

ORIGINAL

PO NO. 950000_____



**SOUTH FLORIDA WATER MANAGEMENT DISTRICT
LOCAL GOVERNMENTAL AGREEMENT**

AGREEMENT NO. 460003555

BETWEEN THE

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

AND

CITY OF RIVIERA BEACH

THIS AGREEMENT is entered into as of _____ by and between the South Florida Water Management District (**DISTRICT**) and City of Riviera Beach (**CITY**).

WHEREAS, the **DISTRICT** is a government entity created by Chapter 373, Florida Statutes; and

WHEREAS, the **DISTRICT** desires to provide financial assistance to the **CITY** for the Singer Island South Stormwater Project; and

WHEREAS, the **CITY** warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms and conditions of this **AGREEMENT**; and

WHEREAS, the Governing Board of the **DISTRICT**, at its September 8, 2016 meeting, approved entering into this **AGREEMENT** with the **CITY**;

NOW, THEREFORE, in consideration of the covenants and representations set forth herein and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

1. The **DISTRICT** agrees to contribute funds and the **CITY** agrees to perform the work set forth in Exhibit "A" attached hereto and made a part hereof, subject to availability of funds and in accordance with their respective authorities for the Singer Island South Stormwater Project.
2. The period of performance of this **AGREEMENT** shall commence on October 1, 2016 and shall terminate on October 31, 2018.
3. The total **DISTRICT** contribution for all work completed herein shall not exceed the amount of \$150,000 or 50% of eligible stormwater expenditures for the project as noted in Exhibit B, whichever is less.

4. The **CITY** shall submit Reimbursement Request Packages as described in the Payment and Deliverables Schedule set forth in Exhibit “B” attached hereto and made a part hereof. Payments by the **DISTRICT** shall be made following receipt and acceptance of the Reimbursement Request Packages by the **DISTRICT**’s Project Manager. Reimbursement Request Packages shall adequately demonstrate completion of each Task in accordance with Exhibit “A” and shall include, but not be limited to, a copy of the **CITY**’s invoice and other documentation supporting payment.
5. The **DISTRICT**’s payment is a reimbursement of actual eligible expenditures and is therefore contingent on adequate documentation to support actual eligible expenditures within the not-to-exceed **AGREEMENT** funding limitation. The **CITY** should provide prior written notice to the **DISTRICT**’s Project Manager of its decision to apply the unexpended balance toward a subsequent Task. Actual eligible expenditures less than the estimated project cost will result in a reduced final payment per the **AGREEMENT** funding limitation. The **CITY** is responsible for any additional funds either through local revenues, grants, other appropriations, and/or other funding sources.
6. The **CITY** shall provide evidence that its minimum cost-share of 50% has been met for each submitted invoice. Absence of proper supporting documentation may result in non-payment or audit and return of prior payments. In no event shall the **DISTRICT** be liable for any contribution hereunder in excess of \$150,000.
7. If the total consideration for this **AGREEMENT** is subject to multi-year funding allocations, funding for each applicable fiscal year of this **AGREEMENT** will be subject to Governing Board budgetary appropriation. In the event the **DISTRICT** does not approve funding for any subsequent fiscal year, this **AGREEMENT** shall terminate upon expenditure of the current funding, notwithstanding other provisions in this **AGREEMENT** to the contrary. The **DISTRICT** will notify the **CITY** in writing after the adoption of the final **DISTRICT** budget for each subsequent fiscal year if funding is not approved for this **AGREEMENT**.
8. The **CITY** shall submit quarterly financial reports to the **DISTRICT** providing a detailed accounting of all expenditures incurred hereunder throughout the term of this **AGREEMENT**. The **CITY** shall report and document the amount of funds expended per month during the quarterly reporting period and the **AGREEMENT** expenditures to date within the maximum not-to-exceed **AGREEMENT** funding limitation.
9. The **CITY**’s contribution shall be at least 50% of the total amount of the project in conformity with the laws and regulations governing the **CITY**.
10. All work to be performed under this **AGREEMENT** is set forth in Exhibit “A”, Statement of Work, which is attached hereto and made a part of this **AGREEMENT**. The **CITY** shall submit quarterly progress reports detailing the status of work to date for each task. The work specified in Exhibit “A” shall be under the direction of the **CITY** but shall be open to periodic review and inspection by either party. No work set forth in Exhibit “A” shall be performed beyond September 28, 2018 unless authorized through execution of an amendment to this **AGREEMENT** to cover succeeding periods.

11. The **CITY** shall not subcontract, assign or transfer any other work under this **AGREEMENT** without the prior written consent of the **DISTRICT's** Project Manager. The **CITY** agrees to be responsible for the fulfillment of all work elements included in any subcontract and agrees to be responsible for the payment of all monies due under any subcontract. It is understood and agreed by the **CITY** that the **DISTRICT** shall not be liable to any subcontractor for any expenses or liabilities incurred under the subcontract(s).
12. Both the **DISTRICT** and the **CITY** shall have joint ownership rights to all work items, including but not limited to, all documents, technical reports, research notes, scientific data, computer programs, including the source and object code, which are developed, created or otherwise originated hereunder by the other party, its subcontractor(s), assign(s), agent(s) and/or successor(s) as required by the Exhibit "A", Statement of Work. Both parties' rights to deliverables received under this **AGREEMENT** shall include the unrestricted and perpetual right to use, reproduce, modify and distribute such deliverables at no additional cost to the other party.
13. The **CITY**, to the extent permitted by law, assumes any and all risks of personal injury, bodily injury and property damage attributable to negligent acts or omissions of the **CITY** and the officers, employees, servants and agents thereof. The **CITY** represents that it is self-funded for Worker's Compensation and liability insurance, covering bodily injury, personal injury and property damage, with such protection being applicable to the **CITY**, its officers and employees while acting within the scope of their employment during performance of under this **AGREEMENT**. In the event that the **CITY** subcontracts any part or all of the work hereunder to any third party, the **CITY** shall require each and every subcontractor to identify the **DISTRICT** as an additional insured on all insurance policies as required by the **CITY**. Any contract awarded by the **CITY** shall include a provision whereby the **CITY's** subcontractor agrees to indemnify, pay on behalf, and hold the **DISTRICT** harmless from all damages arising in connection with the **CITY's** subcontract.
14. The **CITY** and the **DISTRICT** further agree that nothing contained herein shall be construed or interpreted as (1) denying to either party any remedy or defense available to such party under the laws of the State of Florida; (2) the consent of the State of Florida or its agents and agencies to be sued; or (3) a waiver of sovereign immunity of the State of Florida beyond the waiver provided in Section 768.28, Florida Statutes.
15. The parties to this **AGREEMENT** are independent entities and are not employees or agents of the other parties. Nothing in this **AGREEMENT** shall be interpreted to establish any relationship other than that of independent entities, between the **DISTRICT**, the **CITY**, their employees, agents, subcontractors or assigns, during or after the term of this **AGREEMENT**. The parties to this **AGREEMENT** shall not assign, delegate or otherwise transfer their rights and obligations as set forth in this **AGREEMENT** without the prior written consent of the other parties. Any attempted assignment in violation of this provision shall be void.
16. The parties to this **AGREEMENT** will not discriminate against any person on legally protected bases in any activity under this **AGREEMENT**.
17. The **CITY**, its employees, subcontractors or assigns, shall comply with all applicable federal, state and local laws, regulations and requirements relating to the performance of this **AGREEMENT**. The **DISTRICT** undertakes no duty to ensure such compliance, but

will attempt to advise the **CITY**, upon request, as to any such laws of which it has present knowledge.

18. Either party may terminate this **AGREEMENT** at any time for convenience upon thirty (30) calendar days prior written notice to the other party. In the event of termination, all funds not expended by the **CITY** for authorized work performed through the termination date shall be returned to the **DISTRICT** within sixty (60) days of termination.
19. The **CITY** shall allow public access to all project documents and materials in accordance with the provisions of Chapter 119, Florida Statutes. Should the **CITY** assert any exemptions to the requirements of Chapter 119 and related Statutes, the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon the **CITY**.
20. The **CITY** shall maintain records and the **DISTRICT** shall have inspection and audit rights below. The **CITY** shall similarly require each subcontractor to maintain and allow access to such records for audit purposes:
 - A. Maintenance of Records: The **CITY** shall maintain all financial and non-financial records and reports directly or indirectly related to the negotiation or performance of this **AGREEMENT** including supporting documentation for any service rates, expenses, research or reports. Such records shall be maintained and made available for inspection for a period of five (5) years from the expiration date of this **AGREEMENT**.
 - B. Examination of Records: The **DISTRICT** or designated agent shall have the right to examine in accordance with generally accepted governmental auditing standards all records directly or indirectly related to this **AGREEMENT**. Such examination may be made only within five (5) years from the expiration date of this **AGREEMENT**.
 - C. Extended Availability of Records for Legal Disputes: In the event that the **DISTRICT** should become involved in a legal dispute with a third party arising from performance under this **AGREEMENT**, the **CITY** shall extend the period of maintenance for all records relating to the **AGREEMENT** until the final disposition of the legal dispute. All such records shall be made readily available to the **DISTRICT**.
21. If the **DISTRICT's** contribution includes state or federal appropriated funds, the **CITY** shall, in addition to the obligations set forth in paragraph 20 above, require each subcontractor to maintain and allow access to such records in compliance with the requirements of the Florida State Single Audit Act and the Federal Single Audit Act.
22. All notices or other communication regarding this **AGREEMENT** shall be in writing and forwarded to the attention of the following individuals:

South Florida Water Management District	City of Riviera Beach
Attn: Nestor Garrido, Project Manager Attn: Sharman Rose, Contract Specialist 3301 Gun Club Road West Palm Beach, FL 33406 Telephone No: (561) 682-2167 Email: shrose@sfwmd.gov	Attn: Terrence Bailey 2391 Avenue L Riviera Beach, FL 33404 Telephone No: (561) 845-3472 Email: TBailey@Rivierabch.com

23. **CITY** shall send its invoices and any attachments to APInvoice@sfwmd.gov and a copy to the **DISTRICT** Project Manager. All invoices must reference the **CITY's** legal name as authorized to do business with the State of Florida; **DISTRICT'S AGREEMENT** Number and Purchase Order (PO) Number as specified on the cover/signature page of the **AGREEMENT**; a unique invoice number not previously used; date; a description of the services performed, and the amount to be invoiced. **CITY** shall: 1) submit invoices using a pdf file at a resolution of no less than 300 dpi; 2) name the pdf file with the **CITY's** name and the PO number; 3) provide all required attachments with the invoice file (refer to Attachment 1 to Exhibit C), and 4) include the PO number and Invoice number in the subject line of the email. If email or pdf filing is not possible, the **CITY** must provide the above to the following address:

***South Florida Water Management District
Accounts Payable
P.O. Box 24682
West Palm Beach, FL 33416-4682***

- CITY** must submit its invoices in compliance with the requirements of this subsection and all other terms and conditions of this **AGREEMENT** in order to receive prompt payment by the **DISTRICT** as described in Section 218.70, F.S. **CITY's** failure to follow the instructions set forth in the **AGREEMENT** regarding a proper invoice and acceptable services and/or deliverables may result in an unavoidable delay in payment by the **DISTRICT**.
24. **CITY** recognizes that any representations, statements or negotiations made by **DISTRICT** staff do not suffice to legally bind **DISTRICT** in a contractual relationship unless they have been reduced to writing and signed by an authorized **DISTRICT** representative. This **AGREEMENT** shall inure to the benefit of and shall be binding upon the parties, their respective assigns, and successors in interest.
25. This **AGREEMENT** may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A photocopy, electronic or facsimile copy of this **AGREEMENT** and any signatory hereon shall be considered for all purposes as original.
26. This **AGREEMENT** may be amended, extended or renewed only with the written approval of the parties. The **DISTRICT** shall be responsible for initiating any amendments to this **AGREEMENT**, if required.
27. This **AGREEMENT**, and any work performed hereunder, is subject to the Laws of the State of Florida. Nothing in this **AGREEMENT** will bind any of the parties to perform beyond their respective authority, nor does this **AGREEMENT** alter the legal rights and remedies which the respective parties would otherwise have, under law or at equity.
28. Should any term or provision of this **AGREEMENT** be held, to any extent, invalid or unenforceable, as against any person, entity or circumstance during the term hereof, by force of any statute, law, or ruling of any forum of competent jurisdiction, such invalidity shall not affect any other term or provision of this **AGREEMENT**, to the extent that the

AGREEMENT shall remain operable, enforceable and in full force and effect to the extent permitted by law.

29. Failures or waivers to insist on strict performance of any covenant, condition, or provision of this **AGREEMENT** by the parties shall not be deemed a waiver of any of its rights or remedies, nor shall it relieve the other party from performing any subsequent obligations strictly in accordance with the terms of this **AGREEMENT**. No waiver shall be effective unless in writing and signed by the party against whom enforcement is sought. Such waiver shall be limited to provisions of this **AGREEMENT** specifically referred to therein and shall not be deemed a waiver of any other provision. No waiver shall constitute a continuing waiver unless the writing states otherwise.
30. Any dispute arising under this **AGREEMENT** which cannot be readily resolved shall be submitted jointly to the signatories of this **AGREEMENT** with each party agreeing to seek in good faith to resolve the issue through negotiation or other forms of non-binding alternative dispute resolution mutually acceptable to the parties. A joint decision of the signatories, or their designees, shall be the disposition of such dispute.
31. This **AGREEMENT** states the entire understanding and agreement between the parties and supersedes any and all written or oral representations, statements, negotiations, or agreements previously existing between the parties with respect to the subject matter of this **AGREEMENT**.
32. Any inconsistency in this **AGREEMENT** shall be resolved by giving precedence in the following order:
 - (a) Terms and Conditions outlined in preceding paragraphs 1 – 31
 - (b) Exhibit “A” Statement of Work
 - (c) Exhibit “B” Payment and Deliverable Schedule
 - (d) all other exhibits, attachments and documents specifically incorporated herein by reference

IN WITNESS WHEREOF, the parties or their duly authorized representatives hereby execute this **AGREEMENT** on the date first written above.

**SOUTH FLORIDA WATER MANAGEMENT DISTRICT
BY ITS GOVERNING BOARD**

By: _____
Lennart J. Lindahl, P.E.
Assistant Executive Director

By: _____
Dorothy A. Bradshaw, Director
Administrative Services Division

SFWMD OFFICE OF COUNSEL APPROVED

By: [Signature]
Print Name: Frank Mender
Date: 12/19/16

SFWMD PROCUREMENT APPROVED

By: [Signature]
Date: 12/13/16

[Signature]

CITY OF RIVIERA BEACH

ATTEST:

BY: _____
CLAUDENE L. ANTHONY
CERTIFIED MUNICIPAL CLERK
CITY CLERK

BY: _____
THOMAS A. MASTERS,
MAYOR

APPROVED AS TO TERMS AND
CONDITIONS

BY: _____
BRYNT JOHNSON
DEPARTMENT DIRECTOR

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

BY: _____
ANDREW DEGRAFFENREIDT
CITY ATTORNEY

Date: _____

EXHIBIT “A”

STATEMENT OF WORK

Singer Island South Stormwater Project
City of Riviera Beach

1.0 INTRODUCTION AND BACKGROUND

The South Florida Water Management District (**DISTRICT**) has allocated funding in Fiscal Year 2017 to local governments and other entities for construction and implementation of stormwater management, alternative water supply, and water conservation projects through the Cooperative Funding Program.

The Project Area within Singer Island South was identified as a Capital Improvement Project in need of stormwater system improvements based on the City’s Stormwater Master Plan dated 2009. The existing drainage system within the Singer Island South Project consists of seven independent drainage systems collecting stormwater runoff from the public right of way areas and discharging to the Lake Worth Lagoon (LWL). The installation of exfiltration trench throughout the neighborhood and the connection of all the independent outfall systems was selected as the most effective option for reducing the peak flood stage and reducing the flood duration. A total of 4,200 linear feet of exfiltration trench is being proposed throughout the neighborhood in multiple phases to minimize impacts to the residents, which will provide additional storage and improve the water quality of stormwater runoff prior to discharging to the outfalls. The project is bounded from Singer Drive to Morse Boulevard and Intracoastal Waterway to N. Ocean Boulevard.

2.0 OBJECTIVE

General project objectives, which align with the mission of the **DISTRICT**, include managing and protecting water resources of the region by balancing and improving flood control, water quality, and natural systems. The purpose of the Singer Island South Project is to enhance the drainage system throughout the residential neighborhood to reduce flooding by providing additional storage and improving the water quality of the stormwater runoff prior to discharging into the LWL.

3.0 SCOPE OF WORK

The City of Riviera Beach (**CITY**) shall construct (1) approximately 4,200 linear feet of exfiltration trench and 2,800 linear feet of solid pipe, (2) approximately 86 drainage structures, (3) weirs to retain stormwater runoff in the exfiltration trench prior to the outfalls, (4) multiple pollution retardant baffles at inlets to keep debris out of the drainage system and ultimately the canal in accordance with design plans, project specifications, and applicable permits. Roadway work including regrading with curbing to convey flow into the proposed drainage system is not part of the contract.

Due to the length and amount of infrastructure proposed and the single entrance and exit of the subdivision, the project shall be phased into approximately four (4) sections to minimize displacement of existing residents. The **CITY** will be responsible for satisfactory completion of the scope of work and may retain consultants, contractors, and/or vendors to provide the professional and construction services required. The **CITY** will also be responsible for project management, budget management, quality control, and public outreach.

4.0 WORK BREAKDOWN STRUCTURE

The work breakdown structure is presented below:

Task 1

Submit design plans, project specifications, bid amount documentation, and Notice to Proceed (NTP) to the **DISTRICT** Project Manager via email.

Initiate construction activities per design plans, project specifications, and applicable permits.

Tasks 2 through 7

Continue construction activities per design plans, project specifications, and applicable permits.

Submit a quarterly status report (Exhibit "C") to the **DISTRICT** Project Manager via email which provides a narrative of construction activities completed since the NTP was issued; a discussion of project status; an explanation of conflicts or issues, if any, which may affect construction progress or project performance; and a description of other pertinent information attached to the quarterly status report such as project oversight/management documentation, results from applicable inspections or field tests, addendums or revisions to design plans or project specifications, and relevant project correspondence. The reports are due quarterly and shall be submitted until the project is complete.

Task 8

Complete construction activities (100%) per design plans, project specifications, and applicable permits.

Submit a Reimbursement Request Package to the **DISTRICT** Project Manager which includes Certificate of Completion, a **CITY** invoice and supporting documentation such as consultant, contractor, and/or vendor invoices and proof of payment(s).

EXHIBIT "B"
PAYMENT AND DELIVERABLES SCHEDULE

Singer Island South Stormwater Project
City of Riviera Beach

The schedule set forth below is October 1, 2016 to September 28, 2018.

All deliverables submitted hereunder are subject to review and acceptance by the **District** Project Manager. Acceptability of all work will be based on the judgment of the **District** that the work is technically complete and accurate.

Payment shall be made following receipt and acceptance by the **District** of the Reimbursement Request Package(s) in accordance with the schedule set forth below. The **City** shall submit a reimbursement request upon completion of each Task noted below. If applicable, the **City** shall submit a final reimbursement request for payment on or before September 28, 2018 for reimbursement. All reimbursement requests shall be accompanied by adequate documentation to demonstrate completion of each Task in accordance with Exhibit A the Statement of Work (SOW).

Reimbursement Request Packages shall include, but not be limited to, a copy of the **City's** invoice, signed certification letter for partial payment that the Task(s) is (are) complete per the SOW or that the project is complete per the SOW, copies of vendor invoices, and any other documentation supporting payment. Reimbursement Request Packages shall adequately demonstrate completion of each Task in accordance with Exhibit A the SOW.

The **District** shall only be obligated to pay for documented actual construction costs within the not-to-exceed amounts specified below. In *no event* shall the **District's** total obligation exceed the amount specified below for the total **Agreement**; however, an actual construction cost less than the estimated construction cost *may* result in a reduced final payment. The **City** is responsible for any additional funds either through local revenues, grants, other appropriations, and/or other funding sources.

Total payment by the **District** for all work completed herein *shall not exceed* the amount of \$150,000.00. If the total consideration for this **Agreement** is subject to multi-year funding allocations, funding for each applicable fiscal year will be subject to Governing Board budgetary appropriation. In the event the **District** does not approve funding for any subsequent fiscal year, this **Agreement** shall terminate upon expenditure of the current funding, notwithstanding other provisions in this **Agreement** to the contrary.

Task	Deliverable(s)	Due Date	CITY Share	DISTRICT Not-To-Exceed Amount	Estimated Project Cost
1	Design Plans, Project Specifications, Bid Amount Documentation, and NTP	September 29, 2017	N/A	N/A	N/A
2	Exhibit "C" - Quarterly Status Report	March 31, 2017	N/A	N/A	N/A
3	Exhibit "C" - Quarterly Status Report	June 30, 2017	N/A	N/A	N/A
4	Exhibit "C" - Quarterly Status Report	September 29, 2017	N/A	N/A	N/A
5	Exhibit "C" - Quarterly Status Report	December 29, 2017	N/A	N/A	N/A
6	Exhibit "C" - Quarterly Status Report	March 30, 2018	N/A	N/A	N/A
7	Exhibit "C" - Quarterly Status Report	June 29, 2018	N/A	N/A	N/A
8	Exhibit "C" - Quarterly Status Report	September 28, 2018	\$1,033,583	\$150,000	\$1,183,583
	Complete 100% of construction activities per design plans, project specifications, and applicable permits.				
	Reimbursement Request Package (including Certificate of Completion, Invoice(s), Proof of Payment)				
Total			\$1,033,583	\$150,000	\$1,183,583

If applicable, interim Reimbursement Request Packages shall be submitted upon completion of the task(s) noted above. Reimbursement Request Packages must be submitted on or before September 28, 2018 for reimbursement.

Exhibit C Quarterly Status Reports are due within ten (10) days of the due date.

Ineligible costs include, but not limited to, permits, as-builts, videos, early completion bonus, bonds and insurance, etc.

EXHIBIT “C”
QUARTERLY STATUS REPORT
SINGER ISLAND SOUTH STORMWATER PROJECT

1.0 DATE OF REPORT

Click here to enter a date.

2.0 NAME AND TITLE OF PERSON COMPLETING REPORT

Click here to enter text.

3.0 NARRATIVE OF CONSTRUCTION ACTIVITIES COMPLETED TO DATE OR SINCE LAST REPORT

Click here to enter text.

4.0 DISCUSSION OF OVERALL PROJECT STATUS

Click here to enter text.

5.0 EXPLANATION OF CONFLICTS, IF ANY, WHICH MAY AFFECT CONSTRUCTION PROGRESS OR PROJECT PERFORMANCE

Click here to enter text.

6.0 DESCRIPTION OF OTHER PERTINENT INFORMATION ATTACHED THIS REPORT FOR FURTHER CLARIFICATION OF DETAILS CONTAINED IN CONSTRUCTION ACTIVITIES NARRATIVE, OVERALL PROJECT STATUS DISCUSSION, AND/OR CONFLICTS EXPLANATION

Click here to enter text.