consultant's response, which are made a part hereof by reference, the Agreement shall control.

IN WITNESS WHEREOF, the parties have executed the agreement as of the date first above written.

ATTEST:

CITY OF NORTH PORT, FLORIDA

By: _____
Patsy Adkins, City Clerk, MMC

By: _____
Jonathan R. Lewis, City Manager, ICMA-CM

APPROVED AS TO FORM AND CORRECTNESS:

By: _____
Mark Moriarty, City Attorney

WITNESS:

CONSULTANT:

By: Ellen M. DeLoach

By: 
David A. DeLoach, PE

ATTACHMENT 1 – SCOPE OF SERVICES

EXHIBIT A
SCOPE OF WORK
CITY OF NORTH PORT
BIG SLOUGH FLOOD REDUCTION FEASIBILITY STUDY
DELOACH ENGINEERING SCIENCE, PLLC

General Overview

The Big Slough Watershed is located in southeastern Sarasota County and is tributary to the Myakka River. Portions of the City of North Port located east of the Myakka River are within the southern portion of the Big Slough Watershed. The Big Slough Canal (also called Myakkahatchee Creek in its lower reaches) passes from north to south and receives inflows from numerous waterways within the City. Those waterways provide surface drainage across most of North Port before the Big Slough Canal discharges beneath U.S. Highway 41 toward its confluence with the Myakka River.

The City has routinely experienced flooding in the Big Slough Watershed. Two such flood zones are the areas near Myakkahatchee Creek at I-75 and the areas in and around the Jockey Club.

- The Myakkahatchee Creek at I-75 Study Area covers approximately 335 acres adjacent to the Myakkahatchee Creek. The area is bounded on the east by Sumter Boulevard and traversed from east to west by Interstate Highway 75.
- The northern section of the Jockey Club Study Area covers approximately 62 acres and is bounded on the north by Appomattox Drive, on the west by Pan American Boulevard, and on the east by Myakkahatchee Creek. The southern section of the Jockey Club Study Area near Ketona Road is also included and is approximately 82 acres in size.

The Big Slough Flood Reduction Feasibility Study is comprised of two distinct parts:

- Part 1 is to evaluate localized flooding along Myakkahatchee Creek within the I-75 and Jockey Club Study Areas and recommend specific construction projects or other methods to mitigate flooding.
- Part 2 is to evaluate preliminary regional concepts including, but not limited to, those previously developed by others, with the intent to advance large scale solutions to mitigate flooding throughout the City of North Port.

Scope of Services

DeLoach Engineering Science, PLLC (CONSULTANT), upon receiving direction and notice to proceed from the City of North Port (CITY), shall conduct a stormwater study to evaluate feasibility and cost effectiveness of various solutions intended to reduce flooding in the City of North Port within the Big Slough Watershed. The stormwater evaluations shall employ data and a watershed model previously developed by Ardaman & Associates, Inc. for the North Port/Big Slough Watershed Management Program (WMP) project.

That prior project was cooperatively funded by the Southwest Florida Water Management District (SWFWMD) and the City of North Port and was completed in 2014. The existing watershed model was developed using CHAN Version 2.03 (Aquarian Software, Inc.). All data collected, work products generated, and reports submitted under the North Port/Big Slough WMP project will be obtained by the CITY and provided to the CONSULTANT for use in performing this flood reduction study.

The flood reduction study will be performed in two distinct parts, each comprised of multiple tasks as outlined in the following. Part 1 is a concentrated effort which considers solutions to reduce flooding through implementing localized improvements within certain identified neighborhoods that are adjacent to Myakkahatchee Creek at I-75 and at the Jockey Club while Part 2 is a broader study which considers a regional approach to reduce flooding in other portions of the City.

Part 1. Part 1 activities shall include field surveying, hydraulic modeling, alternatives analyses, and cost benefit assessments needed to evaluate feasibility of options to alleviate flooding in the local neighborhoods. The project shall include community outreach meetings to receive input of concerns from residents. The study shall include a determination of the reasons for flooding, either from conditions within the neighborhoods or from backwater of the Myakkahatchee Creek and interconnected waterways and retention ditches. Solutions may include, but not be limited to: storm sewer construction, pump stations, raised road elevations, flood walls, flood gates, land acquisition, and any combination thereof. The study shall include but not be limited to evaluating mean annual, 10, 25, and 100 year 1-day and 100 year 5-day storm events.

The CONSULTANT shall determine which solution for these storm events provides the best cost/benefit. In assessing feasibility of various solutions, it should be noted that drainage improvements may not eliminate flooding entirely but instead may reduce the depth, duration, and/or frequency of flooding to levels that nevertheless result in reduced annualized damages and a substantial benefit to the community.

The study will focus principally on quantifying hydraulic performance, cost of implementation, and value of benefits derived from reduced flooding and will address other equally important issues qualitatively. For example, hydraulic performance will be summarized with simulation pre vs post peak stage and peak discharge tables for use in demonstrating no adverse impacts in a Statewide Environmental Resource permit (SWERP) application. On the other hand, wetland impacts associated with implementing the various solutions will be addressed qualitatively. For example, while no formal wetland jurisdictional boundary will be developed, potential wetland impacts will be identified based on engineering-level site visits, review of aerial photography, National Wetlands Inventory (NWI) and hydric soil mapping, etc., in order to estimate potential mitigation requirements and associated costs. Wetland impacts and other factors that are addressed qualitatively in the course of this study would need to be deferred in any Statewide Conceptual ERP application and later resolved during subsequent construction permitting (when final design of the improvements has been completed, wetland jurisdiction has been properly established, wetland impacts and mitigation have been quantified, etc.)

It is anticipated that Part 1 will result in a conceptual plan for improvements covering multiple sites and facilities and that a Statewide Environmental Resource Permit (SWERP) will be submitted for Conceptual Approval of the overall plan for flood reduction in these areas. The SWERP application would include: conceptual-level drawings and/or diagrams describing the plan for improvements in general terms; a narrative including summary of project purpose, proposed facilities, and pre/post hydraulic performance; and calculations (pre/post storm event simulation results) to demonstrate no adverse impacts with

respect to water quantity. Site-specific design and environmental matters (including wetland impacts and mitigation) would be deferred to one or more future SWERP construction applications for implementation of the proposed improvements.

The CONSULTANT shall review and provide a timely response to up to two (2) Requests for Additional Information (RAIs) from SWFWMD. It is expected that District review times will be on the order of one (1) month each and that CONSULTANT response times will be on the order of two (2) weeks each.

1.1 Project Development

1.1.1 Kickoff Meeting and Initial Field Visit

1.1.2 Data Collection and Assembly (as available from WMP Project files and other City sources)
Collect and assemble all available data from the City of North Port as may be needed to support development of flood reduction strategies in the local areas of interest. *Based upon review of available data and the project approach, assess outstanding data needs and coordinate with the City on a plan for acquisition of that data or on a revised approach to the project. For example, hydraulic analyses performed by the CONSULTANT are intended to support conceptual level design and permitting and it is expected that the current Big Slough CHAN model is sufficiently accurate, "as-is", to support that effort. Therefore, only a minor portion of the overall project budget has been allocated for additional field data collection by approximate methods and/or to allow for a small amount of supplemental field survey to identify a small number of pipe and ditch bottom elevations by a PLS. Similarly, accuracy of cost-benefit evaluations will depend in large part on accuracy of finished floor elevations, estimated construction costs, and structure and home content values. It is assumed that finished floor elevations can be adequately approximated from available LiDAR-based terrain information and that a field survey of structure elevations will not be performed. Construction costs and structure and home content values will be estimated using readily available information for the region. Accuracy of the benefit-cost evaluation would be enhanced if surveyed finished floor elevations, local construction cost information, home value data, and other relevant cost information can be obtained from Sarasota County or other sources.*

1.1.2.1 CHAN Model from North Port/Big Slough WMP Project

1.1.2.2 Geodatabase from North Port/Big Slough WMP Project

1.1.2.3 Terrain from North Port/Big Slough WMP Project

1.1.2.4 PLS Survey from North Port/Big Slough WMP Project

1.1.2.5 Land Use from North Port/Big Slough WMP Project

1.1.2.6 Parcels from City of North Port

1.1.2.7 Utilities from City of North Port (for specific areas)

1.1.3 Summary of Prior Work Performed, Alternatives Considered, and Findings

Provide a brief summary description of prior work performed in the Big Slough Watershed by CDM (1996) and Ardaman & Associates (2014) as relates to flooding and flood reduction plans. To the extent possible based upon a review of available prior reports and/or discussion with agency staff, describe all alternatives that were previously considered, summarize findings of hydraulic analyses that were performed, and discuss other factors (cost, environmental, land availability, etc.) which may have proven to be barriers to project implementation. Also describe any drainage improvements that were implemented.

1.1.3.1 Ardaman

1.1.3.2 CDM

1.1.4 Project Plan Formulation

Develop a Project Plan document describing project goals, objectives, and limits. Include project scope and schedule, resource allocations, and budget estimates. Attach quality assurance, quality control, safety, and project communication plans.

1.2 Define Existing Flooding Problems

1.2.1 Confirm Ability to Reproduce WMP Project Model Results

Perform "Existing Condition" storm event simulations using CHAN model input data taken from the North Port/Big Slough WMP Project. Simulated events include synthetic design storms with mean annual through 100-year return periods and 24-hour and 5-day rainfall durations, using rainfall distributions consistent with SWFWMD WMP Guidelines. Compare simulation results (runoff volume, peak runoff, peak discharge, and peak stage) for each event to simulation results reported in the Ardaman database in order to confirm that the model results can be reproduced. Map flood inundation areas and compare flood extents to similar mapping previously performed by Ardaman to confirm results. *Note: Hydraulic analyses performed by the CONSULTANT are intended to support conceptual level design and permitting and it is expected that the current Big Slough CHAN model is sufficiently accurate, "as-is", to support that effort. Therefore, only a minor portion of the overall project budget has been allocated for modifications to the existing condition model to better represent local conditions in the two areas of interest.*

1.2.1.1 Simulations of Mean Annual to 100-Year Events

1.2.1.2 Flood Mapping and Comparison to Ardaman Results

1.2.1.3 Update Model to include a Small Number of Prior Conveyance Improvements

1.2.1.4 Flood Mapping and Comparison of Updated Model to Ardaman Results

1.2.2 Characterize Local Flooding Conditions

Develop inundation maps, level of service tables, and other materials to describe existing flooding conditions (extent, depth, duration, and frequency) in each of the local areas being investigated. Include annotation to describe local rainfall excess as well as flow rates and paths of stormwater passing into and out of each problem area. Identify the principal "reason(s)" for flooding in terms of local conveyance and/or storage deficiencies, backwater effects from interconnected waterways resulting in reduced local drainage capacity or actual backflow into the area, uncontrolled overflows from upstream or adjacent lands, etc.

1.2.2.1 Myakkahatchee Creek at I-75

1.2.2.2 Jockey Club

1.3 Operations Staff Meeting and Team Field Visit

1.3.1 Meeting Topics

1.3.1.1 Prior Work and Project Plan

1.3.1.2 Existing Flooding Problems and Potential Solutions – with Operations Staff Input

1.3.1.3 Approach to Evaluation of Hydraulic Performance of Potential Solutions

1.3.1.4 Cost-Benefit and Other Project Considerations and Constraints

1.3.1.5 Refinements and Development of a Recommended Plan

1.3.1.6 Remaining Project Schedule and Upcoming Community Meeting

1.4 Formulate List of Potential Solutions for Hydraulic Evaluation

1.4.1 Describe Each Potential Solution and Any Known or Expected Obstacles to Success

1.4.2 Identify Additional Data Needs to Support Hydraulic Evaluation

1.4.3 Meeting to Review and Discuss List of Potential Solutions

1.4.4 Select a Set of Alternatives from Among Potential Solutions for Hydraulic Evaluation

1.5 Evaluate Hydraulic Performance of Selected Set of Alternatives

1.5.1 Perform Hydraulic Analyses

1.5.2 Summarize Hydraulic Performance

- 1.5.3 Meeting to Review and Discuss Performance of Alternatives
- 1.5.4 Identify Preferred Plan(s) of Improvements
- 1.6 Refine Preferred Plan(s) of Improvements
 - 1.6.1 Evaluate Site Conditions and Design/Permitting Constraints of Preferred Plan(s)
 - 1.6.2 Refine Preferred Plan(s) to Address Site Conditions and Design/Permitting Constraints
 - 1.6.3 Perform Hydraulic Analyses of Refined Plan(s)
 - 1.6.4 Perform Cost-Benefit Analysis of Refined Plan(s)
 - 1.6.5 Meeting to Review and Discuss Refined Plan(s)
 - 1.6.6 Select Recommended Plan
- 1.7 Community Outreach Meeting
 - 1.7.1 Meeting Topics
 - 1.7.1.1 Project Update
 - 1.7.1.2 Summary of Plan Development
 - 1.7.1.3 Description of Recommended Plan
 - 1.7.1.4 Performance of Recommended Plan
 - 1.7.1.5 Cost-Benefit
 - 1.7.1.6 Public Input
 - 1.7.1.7 Remaining Project Schedule and Upcoming Presentation to City
- 1.8 Summarize and Present Recommended Plan of Improvements
 - 1.8.1 Finalize Recommended Plan and Project Deliverables
 - 1.8.1.1 Pre/Post Models and Result Tabulations
 - 1.8.1.2 Conceptual-Level Design Drawings
 - 1.8.1.3 Opinion of Probable Cost (incl. detailed design, permitting, land, and construction)
 - 1.8.1.4 Cost-Benefit
 - 1.8.1.5 Report and Mapping
 - 1.8.1.6 Training City staff in use of CHAN Modeling Software
 - 1.8.2 Meeting with City Administrative Staff
 - 1.8.3 Statewide Environmental Resource Permitting
 - 1.8.3.1 SWFWMD Pre-App Meeting for Statewide Conceptual (or simple Standard) ERP
 - 1.8.3.2 Application Preparation/Submittal and Response to Two (2) RAIs

Part 2. Part 2 activities shall include field investigations, hydraulic modeling, alternatives analyses, and cost benefit assessments needed to advance preliminary concepts to achieve flood mitigation in areas where residential structures are shown as flooding in the recently updated Flood Insurance Rate Maps (FIRMs) including, but not limited to, those previously suggested in the North Port/Big Slough WMP project by Ardaman & Associates, Inc. and/or in the Big Slough Watershed Study by Camp Dresser & McKee, Inc. The work will include identification of candidate site(s), citing of relevant permitting requirements for construction and operation of facilities, and providing cost estimates for detailed design, permitting, land acquisition, and construction. The CONSULTANT shall consider mixed use of regional facilities such as, but not limited to, storage for water supply to the City's water treatment plant, recreational activities, and environmental opportunities such as preserves and water quality improvement.

Using the previously developed CHAN model, the CONSULTANT shall perform a limited number of screening-level simulations in order to evaluate feasibility of regional concepts to achieve flood reduction. In assessing feasibility of various solutions, it should be noted that improvements may not eliminate flooding entirely but instead may reduce the depth, duration, and/or frequency of flooding to levels that nevertheless result in reduced annualized damages and a substantial benefit to the community.

It is anticipated that Part 2 will result in a detailed planning-level document describing a small number of regional projects which exhibit potential flood reduction benefits based upon screening-level hydraulic evaluations performed as part of this project. The planning document would include: conceptual-level drawings and/or diagrams describing the regional plan(s) for improvements in general terms; a narrative including summary of project purpose, proposed facilities, environmental and other constraints, and expected hydraulic performance; and calculations (screening-level pre/post storm event simulation results) to demonstrate anticipated flood reduction and identify potential adverse impacts with respect to water quantity. A project plan and cost estimate for each regional flood reduction concept would be provided along with a discussion on future SWERP application(s) for implementation of the proposed improvements. Due to the size and scope of those solutions, additional funding would be required to fully develop and implement the regional projects. It should also be noted that additional analyses required to support design and permitting of mixed-use regional solutions may include additional storm event hydraulic modeling as well as continuous simulations, water quality evaluations, hydroperiod analyses, water quality studies, water supply evaluations, etc. Planning-level cost estimates will address those additional analyses as well as engineering design, environmental permitting, land acquisition, construction, and other costs.

- 2.1 Formulate List of Regional Flood Reduction Concepts
 - 2.1.1 Describe Each Potential Solution and Known or Expected Obstacles to Success
 - 2.1.2 Identify Additional Data Needs to Support Hydraulic Evaluation
 - 2.1.3 Meeting to Review and Discuss List of Potential Solutions
 - 2.1.4 Select a Set of Alternatives for Further Evaluation
- 2.2 Landowner Outreach Meeting(s) (including State agencies)
- 2.3 Evaluate Hydraulic Performance of Selected Set of Alternatives
 - 2.3.1 Perform Screening-Level Hydraulic Analyses
 - 2.3.2 Summarize Hydraulic Performance
 - 2.3.3 Meeting to Review and Discuss Performance of Alternatives
 - 2.3.4 Identify Preferred Plans for Regional Improvements
- 2.4 Summarize and Present Preferred Plan(s) for Regional Improvements
 - 2.4.1 Screening-Level Hydraulic Model Pre/Post and Result Tabulations
 - 2.4.2 Conceptual-Level Drawings and Plan Descriptions
 - 2.4.3 Site Conditions and Design Constraints
 - 2.4.4 Relevant Permitting Requirements
 - 2.4.5 Opinion of Probable Cost (for detailed analysis, design, permitting, land, and construction)
 - 2.4.6 Planning-Level Report and Mapping

ATTACHMENT 2 – FEES AND TIME SCHEDULE

BIG SLOUGH FLOOD REDUCTION FEASIBILITY STUDY for CITY OF NORTH PORT
 DeLoach Engineering Science, PLLC - Project Plan with Timeline, Manhour and Fee Estimate

Task Descriptions	Principal Engineer	Project Engineer	GIS Analyst	Sub-Consultant	Reimb. Expenses	Estimated Fee	Start Date	End Date	Task Duration	Project Duration
1.1 Project Development	8	8	0	8	\$0.00	\$13,290.00	3-Oct-16	7-Oct-16	5	5
1.1.1 Kickoff Meeting and Initial Field Visit	4	4	10	4	\$0.00	\$4,040.00	3-Oct-16	14-Oct-16	12	12
1.1.2 Review of Existing Flood Maps	0	0	0	8	\$0.00	\$3,260.00	3-Oct-16	14-Oct-16	12	12
1.1.3 Summary of Prior Work Performed, Alternatives and Findings	12	0	0	8	\$0.00	\$3,000.00	3-Oct-16	23-Oct-16	20	20
1.1.4 Project Plan Formulation	0	0	0	4	\$0.00	\$4,990.00	3-Oct-16	23-Oct-16	20	20
1.2 Define Existing Flooding Problems	32	32	16	2	\$0.00	\$8,660.00	10-Oct-16	21-Oct-16	12	19
1.2.1 Confirm Ability to Reproduce Existing Flood Model Results	8	16	16	16	\$0.00	\$4,160.00	17-Oct-16	28-Oct-16	12	25
1.2.2 Reproduce Existing Flood Model Results	12	12	0	8	\$0.00	\$5,500.00	31-Oct-16	4-Nov-16	5	33
1.3 Operations Staff Meeting and Team Field Visit	8	8	0	8	\$0.00	\$12,960.00	31-Oct-16	4-Nov-16	5	33
1.3.1 Meeting Topics (Preparation, Attendance and Field Visit)	8	8	0	8	\$0.00	\$4,040.00	31-Oct-16	4-Nov-16	5	49
1.3.2 Formulate List of Potential Solutions for Hydraulic Evaluation	8	8	3	8	\$0.00	\$4,040.00	31-Oct-16	4-Nov-16	5	49
1.3.3 Identify Additional Data Needs to Support Hydraulic Evaluation	8	8	3	8	\$0.00	\$4,880.00	31-Oct-16	4-Nov-16	5	54
1.3.4 Identify Additional Data Needs to Support Hydraulic Evaluation	8	8	3	8	\$0.00	\$4,880.00	31-Oct-16	4-Nov-16	5	61
1.4 Formulate List of Potential Solutions for Hydraulic Evaluation	8	8	0	4	\$0.00	\$2,020.00	28-Nov-16	2-Dec-16	5	81
1.4.1 Identify Additional Data Needs to Support Hydraulic Evaluation	8	8	0	4	\$0.00	\$2,020.00	28-Nov-16	2-Dec-16	5	81
1.4.2 Identify Additional Data Needs to Support Hydraulic Evaluation	8	8	0	4	\$0.00	\$2,020.00	28-Nov-16	2-Dec-16	5	81
1.4.3 Select a Set of Alternatives from Among Potential Solutions for Hydraulic Evaluation	8	8	0	4	\$0.00	\$2,020.00	28-Nov-16	2-Dec-16	5	81
1.4.4 Evaluate Hydraulic Performance of Selected Alternatives	8	8	0	4	\$0.00	\$2,020.00	28-Nov-16	2-Dec-16	5	81
1.5 Evaluate Hydraulic Performance of Selected Alternatives	8	8	0	40	\$10,000.00	\$32,520.00	5-Dec-16	30-Dec-16	26	88
1.5.1 Evaluate Hydraulic Performance of Selected Alternatives	8	8	16	16	\$0.00	\$2,020.00	5-Dec-16	30-Dec-16	26	88
1.5.2 Summarize Hydraulic Performance of Selected Alternatives	8	8	16	16	\$0.00	\$2,020.00	5-Dec-16	30-Dec-16	26	88
1.5.3 Meeting to Review and Discuss Performance of Alternatives	8	8	16	16	\$0.00	\$2,020.00	5-Dec-16	30-Dec-16	26	88
1.5.4 Identify Preferred Plan(s) of Improvements	8	8	16	16	\$0.00	\$2,020.00	5-Dec-16	30-Dec-16	26	88
1.6 Review and Discuss Performance of Alternatives	8	8	0	4	\$0.00	\$2,020.00	23-Jan-17	27-Jan-17	5	117
1.6.1 Evaluate Site Conditions and Design/Permitting Constraints of Preferred Plan(s)	8	8	16	16	\$0.00	\$66,220.00	30-Jan-17	3-Feb-17	5	134
1.6.2 Evaluate Site Conditions and Design/Permitting Constraints of Preferred Plan(s)	8	8	16	16	\$0.00	\$66,220.00	30-Jan-17	3-Feb-17	5	134
1.6.3 Refine Preferred Plan(s) to Address Site Conditions and Design/Permitting Constraints	8	8	16	16	\$0.00	\$66,220.00	30-Jan-17	3-Feb-17	5	134
1.6.4 Perform Hydraulic Analyses of Refined Plan(s)	8	8	16	16	\$0.00	\$66,220.00	30-Jan-17	3-Feb-17	5	134
1.7 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.1 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.2 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.3 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.4 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.5 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.6 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.7 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.8 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.9 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.10 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.11 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.12 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.13 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.14 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.15 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.16 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.17 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.18 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.19 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.20 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.21 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.22 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.23 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.24 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.25 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.26 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.27 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.28 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.29 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.30 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.31 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.32 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.33 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.34 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.35 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.36 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.37 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.38 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.39 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.40 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.41 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.42 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.43 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.44 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.45 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.46 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.47 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.48 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.49 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.50 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.51 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.52 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.53 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.54 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.55 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.56 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.57 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.58 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.59 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.60 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.61 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.62 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.63 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.64 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.65 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.66 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.67 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.68 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.69 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.70 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.71 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.72 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.73 Prepare and Present Recommended Plan(s)	8	8	0	8	\$0.00	\$18,240.00	13-Feb-17	17-Mar-17	12	168
1.7.74 Prepare and Present Recommended Plan(s)	8	8	0	8						

**ATTACHMENT 3 –
SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT AND CITY OF NORTH PORT AGREEMENT**



An Equal Opportunity Employer

Southwest Florida Water Management District

2379 Broad Street, Brooksville, Florida 34604-6899

(352) 796-7211 or 1-800-423-1476 (FL only)

WaterMatters.org

Bartow Service Office
170 Century Boulevard
Bartow, Florida 33830-7700
(863) 534-1448 or
1-800-492-7862 (FL only)

Sarasota Service Office
6750 Fruitville Road
Sarasota, Florida 34240-9711
(941) 377-3722 or
1-800-320-3503 (FL only)

Tampa Service Office
7601 U.S. 301 North (Fort King Highway)
Tampa, Florida 33637-6759
(813) 985-7481 or
1-800-836-0797 (FL only)

April 4, 2016

Michael A. Babb
Chair, Hillsborough

Randall S. Maggard
Vice Chair, Pasco

Jeffrey M. Adams
Secretary, Pinellas

David W. Dunbar
Treasurer, Hillsborough, Pinellas

H. Paul Senft, Jr.
Former Chair, Polk

Ed Armstrong
Pinellas

Bryan K. Beswick
DeSoto, Hardee, Highlands

Thomas E. Bronson
Hernando, Marion

Wendy Griffin
Hillsborough

John Henslick
Manatee

George W. Mann
Polk

Michael A. Moran
Charlotte, Sarasota

Kelly S. Rice
Citrus, Lake, Levy, Sumter

Robert R. Boltran, P.E.
Executive Director

Gordon Reynolds
City of North Port
Department of Public Works
1100 N. Chamberlain Boulevard
North Port, Florida, 34286

Subject: City of North Port BMP Alternatives Analysis (N682);
Agreement No. 16CF0000171

Dear Gordon Reynolds:

Enclosed is one fully executed original of the agreement between the Southwest Florida Water Management District and City of North Port for the subject project. Please accept this letter as your written notice to proceed.

If you have any questions, please contact me at extension 4136 at the Brooksville office.

Sincerely,

Anita Hoover
Procurement Specialist 3
Finance Bureau/Procurement

Enclosures (1)

cc: Jezabel Pagan Garcia, WRB
S. Tarokh, PAB
Records (Contract File)
Project File

COOPERATIVE FUNDING AGREEMENT (Type 3)
BETWEEN THE
SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT
AND
CITY OF NORTH PORT
FOR
CITY OF NORTH PORT BMP ALTERNATIVES ANALYSIS (N682)

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 the CITY OF NORTH PORT, a municipal corporation of the State of Florida, whose address is 4970 City Hall Boulevard, North Port, Florida 34286, 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 developing an Alternative Analysis study to generate feasible solutions to reduce flooding in the area near the Myakkahatchee Creek and I-75 and the Jockey Club area 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 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:
Jezabel Pagan Garcia
Southwest Florida Water Management District
2379 Broad Street
Brooksville, Florida 34604

Project Manager for the COOPERATOR:
Gordon Reynolds
City of North Port
Department of Public Works
1100 N. Chamberlain Boulevard
North Port, Florida 34286

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 attached hereto as an exhibit 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 section of this Agreement.

2. SCOPE OF WORK.

- 2.1 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 COOPERATOR'S 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.

2.2 The parties acknowledge that the PROJECT is a feasibility study. The parties recognize that during the course of study, alternatives may be determined to not be feasible due to cost, water quality, permitability, supply availability, or other pertinent considerations. The COOPERATOR shall cease work on alternatives determined to not be feasible. The COOPERATOR may request reallocating funds to another alternative in accordance with subparagraph 2 of the Project Contacts and Notices Paragraph or the Scope of Work Paragraph of this Agreement. The approval of such request for reallocation of funds shall be in the DISTRICT'S sole discretion.

3. FUNDING.

The parties anticipate that the total cost of the PROJECT will be Two Hundred and Fifty Thousand Dollars (\$250,000). The DISTRICT agrees to fund PROJECT costs up to One Hundred and Twenty-Five Thousand Dollars (\$125,000), 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 Council 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 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 shall the DISTRICT'S expenditure amounts under this Agreement exceed expenditures made by the COOPERATOR.

3.3 Unless otherwise stated in this Agreement, 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. The COOPERATOR must obtain the DISTRICT'S written approval prior to posting solicitations for consultants or contractors and prior to entering into agreements with consultants or contractors to ensure that costs to be reimbursed by the DISTRICT under those agreements are reasonable and allowable under this Agreement. 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 contract(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 contingency expenses. The DISTRICT agrees to reimburse the COOPERATOR for contingency expenses 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.

- 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 City of North Port BMP Alternatives Analysis (N682) agreement between the Southwest Florida Water Management District and the City of North Port (Agreement No. 16CF0000171), 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 or 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 as it may be modified in accordance with subparagraph 2 of the Scope of Work paragraph, 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 meet 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 the attorneys' fees and costs incurred by the DISTRICT, including appeals, as a result of COOPERATOR'S failure to repay the DISTRICT as required by this Agreement.
- 5.5 This Repayment Provision, including all subparagraphs, shall survive the expiration or termination of this Agreement.

6. CONTRACT PERIOD.

This Agreement shall be effective October 1, 2015, and shall remain in effect through September 1, 2017, 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 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. 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 DISTRICT with each deliverable set forth in the Project Plan for review by the DISTRICT, including any supporting documentation. The DISTRICT shall provide a written response to the COOPERATOR and the COOPERATOR shall respond to the DISTRICT'S questions and concerns within the timeframes set forth in the Project Plan.
- 8.4 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 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 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 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. If the PROJECT involves design services, the COOPERATOR'S professional designers and the DISTRICT'S 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. However, the DISTRICT undertakes no duty to ensure compliance with such rules and regulations.

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 women 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.

14.2 The COOPERATOR 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 an exhibit to this Agreement. 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. This Paragraph shall survive the expiration or termination of this Agreement.

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 COOPERATOR.

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 COOPERATOR 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 Subsection 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.

20. GOVERNING LAW.

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

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 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.

22. ENTIRE AGREEMENT.

This Agreement and the attached exhibit(s) 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.

23. DOCUMENTS.

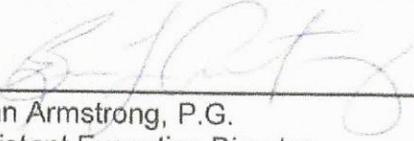
The following document(s) is/are attached and made a part of this Agreement. In the event of a conflict of contract terminology, priority shall first be given to the language in the body of this Agreement, then to Exhibit "A," and then to Exhibit "B."

Exhibit "A" Project Plan
Exhibit "B" Minority/Women Owned and Small Business Utilization Report

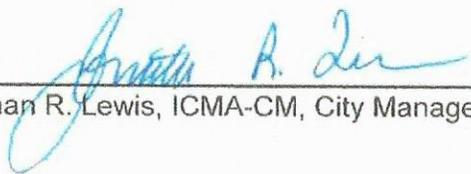
The remainder of this page intentionally left blank.

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.

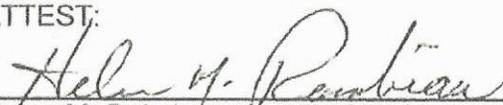
SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT

By:  4/1/16
Brian Armstrong, P.G. Date
Assistant Executive Director

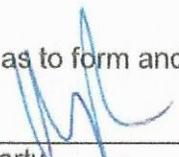
CITY OF NORTH PORT

By:  3-23-16
Jonathan R. Lewis, ICMA-CM, City Manager Date

ATTEST:

 3-24-16
Helen M. Raimbeau, MMC, City Clerk Date

Approved as to form and correctness:

 3-23-16
Mark Moriarty Date

COOPERATIVE FUNDING AGREEMENT (Type 3)
BETWEEN THE
SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT
AND
CITY OF NORTH PORT
FOR
CITY OF NORTH PORT BMP ALTERNATIVES ANALYSIS (N682)

PROJECT PLAN

PROJECT DESCRIPTION

The PROJECT involves the development of an Alternative Analysis study to evaluate feasible solutions to reduce flooding in two localized areas within the City of North Port: the area near Myakkahatchee Creek and I-75 and the Jockey Club area.

Existing site conditions will be evaluated and the Big Slough Watershed model used to model improvement projects. Best Management Practices (BMPs) and BMP implementation plan will be developed with prioritized recommendations and probable costs for implementation of selected BMPs.

MEASURABLE BENEFIT

A completed Alternative Analysis study that generates feasible solutions to reduce flooding within the following two areas within the City of North Port: area near the Myakkahatchee Creek just north and south of I-75, and the Jock Club area, bounded by Appomattox Drive, Pan American Boulevard and Kapa Place.

PROJECT TASKS

- Project Development
- Cost-Benefit Analysis
- BMP Alternatives Conceptual Drawings and Cost Estimates
- BMP Alternatives Analysis Report

DELIVERABLE REVIEW TIMES

The DISTRICT shall provide a written response to the COOPERATOR within 20 business days of receipt of each deliverable specified below including supporting documentation. The COOPERATOR shall respond to the DISTRICT'S questions and concerns within 20 business days of receipt by the COOPERATOR.

- Project Development Document
- Cost-Benefit Analysis
- BMP Alternatives Conceptual Drawings and Cost Estimates
- BMP Alternatives Analysis Report

PROJECT DELIVERABLES

- Quarterly status reports
- Kick-off meeting minutes
- Copy of contract with consultant (for cost approval, prior to execution)
- Monthly progress meeting minutes
- Project Development Document
- BMP Alternatives Analysis Report, Cost Estimates and Conceptual Drawings
- One (1) set, electronic and hardcopy, of BMP Alternatives Analysis Report
- Minority/Women Owned and Small Business Utilization Report

PROJECT SCHEDULE

TASK DESCRIPTION	START	FINISH
Consultant selection	5/15/2016	6/28/2016
Project Development	6/29/2016	10/31/2016
Selection of BMP Alternatives Based on Cost-Benefit Analysis	11/1/2016	12/31/2016
Draft Deliverable of BMP Alternatives Analysis	1/1/2017	2/28/2017
Final Deliverable of BMP Alternatives Analysis, Conceptual Drawings and Cost Estimates	3/1/2017	6/1/2017

Additional task deadlines contained in the performance schedules of the consultant and contractor contracts will be incorporated herein by reference.

PROJECT BUDGET

TASK DESCRIPTION	DISTRICT	CITY	TOTAL
Alternative Analysis study	\$125,000	\$125,000	\$250,000
Total	\$125,000	\$125,000	\$250,000

